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# A Policy Analysis of the City of Newton, Massachusetts' Demolition Delay Ordinance

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A Policy Analysis of the City of Newton, Massachusetts'  
Demolition Delay Ordinance

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Master of Science

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School of Architecture, Art and Historic Preservation  
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May 2015

## A Policy Analysis of the City of Newton, Massachusetts' Demolition Delay Ordinance

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## EXECUTIVE SUMMARY

The City of Newton first adopted its Demolition Delay Ordinance in 1985, stating that historic preservation was determined to be an important and integral component of Newton's Comprehensive Plan. The overall goal and purpose of the ordinance is to protect Newton's historic resources from demolition. In the last year and a half the number of applications submitted for demolition review has been rapidly increasing. There is a significant percentage of historic buildings that are included in the number of teardowns. This report provides an analysis on the current demolition delay ordinance in Newton, as well as various demolition delay policies that are being practiced throughout the country. The alternatives are presented in the order of the typical flow of a demolition delay ordinance's process. This includes the methods for the trigger of review, the initial staff and community review process, the public hearing process, the actual delay period, and staff review that occur once a delay has been implemented. The research and recommendations were shaped around the variables of the number of applications and demolitions, existing historic staff and staff time, Newton's existing popularity as a place to live, population growth, and building stock, and effect on developers, city staff and aldermen, as well as the community. Findings and conclusions are presented with recommendations for future research. Recommendations addressed in this report included to introduce an application fee, to extend the period of staff review once an application is submitted, to enforce a deadline for determinations of "not historic" and "not preferably-preserved," to require lawn signs and newspaper announcement of public hearing information, to extend the length of the delay period, and to add additional requirements that require historic staff review after a delay has been imposed, specifically to buildings listed on or deemed eligible for listing on the National Register of Historic Places.

## CHAPTER 1: INTRODUCTION

The City of Newton, Massachusetts is desirably located seven miles from the state's capital and has been consistently a popular and well-respected community in the state. As recent as 2014, *USA Today* named Newton the top city on its list of "America's 50 Best Cities to Live in." Although the city has been a desired location for homeowners for over a century, in the last few years the city has become a hub for demolition and new construction. With development becoming the new norm in the city, both historic and non-historic buildings have fallen victim to the bulldozer. Newton faces important policy decisions about how to handle this rapid rise in demolition.

Adopted in 1985, Newton's Demolition Delay Ordinance was enacted to protect the city's historic resources and historic building stock, to allow for community input in the development process, and to become an integral component of the city's comprehensive plan. The ordinance serves as a temporary, and at times, lasting safety net for historic buildings threatened by demolition. For decades the ordinance has given buildings and the community the protection and recognition they deserve. Through the ordinance and its process, any building over fifty years of age requires demolition review. If, after an initial review the historic staff finds the building to meet the criteria for historical significance, the building and its applicant are put on an agenda for a Newton Historical Commission public hearing meeting. Local abutters are notified of the hearing, and the community has an opportunity to provide input. At the meeting the commission votes on whether or not to find the building preferably preserved, meaning its loss would be detrimental to the city, and to impose a demolition delay. If the building is listed or eligible for listing on the National Register, an eighteen-month delay is imposed; all other

preferably preserved buildings receive a one-year demolition delay. The delay is the central component of the ordinance, and its purpose is to add options to save the building before obtaining of a demolition permit from the city's Inspectional Services Department.

Similar demolition delay ordinances or processes are widely used all over the country. Simply put, a definition for this type of ordinance is a general bylaw or legal tool that provides communities with a means to ensure that potentially significant buildings and structures are not demolished without notice and some level of review by a preservation commission.

Demolition delay ordinances vary from one another. Typically most ordinances and regulations follow a similar application and review process. The process begins with the trigger for review. For Newton, it would be any building over fifty years old. The process continues with the initial historic staff and community review; next is the public hearing to allow for community contribution, followed by the actual delay period; and ending with historic staff review that is required once the delay has been imposed. This specific process is continuously followed throughout the capstone, and the practices and policies of each step are examined by looking at various cities and towns.

Recommendations for policy alternatives provided by the author are supported by documentary evidence, existing conditions in the city, and current successful policies implemented around the country.

Key groups and players in Newton that either are currently or may be potentially affected by the demolition delay ordinance and the author's proposed policy implementations are often mentioned in the report. This includes the city's historic staff and aldermen, the Newton Historical Commission, homeowners, developers, abutters,



and the community as a whole. The objective of this capstone is to provide the City of Newton with an analysis on its current demolition delay ordinance and the city's ongoing residential demolition issue, as well as provide the city with policy alternatives practiced around the country with recommendations that could be beneficial.

This report will begin with a literature review, which cites sources that discuss the background of a demolition delay ordinance, its importance, properties subject to its review, the procedure, and conflicts. The report will then specifically examine the City of Newton and its current demolition delay ordinance in order for readers to understand its benefits and drawbacks. A list of demolition delay ordinance's policy alternatives used in various cities and towns across the country will then be assessed. This list will follow the typical process of the demolition review process previously mentioned. Lastly, the author will provide recommendations to the City of Newton using supporting evidence from the previous three chapters, and conclude with an assessment for the future.

There is no one solution to the residential teardown pace in Newton, and the city's demolition delay ordinance is simply one piece of the puzzle. The City is currently working towards zoning code reform, which will take time to accomplish, but its demolition delay ordinance should be closely examined during the process. The ordinance is one of the city's stronger weapons in proper and controllable demolition and new development, and should not only be better utilized by the city, but also it should be altered and tailored to realize its full potential.

## CHAPTER 2: LITERATURE REVIEW

### 2.1 Background

It can be argued that Historic Preservation is one of the nation's success stories. Its most effective defense at the federal level is the National Historic Preservation Act (NHPA), enacted in 1966. The NHPA provides a framework for the identification and protection of historic structures through a collaborative effort by federal, state, and local governments.<sup>1</sup> However, even at the federal level the NHPA provides no ultimate protection against the demolition of historic buildings, regardless of whether the building is listed on the National Register or within a National Register district. Additionally, the NHPA includes a procedure for an agency review, known as "Section 106 review" for any federal undertaking that could impact historic resources above or below ground, but the act only applies to projects that require or include federal government action through permitting or funding.<sup>2</sup> Even then, the state or federal entity only has to take identified historic structures into account. Hutt, Blanco, and Varmer furthered the description by stating the act established State Historic Preservation Officers to provide valuable aid to local preservation agencies, and it is the local agencies that bear the weight of preservation efforts.<sup>3</sup> With the rapid amount of demolition and new construction occurring all over the United States, it is becoming increasingly difficult for local agencies to protect historic properties. One of the most successful weapons a local agency can use against the demolition of historic buildings or structures is a demolition review law. At the local level laws are incorporated into ordinances, which is the body of law

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<sup>1</sup> Sherry Hutt, Caroline M. Blanco, and Ole Varmer, *Heritage Resources Law: Protecting the Archeological and Cultural Environment* (New York: Wiley, 1999), 22.

<sup>2</sup> Ibid, 22, 24.

<sup>3</sup> Ibid, 25.

that a local municipality enforces, thus it is typically referred to as a “demolition delay ordinance” or simply, “demolition ordinances.”

Julia Miller explains that demolition review is a legal tool that provides communities with the means to ensure that potentially significant buildings and structures are not demolished without notice and some level of review by a preservation commission.<sup>4</sup> Christopher Skelly, with the Massachusetts Historical Commission, further notes that a demolition delay bylaw is typically a general bylaw requiring a majority affirmative vote of town meeting or city council, and is most often drafted by a municipal historical commission.<sup>5</sup> The review creates a safety net for historic resources by ensuring that buildings and structures worthy of preservation are not inadvertently demolished. Miller states that demolition review, as the name suggests, allows for review of applications for demolition permits for a specific period of time to assess a building’s historical significance.<sup>6</sup> If the local agency deems a building to be significant, then the issuance of the permit may be delayed for a specific period of time to pursue landmark designations, or to explore various preservation solutions.<sup>7</sup> Skelly points out the sometimes-harsh reality that demolition review does not always prevent the demolition of historically significant buildings or structures. Communities that are seeking to

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<sup>4</sup> Julie H. Miller, “*Protecting Potential Landmarks through Demolition Review*,” National Trust for Historic Preservation (Law Center Publications), accessed January 26, 2015, [http://www.preservationnation.org/information-center/sustainable-communities/creating/teardowns/demolition\\_review.pdf](http://www.preservationnation.org/information-center/sustainable-communities/creating/teardowns/demolition_review.pdf)

<sup>5</sup> Christopher C Skelly, “*Preservation Through Bylaws and Ordinances: Tools and Techniques for Preservation Used by Communities in Massachusetts*,” Massachusetts Historical Commission (Lee Wright, 1999), 35.

<sup>6</sup> Miller.

<sup>7</sup> Ibid.

permanently prevent demolitions should pursue a local historic district, local landmark, or architectural preservation district bylaw.<sup>8</sup>

## 2.2 Importance

Demolition review processes help to prevent the demolition of historically significant buildings. Robert Stipe states, “Although it is a narrow and defensive approach to preservation, historic district and landmark ordinances are nonetheless the first line of defense at the local government level.”<sup>9</sup> Not every historic building in the United States has been surveyed and had a history written up, and the idea of putting together a full inventory and survey of possible historic buildings in every city and town is a daunting and more than likely impossible task. Miller points out that, “Given the vast numbers of older buildings in cities and towns across the United States, it is virtually impossible for a community to identify all buildings that should be protected under a historic preservation ordinance in advance. By establishing a referral mechanism, communities can be assured that buildings meriting preservation will not fall through the cracks.”<sup>10</sup> It is important at the local level for a city or town to evaluate its buildings and structures individually, and determine if it might have any type of historical significance or importance to the community. This point is furthered discussed by Miller, specifically for buildings of only local historic significance, “Demolition review procedures have also been adopted to protect buildings that may not meet the standards for designation but nonetheless embody distinguishing features that help to make a community an attractive

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<sup>8</sup> Skelly, 35.

<sup>9</sup> Robert E. Stipe, *A Richer Heritage: Historic Preservation in the Twenty First Century* (University of North Carolina Press, 2003), 132.

<sup>10</sup> Miller.

place to live or work.”<sup>11</sup> The idea of focusing on each individual building as it stands on its own, instead of part of a larger historic area or neighborhood, is still somewhat of a new concept. David Tipson reminds us, “The concerns familiar to us today about the precise authenticity or integrity of features of a historic site did not fully arise until the mid-twentieth century. Preservationists began increasingly to focus on buildings for building’s sake, rather than for their association with historical figures or events.”<sup>12</sup> A main reason a demolition review is important is that because historic resources surveys are incomplete, potentially important and historically significant buildings will be lost without a process in place.

It is important to consider that a review or delay might influence community and public welfare. As Tipson explains, following the publication of Jane Jacob’s *“Death and Life of Great American Cities”* in 1961, preservation efforts increasingly turned to the protection of certain aspects of the physical environment in promoting community life.<sup>13</sup> In the NHPA’s own legislation, Congress found that “historic properties significant to the nation’s heritage are being lost or substantially altered, often inadvertently, with increasing frequency” and “the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans.”<sup>14</sup> Demolition reviews and delays allow communities to become involved in their own city or town’s fate, concerning the impacting effects of demolished historic buildings. Miller explains that during the demolition review process, which is stated in

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<sup>11</sup> Ibid.

<sup>12</sup> David F. Tipson, “Putting the History Back in Historic Preservation,” *The Urban Lawyer*, vol. 36 no. 2 (American Bar Association, 2004), 291.

<sup>13</sup> Ibid, 291.

<sup>14</sup> U.S. Congress. 16 United States Code 470 Section 1, subsection (b), paragraphs (3) and (4).

the appropriate ordinance, both notice and hearing requirements are set forth to address two concerns. One is meeting the constitutional rights of the applicant, and the other is to ensure that the community knows about the pending demolition and has a meaningful opportunity to participate in the proceedings.<sup>15</sup> By delaying demolition for a period of time, concerned residents may be able to negotiate the preservation of character-defining houses on a case-by-case basis.<sup>16</sup> Community involvement and participation will help strengthen a demolition review, and further a historic building's chances at being saved from proposed demolition.

Not only are demolition review ordinances and pro-historic preservation models beneficial to a community, they can also be an important aspect of a successful town or city comprehensive plan. Michael Mantell, Stephen Happer, and Luther Propst argue that, "Communities are learning that the preservation and enhancement of historic and cultural resources can provide substantial and direct economic benefits...by building growth management efforts around their historic and cultural resources, thereby, promoting quality economic development, appreciating property values, and a positive local image."<sup>17</sup> Demolition review and delay ordinances also provide local governments and their comprehensive plans with an opportunity and the time to address fast-paced changes in development, the physical environment, and needs of the community. Stipe reinforces this point by indicating that, "Not only has preservation become an important input to local comprehensive planning and to land use and urban design planning efforts in some

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<sup>15</sup> Miller.

<sup>16</sup> Ibid.

<sup>17</sup> Michael A Mantell, Stephen F. Happer, Luther Propst, *Creating Successful Communities: A Conservation Foundation* (Island Press, 2012), 61.

cities, it has also become an active and equal partner in neighborhood conservation and rehabilitation.”<sup>18</sup>

A primary factor to the importance and success of a demolition review ordinance is the actual period of delay. This is the time allotted that allows the community and local government to participate to the fullest extent, become educated on the proposed development, and provides time to seek possible alternatives to demolition. The delay period proves an opportunity for the municipality and other interested parties to negotiate a preservation solution with the property owner, or to find persons who might be willing to purchase, preserve, rehabilitate, or restore such buildings rather than demolish them.<sup>19</sup> Skelly suggests that due to possible time and economic constraints on a development project, longer delay periods provide better results in preserving threatened buildings.<sup>20</sup> This is most likely because a developer is more willing to work with the community and local historical commissions on alternatives, if it might mean moving their project along at a quicker rate.

### **2.3 Properties Subject to Review**

Demolition review and delay ordinances typically set forth objective criteria for determining which properties are subject to review. Miller notes that a trigger for review may be for all buildings built before a specific date or all buildings that have attained a certain age on the date the permit application is filed.<sup>21</sup> Many communities use fifty years as a critical benchmark. Fifty years tends to be the most popular trigger age due largely in

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<sup>18</sup> Stipe, 123.

<sup>19</sup> Miller.

<sup>20</sup> Skelly, 35.

<sup>21</sup> Miller.

part to the National Park Service's National Register Criteria for Evaluation Considerations, which states, "structures that have been moved from their original location, reconstructed historic buildings, properties commemorative in nature, and properties that have achieved significance within the past fifty years shall not be considered eligible for the National Register."<sup>22</sup> Cities that utilize the fifty-year rule include Boston, MA, Boulder, CO and New Castle, DE. Few jurisdictions have opted for a shorter time period, largely in recognition of their younger building stock. Examples provided by Miller include Santa Monica, CA, which uses a forty-year benchmark, and Gainesville, FL, which reviews all structures, listed in the state's "master site file" and/or forty-five years of age.<sup>23</sup> In contrast, some communities have a longer age time period. For example Alexandria, VA, has one hundred years as the trigger for any buildings outside the Old Town Alexandria historic district and the Parker-Gray district.<sup>24</sup>

Alternatively, the demolition ordinance may only apply to properties identified on a historic survey, or listed on a state historic register or the National Register of Historic Places. An example of this practice is Chicago, which requires review of buildings or structures designated as "red" or "orange" on its 1996 color-ranking Chicago Historic Resources Survey (CHRS).<sup>25</sup> About 300 properties are designated "red" in the CHRS, and "Possess some architectural feature or historical association that made them potentially significant in the broader context of the City of Chicago, the State of Illinois,

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<sup>22</sup> National Park Service (USA), "How to Apply the National Register Criteria for Evaluation," accessed February 8, 2015, [http://www.nps.gov/nr/publications/bulletins/nrb15/nrb15\\_7.htm](http://www.nps.gov/nr/publications/bulletins/nrb15/nrb15_7.htm)

<sup>23</sup> Miller.

<sup>24</sup> City of Alexandria, "Demolition Permit Requirements," accessed February 4, 2015, <https://www.alexandriava.gov/uploadedFiles/code/info/Demolition%20Procedures%20and%20Bond%2009.10%281%29.pdf>

<sup>25</sup> The City of Chicago, "An Inventory of Architecturally and Historically Significant Structures," accessed February 8, 2015, <http://webapps1.cityofchicago.org/landmarksweb/web/historicsurvey.htm>



or the United States of America.”<sup>26</sup> About 9,600 properties are designated “orange” in the CHRS, and “Possess some architectural feature or historical association that made them potentially significant in the context of the surrounding community.”<sup>27</sup> Montgomery County, Maryland, delays the issuance of a demolition permit for properties included on its Locational Atlas and Index of Historic Sites. The “City of Brotherly Love” (Philadelphia) only reviews buildings or structures that are designated historic resources. This includes buildings located in a designated historic district, or registered as a historic building. Additionally, the Philadelphia Historical Commission has the power to designate districts and buildings; however, in its list of criteria for designation, there is no reference to the age of a building.<sup>28</sup>

Finally, some communities limit the scope of protection afforded to buildings located within a specific geographic area. As Miller points out, Baton Rouge’s newly enacted demolition ordinance applies only to its downtown buildings.<sup>29</sup> Many cities and towns require review for buildings both historically listed or surveyed, or located within a geographically chosen historic district. For example, Washington D.C. reviews all buildings located within one of its twenty-five historic districts, or any building that has been landmarked and included on the DC Inventory of Historic Sites.<sup>30</sup> In the city of Baltimore, review is required for buildings located within one of its thirty-three historic districts, which are both city and National Register designated. Additionally, demolition

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<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> The City of Philadelphia, Historical Commission, “Designation Criteria,” accessed February 8, 2015, <http://www.phila.gov/historical/designation/Pages/criteria.aspx>

<sup>29</sup> Miller.

<sup>30</sup> DC.Gov, Office of Planning, “Landmarks and Districts,” accessed February 8, 2015, <http://planning.dc.gov/page/landmarks-and-districts>

review is also required for its two hundred landmarked properties. Baltimore provides no specific age as a consideration for designation, and there is no demolition review or approval needed for any properties not designated.<sup>31</sup>

## 2.4 Demolition Review Procedure

The filing of an application for a total demolition permit triggers all demolition review procedures; however, the scope of demolition work requiring review varies from jurisdiction to jurisdiction. Additionally, requests for permits to move or substantially alter buildings may also require review as Miller points out.<sup>32</sup> The Historic Preservation Ordinance of Boulder, CO states that demolition review is required for the demolition or removal of any buildings over fifty years old. Demolition includes the act of either demolishing or removing fifty percent or more of the roof area as measured in plan view; or fifty percent or more of the exterior walls of a building as measured contiguously around the “building coverage” or any exterior wall facing a public street.<sup>33</sup> Miller provides the example of Davis, California, where, “The city’s demolition review procedures apply to ‘the destruction, removal, or relocation of a structure not classified as an incidental structure, or the permanent or temporary removal of more than twenty five percent of the perimeter walls of a structure.’ Incidental structures are accessory buildings such as sheds, fences, play structures, and so forth.”<sup>34</sup> A few jurisdictions such as Concord, NH, and Monroe, CT, have narrowed the number of applications requiring

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<sup>31</sup> City of Baltimore, the Commission for Historical and Architectural Preservation, “Demolition Application Procedure,” accessed February 8, 2015, [http://archive.baltimorecity.gov/Portals/0/agencies/chap/public%20downloads/dem\\_app\\_proc.pdf](http://archive.baltimorecity.gov/Portals/0/agencies/chap/public%20downloads/dem_app_proc.pdf)

<sup>32</sup> Miller.

<sup>33</sup> City of Boulder, Boulder, Colorado-Municipal Code, Title 9-Land Use Code, “Chapter 11-Historic Preservation,” accessed February 8, 2015, [https://www.municode.com/library/co/boulder/codes/municipal\\_code?nodeId=TIT9LAUSCO\\_CH11HIPR](https://www.municode.com/library/co/boulder/codes/municipal_code?nodeId=TIT9LAUSCO_CH11HIPR)

<sup>34</sup> Miller.

review by limiting referrals to projects entailing the demolition of at least five hundred square feet of gross floor area.<sup>35</sup>

In most communities, the permitting official is directed to refer a demolition permit application to a review body for an initial or preliminary determination of significance. In San Antonio, TX, all demolition permits are referred to the city's Historic Preservation Officer, who must determine within thirty days whether or not a building or structure is historically significant. If the building or structure is indeed found to be significant, then the application is forwarded to the Historic and Design Review Commission. If the Commission agrees that the building or structure is historically significant, then the Commission must recommend historic designation to the City Council.<sup>36</sup> In Boston, MA, the Inspectional Services Department must transmit a copy of a demolition permit application to the Boston Landmarks Commission within three days. Within ten days of receiving the application, the commission's staff must make a determination as to whether the building is subject to review, and if the building is deemed to be significant under specific criteria. If the property in question is significant, the commission must hold a public hearing to determine whether the building should be subject to demolition delay.<sup>37</sup> As seen in the examples of Boulder and Boston, the historic preservation commission makes the determination of significance in most cases, with initial review by the staff to the commission. Most communities have specific criteria and regulations for the members of the local historic preservation commission. Christopher Bowers further recommends, "Even though it is not required, a local government usually

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<sup>35</sup> Ibid.

<sup>36</sup> City of San Antonio, Office of Historic Preservation, "Application Process Brochure," accessed February 4, 2015, <http://www.sanantonio.gov/historic/applications.aspx>

<sup>37</sup> City of Boston, "Article 85 Demolition Delay," accessed February 8, 2015, <http://www.cityofboston.gov/landmarks/article85/>

should appoint a preservation commission that has at least a few experts. One to increase the probability of courts upholding decisions concerning proposed alterations, and two that such a commission may participate in the state's 'Certified Local Government Program.'”<sup>38</sup>

The determinations of significance are generally held upon review by a city's historic preservation commission at a public hearing, in which public notice is required beforehand. In some communities, public notice requirements under demolition review ordinances can be extensive. In cases where delay periods may be invoked for the purpose of exploring preservation alternatives, public awareness can be critical.<sup>39</sup> Miller explains that in Monroe, CT concerted efforts are made to inform the public, and the city's ordinances requires publications of notices in a newspaper of general circulation. Additionally required are individually mailed notices to the city's historic district commission, the town historian, the Monroe Historical Society, and all abutting property owners. The city is also required to post for at least thirty days, a 36-inch by 48-inch sign visible from the nearest public street, with the words “DEMOLITION” printed on the sign with the letters being at least three inches in height.<sup>40</sup> Further, in Lake Forest, IL, if a member of the community is unable to attend a public meeting, they can view the meeting on the city's YouTube channel, posted by the Building Review Board.

In order for a delay to be placed upon a structure, most cities' or towns' historic preservation commissions must find that, in considering the public interest, it is preferable that the building or structure be preserved or rehabilitated rather than

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<sup>38</sup> Christopher D. Bowers, “Historic Preservation Law Concerning Private Properties,” *The Urban Lawyer*, vol. 30 no. 2 (American Bar Association, 1998), 409.

<sup>39</sup> Miller.

<sup>40</sup> Ibid.

demolished. Most considerations, criteria, and procedures differ in various communities. Miller provides, “Factors for consideration include: (a) the building’s historic, architectural, and urban design significance; (b) whether the building is one of the last remaining examples of its kind in the neighborhood, the city, or the region; and (c) the building’s condition.”<sup>41</sup> Examples include Gainesville, FL, where a demolition permit may be issued if the preservation planner finds that the structure, “is not designed in an architectural ‘high style’ or a recognized vernacular building pattern, and it does not have historic events or persons associated with it.” In New Castle, DE, the Historic Review Board makes a determination as to whether the building or structure is historically significant, based on the criteria for listing in the New Castle County Register of Historic and Architectural Heritage. In Baton Rouge, LA, the city’s planning commission is charged with determining whether “the structure is individually listed on the National Register of Historic Places, included in a National Register Historic District, or the structure is classified as National Register eligible or a major contributing resource in the historic building survey of the Central Business District.”<sup>42</sup> Miller provides the example of Boulder, CO, where in addition to determining whether the building meets the objectives and standards for landmark designation under its preservation ordinance, “the Boulder commission must also take into account: (1) ‘the relationship of the building to the character of the neighborhood as an established and definable area;’ (2) ‘the reasonable condition of the building;’ and (3) ‘the reasonable projected cost of restoration or repair.’”<sup>43</sup>

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<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

The delay periods invoked under demolition review ordinances can run from thirty days to two years. Most periods fall within the ninety-day to six-month range. Skelly states that a city or town's specific bylaw specifies the length of the delay.<sup>44</sup> Miller also notes that the effective length of equivalent waiting periods can vary significantly, depending upon the date the delay is measured. The City of Boston measures its delay period from the close of the public hearing, whereas the City of Chicago measures its delay period from the application filing date.<sup>45</sup> In some communities with longer delay periods, their ordinances sometimes include specific provisions that enable the issuance of a demolition permit prior to the expiration of the delay period if specific conditions are met. In Newton, MA, a demolition permit may be issued before the expiration of the city's one year delay period if the Newton Historical Commission is satisfied that the permit applicant has made a bona fide, reasonable and unsuccessful effort to locate a purchaser for the building or structure who is willing to preserve, rehabilitate, or restore the building or structure; or has agreed to accept a demolition permit on specified conditions approved by the commission.<sup>46</sup> Additionally, some jurisdictions insist that the property be secured during the demolition delay period. Miller further points out, in Boston the applicant is required to protect the building during the review period. If the building is lost during this period, then the action is treated as an unlawful demolition.

Miller points out that the historic preservation commission usually sits at the center of the preservation effort. The commission will work with the owner and other interested organizations, public agencies, developers, and individuals who may be

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<sup>44</sup> Skelly, 35.

<sup>45</sup> Miller.

<sup>46</sup> Ibid.

instrumental in developing a workable solution.<sup>47</sup> In Boulder, CO, the Landmarks Board may “take any action that it deems necessary and consistent with this chapter to preserve the structure, including, without limitation, consulting with civic groups, public agencies, and interested citizens.”<sup>48</sup> The possible alternatives that may be pursued may be specifically identified in the ordinance, or left to the preservation commission’s discretion. Miller provides alternatives commonly considered, including the possibility of rehabilitating the building with the assistance of tax incentives or other financial assistance; adapting the building to a new use; removing the building to another site; finding a new owner who is willing and able to preserve the building; incorporating the building into the owner/applicant’s redevelopment plans; and using an alternative site for the owner/applicant’s project.<sup>49</sup> Skelly indicates that if the delay period expires and a successful preservation outcome was not achieved, the building inspector can issue the demolition permit at that time.<sup>50</sup> This is one of the unfortunate truths of a demolition review or delay ordinance, and bears weight to the fact as Skelly pointed out earlier that the period of a demolition delay is not a permanent solution.

Many demolition review and delay laws recognize exceptions based on economic hardship, or where the public safety is at stake. Julia Miller explains that, “As is generally the case with the consideration of economic hardship claims under historic preservation ordinances, the burden of proof rests on the applicant to show that retention of the property is not economically viable and the applicant must set forth specific relevant

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<sup>47</sup> Ibid.

<sup>48</sup> City of Boulder.

<sup>49</sup> Miller.

<sup>50</sup> Skelly, 35.

information to make his or her case.”<sup>51</sup> Virtually every community’s demolition review or delay law recognizes an exception on the matter of public safety. The subject of a community’s public safety will always outweigh the issue of historic preservation. In the town of Weston, MA’s bylaw a section for emergency demolitions is included, and states,

Notwithstanding the following provisions, the Building Inspector may issue a demolition permit at any time in the event of imminent and substantial danger to the health and safety of the public due to deteriorating conditions. Prior to doing so, the Building Inspector shall inspect the building and document, in writing, the findings and reasons requiring an emergency demolition, a copy of which shall be forwarded immediately to the Commission. Before allowing emergency demolition, the Building Inspector shall make every effort to inform the Chairperson of the Commission of his intentions to allow demolition before he issues a permit for emergency demolition.<sup>52</sup>

## 2.5 Conflicts

Local government is historic preservation’s first and most important line of defense. Stipe reinforces this idea in his explanation of amendments to the NHPA: “The 1980 amendments to the 1966 National Historic Preservation Act had a significant influence on local preservation operations and programming. The aim of these amendments was to decentralize federal historic preservation programs, placing far more federal responsibility for programmatic decision making on local governments.”<sup>53</sup> Salla emphasizes “with the creation of local historic preservation ordinances, ... local governments make their most important contribution to historic preservation.”<sup>54</sup> An issue worth noting, in placing a significant amount of authority with local historic preservation commissions and municipalities, is that every local demolition review or delay ordinance

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<sup>51</sup> Ibid.

<sup>52</sup> Town of Weston, “Article XXVI Demolition Delay,” accessed February 8, 2015, [http://www.weston.govoffice.com/vertical/sites/%7B264E11B6-4A4A-4EC0-B631-35FE907B479E%7D/uploads/Demo\\_Delay\\_By-Law\(1\).pdf](http://www.weston.govoffice.com/vertical/sites/%7B264E11B6-4A4A-4EC0-B631-35FE907B479E%7D/uploads/Demo_Delay_By-Law(1).pdf)

<sup>53</sup> Stipe, 121.

<sup>54</sup> Consuelo Olimpia Sanz Salla, *The Protection of Historic Properties: A Comparative Study of Administrative Policies*, (WIT Press: Southampton, 2009), 81.



is unique. Although the National Park Service has suggested preservation practices, they exercise a very light hand with state and local jurisdictions, and only if a municipality is a Certified Local Government (CLG). A CLG mandates the creation of a preservation ordinance and regular resource surveys. The result is huge diversity in historic preservation practices around the country. Anthony Robins argues, “One major reason for the continuing losses is that most landmarks regulation takes place at the local level, and the hundreds of landmarks or historic district commissions across the country vary enormously in their ability to protect landmarks.”<sup>55</sup> It is not surprising that with the many ordinance differences across the country, and no central coordinating authority, that possible weakness will be found in the hundreds of demolition review ordinances. In a study conducted to argue for preservation easements, Anthony Robins summarizes this issue, writing, “Perhaps the most surprising finding ... is that even the strongest commissions have weaknesses. These range from inappropriate decisions, to weak enforcements powers, to hardship provision loopholes.”<sup>56</sup> The idea of providing local governments with the ability to draft their own demolition delay ordinance differs greatly with historic preservation practices in many countries in Europe, for instance. In countries such as England and Scotland, almost all historic preservation legislation and practices are created and carried out at the national level. In European countries, the prevention of a demolition proposal is typically permanent if a building or structure is found to be historically significant. As Salla notes, “In principle, European scholars are generally surprised that nothing in federal laws prohibits a private owner from disposing

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<sup>55</sup> Anthony Robins, *The Case for Preservation Easements: When Municipal Ordinances Fail to Protect Historic Properties*, (Thomas & Columbus Inc., 2005), 1.

<sup>56</sup> Ibid.

of historic property as they wish, including its demolition.”<sup>57</sup> The reason for this is the 10<sup>th</sup> amendment of the U.S. Constitution, which states that federal government can’t regulate private property.

One of the most widely discussed and recurring issues is the debate of historic preservation versus development. It has been suggested that some groups and individuals still see historic preservation as more of a hobby rather than a valuable resource to the community. Stipe argues this point in that “One source of frustration at the local level has been the inability of preservationists to building politically strong, viable, and visible constituencies generally respected by community leaders. In terms of accomplishment – buildings saved, sites protected – preservation has gained much ground...but compared with other local programs it is still regarded as a special interest, low-priority fringe activity... But the movement is still too often seen as a middle-class, adhoc, special interest endeavor, rather than as a potential source of solutions to broad community problems.”<sup>58</sup> Not surprisingly, many developers consider a city or town’s demolition review or delay ordinance as a nuisance for their project, but not a permanent annoyance. The pressure of the real estate market is constant, and felt in all communities. Tipson points out “Though the required waiting period does present an obstacle to demolition, it is one that is by no means insurmountable...furthermore, such provisions make the protection of historic resources subject to the real estate market in a given year.”<sup>59</sup>

A notable example of the developer argument is the Supreme Court case of Penn Central Transportation Company versus City of New York in 1978. Penn Central Transportation Co, the owner of the historic Grand Central Station in New York City, had

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<sup>57</sup> Salla, 79.

<sup>58</sup> Stipe, 128-129.

<sup>59</sup> Tipson, 306.

intentions to build a skyscraper over the newly designated landmark. The company was denied permits by the City's Landmark Commission and the case found its way to the Supreme Court. The court began its decision with this language:

Over the past 50 years, all 50 states and over 500 hundred municipalities have enacted laws to encourage or require the preservation of buildings and areas with historic or aesthetic importance. These nationwide legislative efforts have been precipitated by two concerns. The first is recognition that, in recent years, large numbers of historic structures, landmarks, and areas have been destroyed without adequate consideration or either the values represented therein or the possibility of preserving the destroyed properties for use in economically productive ways. The second is a widely shared belief that structures with special historic, cultural, or architectural significance enhance the quality of life for all. Not only do these buildings and their workmanship represent the lessons of the past and embody precious features of our heritage, they serve as examples of quality for today.<sup>60</sup>

The court further stated, "To protect a landmark, one does not tear it down. To perpetuate its architectural features, one does not strip them off."<sup>61</sup> Carolyn Hamm sums up the case by stating, "With the Supreme Court decision in 1978, it was settled that state and local historic preservation legislation, with provisions preventing the demolition of historic structures, did not violate individuals property rights as set forth in the Constitution of the United States."<sup>62</sup>

Not only is the debate of Historic Preservation versus development continuously connecting developers to the issue, some enthusiasts also put a local municipal's planning process in the spotlight. Mantell, Harper, and Propst argue,

Lack of public appreciation of the value of preserving local historic and cultural resources and the resulting low priority that preservation often receives in the local planning process, contribute to the threat of demolition, or degradation of these resources. Inappropriate zoning can compromise the integrity of historic property or districts in

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<sup>60</sup> Penn Central Transportation Company v. City of New York. 438 U.S. 104, 98 S. Ct 2646 (1978), 107-108.

<sup>61</sup> Ibid, 117.

<sup>62</sup> Carolyn J. Hamm, "When the Bulldozer Should Win: A Survey of Laws and Cases Authorizing Demolition of Protected Historic Resources," *Preservation Law Reporter*, vol. 1 (Washington, D.C.: National Trust for Historic Preservation, 1982), 2077.

many ways. It can allow inappropriate uses or densities around historic properties or districts...zoning that allows high density development (in excess of the density of the existing structure) can also encourage market pressure for demolition because the vacant lot may be more valuable than the lot within the building.<sup>63</sup>

Due to the notion that demolition review and delay ordinances can have no further legal standing once a delay expires, market pressure has continuously weakened ordinances. Robins states, “Historic Preservation is a public benefit that is often purchased at a private cost. Ultimately, owners of historic properties are the ones who bear the cost, either through lost development opportunities or through extra costs associated with restoring or maintaining a historic property.”<sup>64</sup> Barry Cullingworth sums this pressing argument up by observing, “Nevertheless, private owners of historic buildings may have to carry financial burdens. These may be in the form of maintenance costs, which are not covered by higher profits from redevelopment. Generalization is difficult, but the constant battle to preserve buildings from demolition and redevelopment point to the frequency with which owners see redevelopment as being more profitable.”<sup>65</sup>

## 2.6 Recommendations

As stated earlier in the chapter, a city or town that is considering or editing an existing demolition delay ordinance should establish an efficient demolition review process. All of the sources documented are reiterated in the following recommendations of the ordinance having resources in place which help applicants and/or permitting officials determine the age and significance of their buildings; the community avoiding making the safety net too small; the importance of keeping the community informed and

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<sup>63</sup> Ibid. 61

<sup>64</sup> Robins, 1.

<sup>65</sup> Barry Cullingworth, “Historic Preservation in the USA,” *Built Environment*, vol. 23 no. 2 Conservation in Western Planning Systems, (Alexandrine Press, 1997), 140.

not making the delay period too short; the preservation commission being provided with the necessary tools to negotiate a solution, such as some level of financial assistance or tax savings; enabling the property to be designated, if designation is warranted; and being able to enforce one's ordinance. As continuously mentioned, state historic preservation enabling legislation differs significantly from state to state, thus it is unwise to rely upon a single historic preservation ordinance model. Model ordinances have been drafted for many states and are generally available from the state historic preservation officer. A key recommendation is that in developing a community's own program or ordinance, it is important to understand not only how such laws work generally, but also to think about how such a law would work in one's own community.

## CHAPTER 3: THE CITY OF NEWTON'S DEMOLITION DELAY ORDINANCE

### 3.1 An Introduction to Newton

Located on the eastern edge of Middlesex County, Newton, Massachusetts, is a largely developed, primarily residential city. As a suburb of Boston, the city mostly developed beginning in the middle of the nineteenth, and well through the twentieth centuries. Residential use is the predominant use of land and structures in Newton, and can be seen scattered throughout the city's thirteen diverse villages. Small retail and commercial development is primarily concentrated in village centers. Newton's evolution, from its early agricultural roots through nearly two centuries of suburban growth, has been in large part a response to innovations in transportation which directly affected the city's development and growth patterns.<sup>66</sup>

The town was incorporated as a separate municipality in 1688, and in 1691 was officially named Newton. From 1774 to 1834, Newton began developing its distinctive village forms; however it was the arrival of the Boston & Worcester Railroad in 1834 that sparked noticeable growth. From the period of 1834 to 1885, Newton grew from a town of 2,500 to a city of 20,000, and its role as a suburban town of choice for middle class Boston workers became firmly established.<sup>67</sup> From the late 19<sup>th</sup> century to the early 20<sup>th</sup> century, the city saw more transportation improvements, and from 1895 to 1900, Newton received 1,200 new residents per year. Vigorous growth characterized Newton in the 20<sup>th</sup> century, and the first half of the century saw the construction of more than 12,000 houses. From 1940 to 1950,

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<sup>66</sup> Boston University Preservation Studies Program, Preservation Planning Colloquium Class, *City of Newton Preliminary Preservation Plan*, (May 2002), 15.

<sup>67</sup> Ibid, 16.

land in Newton was scarce, and post-war shortages led to a housing crunch. One of Newton's responses came in 1948 with the creation of Oak Hill Park, built for Newton's veterans as an affordable housing community. By the turn of the 21<sup>st</sup> century, Newton's population remained steady at 84,000. The housing stock, however, had risen in value and through present day remains primarily available only to small, affluent families. As a result, the city faces the challenge of providing affordable housing to many of its citizens.

Although earlier examples exist, a large bulk of Newton's housing stock was developed primarily in the second half of the 19<sup>th</sup> and early 20<sup>th</sup> centuries. This can be attributed directly to the tremendous growth the city experienced at that time. The homes built between 1886 and 1939 make up a large part of Newton's historic fabric. Development of the buildings was both small and large scaled, with housing built in both subdivisions, and on single lots. In some areas, due to the dispersed 17<sup>th</sup> and 18<sup>th</sup> century's settlement patterns, one can see three centuries of home development on one block.<sup>68</sup> Newton's architecture represents a wide range of styles, with a broad collection dating from the 17<sup>th</sup> century to post World War II construction. Examples include a scattering of vernacular Georgian farmhouses, Gothic and Greek Revival homes, high style Victorian, Mansard, and Italianate residences, and simpler 20<sup>th</sup> century homes, such as the Foursquare, Craftsman, and Colonial Revival styles.<sup>69</sup>

Today, much of the city's housing and building stock is now over fifty years old, with the recent inclusion of buildings built during the post war era (1945-1960). More houses were built in Newton in the years immediately following World War II, than

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<sup>68</sup> Ibid, 18.

<sup>69</sup> Ibid, 18.

in any other city in the Commonwealth. From 1950 to 1959, nearly 4,000 new houses were built. These post-war structures quickly claimed a substantial piece of suburbia, and caused a revolution in the previously accepted practices of house design, construction, and financing.<sup>70</sup> These individual structures and districts reflect an important phase in Newton's development as a community; however their historical significance is commonly debated. A study conducted in 2001, funded by the Massachusetts Historical Commission, included this argument, "Yet the form and design of this architecture is so visibly different from that built in the three proceeding centuries that it continues to be considered non-historic, even though it clearly reflects design and historical contexts that are now in the past...in every case, these developments possess important information about a nationally significant phenomenon in architecture and social programming."<sup>71</sup> The City of Newton's housing stock is unique and diverse, and each individual building deserves to be looked at on its own.

### **3.2 History of Newton's Demolition Delay Ordinance**

The City of Newton adopted its Demolition Delay Ordinance in 1985. The ordinance was adopted because historic preservation was determined to be an important and integral component of the Newton Comprehensive Plan. It enables the Newton Historical Commission (NHC) to delay the demolition of historically significant buildings and structures, the loss of which is considered to be detrimental to the historic resources and heritage of the city. From 1985 to the present day, review for demolition

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<sup>70</sup> Neil Larson & Associates, Inc., *City of Newton Demolition Review and Post World War II Housing Study*, (2001), Section III, 17.

<sup>71</sup> *Ibid*, 17.



delay is triggered by the age of the building; any building fifty years or older is subject to review. In order for a delay to be imposed, a building or structure has to be found both historically significant and preferably preserved. By definition preferably preserved means that the building or structure's loss would be detrimental to the city, thus the Newton Historical Commission votes that it is preferable to Newton that the building be preserved. Initially the delay was six months; it was later extended to one year in 1996. Review for a possible delay applies to both total and partial demolitions of a building. Originally, a partial demolition was defined in the ordinance as the demolishing or altering greater than 25% of a façade or roof; the number was changed to 50% in 2011. While the City has consistently been ahead of most Commonwealth communities in historic preservation efforts, the amount of new demolition permits increased from 20 in 1987 to 146 in 2000, a 730% increase. This raised concerns about the ordinance, and the Commission's ability to effectively review the numerous properties that will soon be historically significant.

Neil Larson & Associates, Inc. conducted a six-month study in 2001, entitled "City of Newton Demolition Review and Post World War II Housing Study". The study assessed the potential impacts on the city's large number of post-war era houses, now reaching the fifty-year mark, and subject to demolition review. Naturally the number of applications for demolition review increased significantly at this time. In 1997, the NHC received 59 requests for review; in 2001 the NHC had 125 requests for review, with 54 of the applications being for complete demolition.<sup>72</sup> Larson noted that little and inconsistent survey work attributed to the loss of many 20<sup>th</sup> century historic buildings. Larson also

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<sup>72</sup> Provided by the City of Newton's Planning Department's Records

discussed some of the issues with the NHC, including inconsistencies and confusion over what is considered historic. Larson stated in his report, “There are virtually no references to the Secretary of Interior’s Standards for eligibility in the official record of actions on the applications, which suggests that the judgments being made by the NHC are inconsistent and less rigorous.”<sup>73</sup> Larson only provided six examples of “good use” and “successes” of the ordinance, saying that examples of problematic reviews and regretful results outnumbered the success stories. One of the six examples given was 134 Vine Street. At first glance, the house did not stand out as a stereotypical historic building, meaning it did not have the common aesthetic and historical connections that a historic building typically does, but a 1983 survey revealed the small house to be significant even though it had undergone many changes. Larson praised the ordinance saying, “Historic structures are often prematurely written off because they have been resided in, even though original massing, windows, and designs are visible, not to mention other historic fabric or significance not evident in a cursory review.”<sup>74</sup> On November 20, 2009, a demolition permit for 134 Vine Street was issued, and has since been replaced with a 5,811 square foot house, and a 686 square foot garage.

Since 1985, there have been numerous amendments to the Demolition Delay Ordinance, as well as attempts. In 2000, Alderman Yates requested that Chapter 30 in the City’s Zoning Ordinance be amended to require a special permit for the demolition of a structure aged 100 years or more, containing one or more residential units in any residential district. This amendment did not pass. In 2003, the Commission adopted an internal review policy regarding partial demolition. The policy was formally adopted as

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<sup>73</sup> Larson, Appendix A-2

<sup>74</sup> Ibid, Appendix A-2

part of the ordinance change in 2008, which also granted a staff level review. In 2007, Alderman Gentile proposed to change the trigger mechanism within the Demolition Review Ordinance from 50 years to 100 years. It was agreed that 100 years was too extreme of a change from the existing trigger date, and the amendment did not pass. In a memorandum regarding this proposed amendment, Lara Kritzer, Newton's Senior Preservation Planner at that time, noted "It is important that the Demolition Review Ordinance continue to be a preservation tool that protects the architectural character of the entire city and which can be adapted to meet its changing needs."<sup>75</sup>

The most extreme changes to the City of Newton's Demolition Delay Ordinance occurred in 2011. Alderman Baker and Yates, on behalf of the Newton Historical Commission requested three different updates to the Ordinance. The first request was to increase the altering or demolishing of 25% of a façade or roof to 50%. In 2011, the number of filings for demolition review was higher in Newton than any other community in Massachusetts. By increasing the trigger for partial reviews to 50%, it would reduce the number of applications filed, and allow for smaller projects to occur without review. This portion of the petition was adopted first. The second request addressed the issue of waivers. At that time once a building or structure was found both historically significant and preferably preserved, an applicant could immediately request a waiver of the delay. A waiver can be granted if the commission is satisfied with plans provided to them of the proposed development, as well as the understanding that the plans approved by the NHC for the waiver will be the plans submitted with the actual building permit. Waivers apply to both partial and total demolitions. In 2011, the NHC was inundated with requests for

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<sup>75</sup> Kritzer, Lara, "Potential Mechanism for Changing the Trigger Mechanism for the Demolition Review Ordinance" City of Newton Department of Planning and Development, (Newton: 2007), 2.

waivers even before a building was put on delay, or on the same night the delay was granted. This decreased the effectiveness of the ordinance in preserving historic buildings and structures in Newton. Thus it was requested that there be an established minimum period of delay for full demolitions if the structure is found to be preferably preserved. The ordinance was amended to include a provision stating that a minimum period of four months since the delay had been imposed must occur before an applicant can request a waiver. Partial demolition waivers were not affected.

The last requested change to the ordinance in 2011 was to extend the existing period of delay for structures proposed for full demolition. The commission proposed to increase the total length of the demolition delay from one year to 18 months, arguing that the longer an applicant undergoes the delay, the more likely the building is to be preserved. At the time, the proposal was found too onerous, but a proposed alternative was to keep the one year delay as existing, but have an 18 month delay for National Register-listed properties and properties determined to be eligible for listing either individually or as part of a National Register District. The 18-month delay would provide further protection to roughly 1,000 properties, and apply to roughly 3-5% of Newton's building stock. The alternative proposal was adopted into the current ordinance.

### **3.3 The City of Newton's Current Demolition Delay Ordinance**

The first subsection of Section 22-50, "Demolition of historically significant buildings or structures" in the City of Newton's Zoning Ordinance, is "Intent and Purposes." It reads, "This section is adopted in furtherance of the policy set forth in the Newton Comprehensive Plan to assure the preservation and enhancement of the City of

Newton's historical and cultural heritage by preserving, rehabilitating or restoring whenever possible, buildings or structures which have distinctive architectural features or historical associations that contribute to the historic fabric of the city.”<sup>76</sup> In subsection (b) “Definitions,” the criteria used for determining whether or not a building is historically significant is noted. The City of Newton states that a building or structure is considered historically significant if it is fifty or more years old and is in any federal, state, or local historic district; or is listed on or is within an area listed on the National or State Register of Historic Places or eligible for such listing; or has been determined by the commission or its designee to be a historically significant building.<sup>77</sup> This determination finding could be that the building or structure is importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the City of Newton; or historically or architecturally important by reason of period style, method of building construction or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures; or located within one hundred fifty feet of the boundary line of any federal or local historic district and contextually similar to the buildings or structures located in the adjacent federal or local historic district.<sup>78</sup>

Subsection (c) is “Procedure.” This subsection immediately introduces what triggers demolition review in Newton. As noted in the previous chapter, there are various types of triggers used by communities across the United States. In Newton, if a building is in whole or in part fifty years or older, a demolition review application is required. In

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<sup>76</sup> City of Newton Zoning Ordinance, “Demolition of historically significant buildings or structures,” *Demolition Delay*, div. 2, sec. 22-50, subsection (a), 281.

<sup>77</sup> *Ibid*, subsection (b), 283.

<sup>78</sup> *Ibid*.

addition to a completed application, the applicant shall provide the commission with a site plan or copy of that portion of the tax assessor's map which shows the building or structure to be demolished; photographs of all existing façade elevations of the building or structure; a description of the proposed plans for demolition; and the reason(s) therefore.<sup>79</sup> A signature from the current homeowner is required, or a copy of a "Purchase and Sale" Agreement. It is also recommended that photographs of surrounding buildings be submitted. Within fifteen days (15) after the application has been submitted, the commission shall make a determination as to whether the building is or is not historically significant. The commission may delegate this determination to commission staff or to a designated commission member. This determination also does not require public notice. Both the applicant and the Inspectional Services Department are notified of the determination. If the building is determined to not be historically significant, no further review is required and no delay is given. Due to the fact that nothing is written in the ordinance about expiration for this type of determination, it is assumed that there is no expiration.<sup>80</sup> For example, if a homeowner requested to demolish their house and received a "not historically significant" determination, but due to outside causes was not able to take down the house at that time, they or subsequent homeowners can demolish the house at any time in the future without review.

When a building or structure is determined to be historically significant, the commission shall hold a public hearing to determine whether the building or structure, or the portion of the building or structure to be demolished, is preferably preserved.

Following public notice as set forth in subsection (c) (8) of this ordinance, the

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<sup>79</sup> Ibid.

<sup>80</sup> Information provided by the City of Newton's Planning Staff

commission shall hold a public hearing within forty-five (45) days of the submission date. Public notice of commission hearings shall provide the date, place and time of the hearing, and the addresses of the properties to be considered at the hearing. Public notice shall include, at a minimum, posting with the city clerk, and notification to the owners of all abutting properties, and to other property owners deemed by the commission to be materially affected.<sup>81</sup>

Upon determination that the building or structure is preferably preserved, the commission shall give written notice to the applicant and the Inspectional Services Department. For a building or structure listed in the National Register of Historic Places or determined eligible for listing, an eighteen-month (18) delay is imposed starting on the date of determination, usually the night of the meeting. For any other building or structure, a one-year delay is imposed. No demolition permit may be issued before the expiration of the delay, unless the commission is satisfied that the applicant has made a bona fide, reasonable and unsuccessful effort to locate a purchaser for the building or structure who is willing to preserve, rehabilitate or restore the building or structure; or has agreed to accept a demolition permit on specified conditions approved by the commission;<sup>82</sup> this is typically referred to as a waiver. If the specified conditions involved approved plans and elevations, then no demolition permit shall be issued unless the applicant provides a complete set of plans and elevation drawings, which have been signed and stamped by the commission or commission staff. For total demolitions, an applicant cannot request a waiver for a minimum of four months after the preferably preserved ruling. A reason for this is provided in the Rules and Regulations, stating, “In

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<sup>81</sup> City of Newton, subsection (c), 286.

<sup>82</sup> Ibid, 285.

order to encourage applications that preserve, restore, reuse, or rehabilitate historic buildings and structures.”<sup>83</sup>

The applicant shall have two years from the date of the expiration of the delay period, in which to apply for and obtain a demolition permit. For any buildings or structures that were determined to be historically significant, but found not preferably preserved, or upon the commission’s failure to make any determination within forty-five (45) days of the submission date, no delay is imposed and no further review is required.<sup>84</sup> Similar to buildings or structures found not historically significant, there is no expiration for this determination, due to the fact that there is no expiration written in the ordinance.

Subsection (d) “Emergency Demolition,” is one that is found in almost every Demolition Delay Ordinance. If a building or structure poses an immediate threat to public health or safety due to its deteriorated condition, the owner may request the issuance of an emergency demolition permit from the Inspectional Services Department. After an inspection of the building or structure has occurred, the commissioner of the department shall determine whether the condition of the building or structure represents a serious or imminent threat to public health and safety, and whether there is any reasonable alternative to the immediate demolition. If the commissioner finds that the condition of the building or structure poses such a threat, and there is no reasonable determination, then the commissioner may issue an emergency demolition permit. The commissioner must prepare a written report describing the demolition and the basis of his decision for the commission.

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<sup>83</sup> Ibid.

<sup>84</sup> Ibid, 286.



Newton goes as far as to have a subsection for Non-Compliance. In subsection (e) it is noted, “Anyone who demolishes a historically significant building or structure without first obtaining and complying fully with the provisions of a demolition permit issued in accordance with this section, shall be subject to a fine of not more than three hundred dollars for each day of violation of this ordinance.”<sup>85</sup> Additionally, the Commissioner of the Inspectional Services Department may elect to issue a stop work order until the commission is satisfied that the ordinance’s requirements have been met; refuse to issue any certificates of occupancy, until any noncompliance has been remediated; or refuse to issue a permit pertaining to any property on which an historically significant building or structure has been demolished for a period of two years from the date of demolition.<sup>86</sup>

### **3.4 Current Development in Newton**

Today, the City of Newton is a very popular place to live, with a population of 87,018, with 31,139 households, of which 69.78% are families.<sup>87</sup> In 2014, Newton was ranked number one on USA Today’s “America’s Best City to Live” list. Newton’s public schools are nationally ranked, with a 95.5% four-year graduation rate, compared to the state’s overall 83.4%. In 2014, Newsweek ranked Newton North High School, number 263, on its list of “Best High Schools in the Country.” CQ Press has consistently ranked Newton among the top ten safest places to live in the country. In 2014, Time’s “Money” ranked Newton no. 15 on its “Best Places to Live 2014” list. “Money” discussed

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<sup>85</sup> Ibid, subsection (e), 287.

<sup>86</sup> Ibid.

<sup>87</sup> City of Newton, “General Demographics,” accessed February 16, 2015, <http://www.newtonma.gov/gov/planning/demog/default.asp>.

Newton's median house cost of roughly \$700,000, saying, "Each year the Boston Marathon runs through Newton. Heartbreak Hill, one of the most dastardly difficult legs of the elite 26.2-mile race, is located near City Hall. But the bigger heartbreak for most people is Newton's lack of affordable housing."<sup>88</sup>

Naturally, the recent positive attention has brought more developers into the city, but Newton has been a desirable place to live for years. As a suburb of Boston, Newton's geographic location has contributed to the community's success. A number of state and federal roadways and highways pass through Newton. These transportation routes importantly serve as commuter access to and from Boston, Cambridge, and the high technology belt along Route 128 (I-95). An MBTA Commuter Rail passes through the northern section of the city, and the Green Line's "D" route serves the south-central sections of the city.

In looking at the number of demolition review requests from past fiscal years, there was a significant increase from 1999, with 93, to 2010 with 242.<sup>89</sup> This is mainly due to Newton's post-war era housing stock reaching the fifty-year trigger. With the 2011 amendment to the Ordinance regarding partial demolition, in which any change to the roof or façade under 50% no longer required review, the commission saw a decline in the number of yearly demolition requests. In fiscal year 2012, the commission reviewed 174 requests, and the city saw the demolition of 79 houses. However, both numbers are steadily increasing. With no amendment to the Ordinance since 2011, the rise in Newton's popularity is potentially a contributing factor to the statistics. In fiscal year 2013, the commission received 199 requests, and the city issued 80 whole house

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<sup>88</sup> Money, "Best Places to Live 2014," accessed February 16, 2015, <http://time.com/money/3312324/newton-massachusetts-best-places-to-live/>.

<sup>89</sup> Provided by the City of Newton's Planning Department's Records

demolition permits. In fiscal year 2014, the commission received a staggering 228 requests, and the city issued 102 whole house demolition permits. A large number of the houses demolished have been replaced with houses nearly double their size. This seemingly random and rapid increase in the number of demolition requests, and actual demolitions, caused a panic type of reaction in the city. By the summer of 2014 citizens, both short and long term began to worry that the demolition of older homes would begin to be seen on every street in the city, and packed the city's "Aldermanic Chambers" for a meeting specifically regarding the issue the following October.<sup>90</sup>

A large bulk of the blame was placed upon the developers of "McMansions," whose scales don't fit in with the existing character of the neighborhood. Teardowns have been a source of contention in New England for a couple of decades, particularly in affluent communities where the land is typically worth more than the structure.<sup>91</sup> Today many post-war era buildings that have yet to be surveyed, are taken down and replaced with a house two or three times larger, and sold for two to three times more. This has had a significant impact on the city's challenge to provide affordable housing. This type of development approach has proven very successful for particular builders, but critics argue that all these teardowns have upended the character of entire neighborhoods, dwarfed abutting homes, and drained a community of its moderately priced housing stock.<sup>92</sup>

Historic preservationists have frowned upon "McMansion" developers for years. Because a demolition delay is not permanent, developers have figured out ways to deal with the delay without interrupting their plans. In his 2001 study report, Larson argued,

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<sup>90</sup> Ellen Ishkanian, "Newton's residents pack hearing on teardown moratorium" *The Boston Globe*, October 19, 2014.

<sup>91</sup> Neil Swidey, "Can there be a teardown that everybody agrees on?" *The Boston Globe*, February 6, 2015, 3.

<sup>92</sup> *Ibid*, 4.

“Yet as many community leaders can attest, developers responding to a vigorous housing market have discovered that it pays to simply wait out the one year delay and demolish a house, rather than comply with the intent of the regulation... Thus a building contractor, under market condition’s high demands for housing and relatively low carrying costs, has learned to build in the cost of holding onto a property for one year to wait out the delay period, and then have the freedom to build as of right, whatever zoning will allow, often to the detriment of the entire neighborhood.”<sup>93</sup>

With teardowns on the rise, and concerned neighbors, in 2014 Alderman Amy Sangiolo requested amendments to the City of Newton Zoning Ordinance, Chapter 30, to create a temporary moratorium. The proposed moratorium was on full or partial demolitions of single and two family residential dwellings, where the gross floor area of the replacement structure or resulting structure would be greater than 120% of the existing’s house’s gross floor area. The City of Newton’s Planning and Development Department stood against the proposed moratorium, stating that there was already a control set in place to prevent wholesale demolition throughout the city, the demolition delay ordinance. In an August 29, 2014 memorandum, the department stated “While this development activity is clearly driven by the desirability of the City in a recovering economy, creating higher land values and an opportunity to develop more expensive homes, it is also enabled by an outdated Zoning Ordinance whose regulations bear little relation to the physical character of the neighborhoods many citizens would like to protect.”<sup>94</sup> Currently, Newton’s Planning and Development Department is working on a zoning reform project to comprehensively address the whole ordinance. The project will

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<sup>93</sup>Larson, Section II, 1.

<sup>94</sup> James Freas, “RE: #237: Ald. Sangiolo on behalf of concerned citizens requesting a one-year moratorium on the demolition of single and two family homes,” (Newton: 2014), 1.

take years to complete and implement; and the Demolition Review Ordinance will be reviewed. In the end, the moratorium failed to get enough support to pass in the fall of 2014. Officially, the board took no action, meaning the measure can be reintroduced at any time. The 2014 Moratorium panic brought to light a known fact; that the high number of demolitions of both non-and historically significant buildings is an issue for the community.

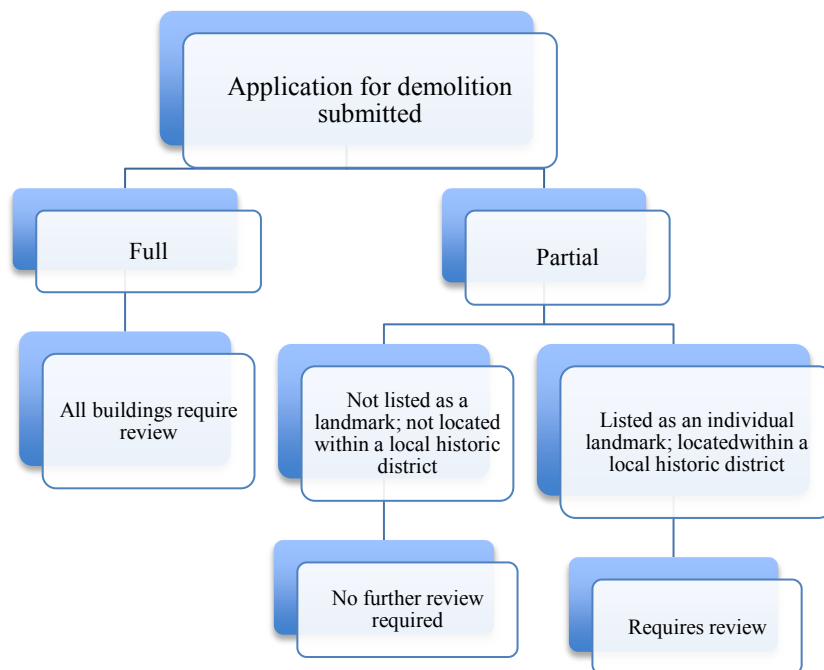
Even with all of the demolitions that have occurred throughout Newton, there are still countless historic buildings and structures still standing. It is important for the city and its Demolition Delay Ordinance to learn from the occurrences of 2014, and alter the ordinance in order to protect the buildings not yet demolished. Historic preservation gained a stronger voice in 2014, and politicians, developers, and citizens were forced to at least consider the consequences of frequent demolition. With new construction maintaining a steady rate, it is time for Newton to consider policy alternatives and changes for the ordinance.

## **CHAPTER 4: POLICY ALTERNATIVES**

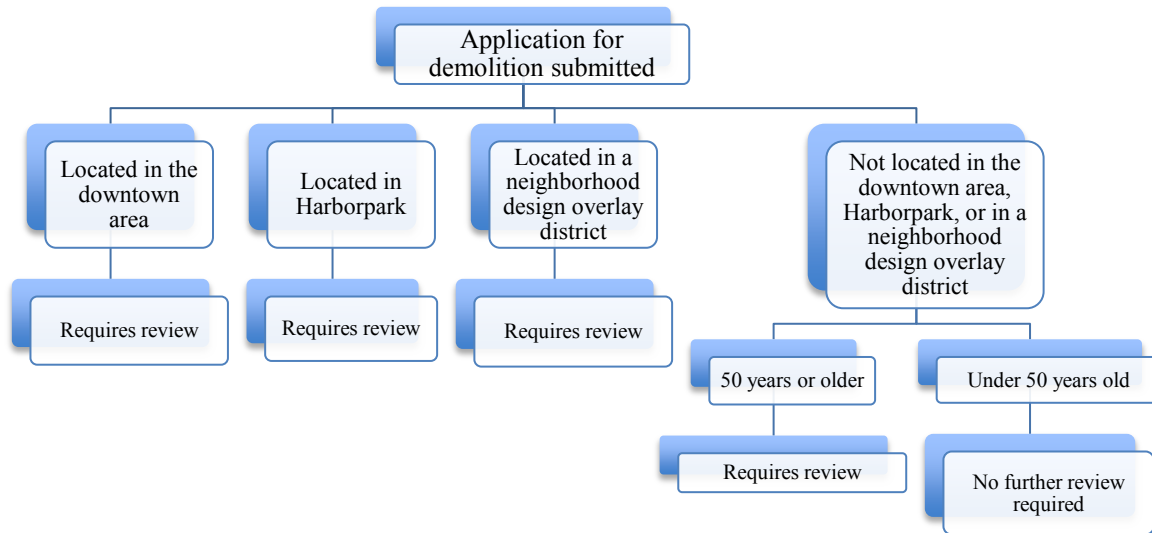
This chapter will explore various policy alternatives that are used around the country. Beginning with “Trigger for Demolition Delay Review” and ending with “Post Delay-Imposed Review,” this chapter will follow the typical multi-step process of demolition delay reviews, discussing two to three different policy alternatives for each individual step. The policy alternatives reviewed are from the City of Denver, CO, the City of Boston, MA, the City of Chicago, IL, the City of Phoenix, AZ, the City of San Francisco, CA, the City of Pittsfield, MA, the Town of Weston, MA, and the City of Philadelphia, PA. The policy alternatives were chosen based upon the criteria gathered in chapter two’s Recommendations section. This includes an alternative that allows for proper review of individual buildings, is beneficial to the community, has a lengthy or strong delay period, and provides staff and the historical commission with the necessary tools and time to enforce the ordinance. Each step’s provided policy alternatives will be arranged in short flow chart figures, with a narrative at the end of each section. Within the narratives, the author will discuss how each policy alternative might be beneficial or possibly harmful to the City of Newton’s demolition delay process, specifically pertaining to the city’s historic preservation staff, the Newton Historical Commission, developers, politicians, historic preservation enthusiasts, homeowners, and local abutters. The goal of this chapter is to look at different policy alternatives, and their positives and negatives, and compare and contrast how those alternatives might fare in the City of Newton. This chapter additionally, provides substantial background for the next chapter, Recommendations.

#### 4.1 Trigger for Review

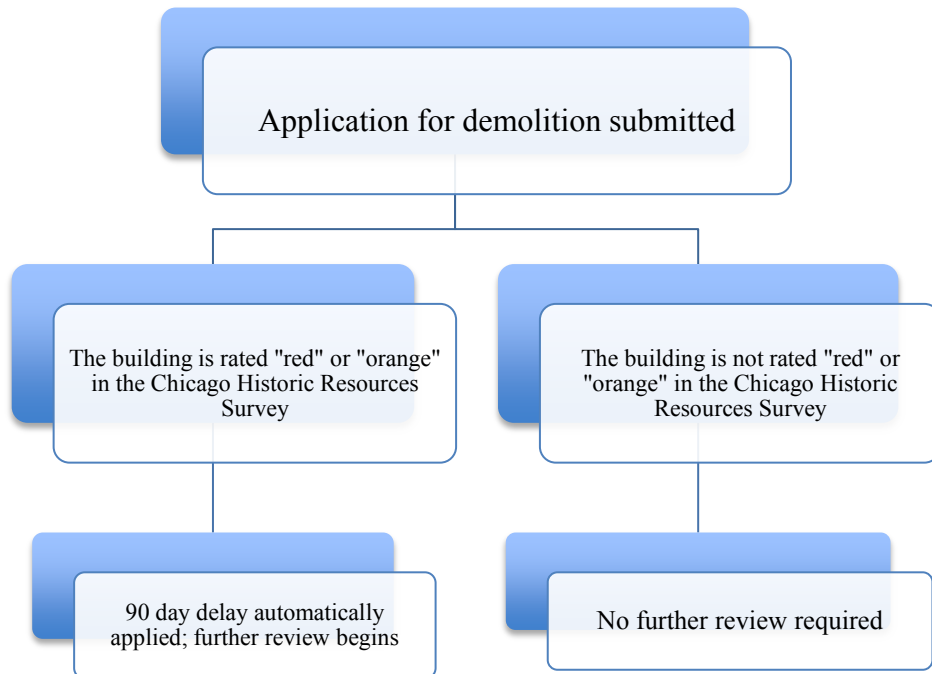
In this section the author will discuss alternatives for the initial trigger for review, which identifies the buildings and structures that either do or do not require further review. This first step is significant because it ensures that a historical building or structure is not missed, and allowed to be quickly demolished. Ideally this policy step provides the city and its ordinance with a recommended large safety net.



**Figure 4.1: The City of Denver's Trigger for Review.**



**Figure 4.2: The City of Boston's Trigger for Review.**



**Figure 4.3: The City of Chicago's Trigger for Review.**



Figure 4.1 represents the City of Denver, Colorado's trigger for review. All demolition requests, both partial and full, submitted for a building listed as an individual Denver landmark, or located within a local historic district are subject to review. For a partial demolition, if a building is not listed as a landmark, and not located within a local historic district, then no further review is required. Additionally, Denver's historic preservation staff reviews every total demolition application, regardless of the age of the building.<sup>95</sup> Currently, the City of Newton reviews all demolition requests for buildings fifty years or older. Changing the ordinance to include review for all total demolition applications seems unnecessary. Newton only has one staff member who reviews all buildings not located within one of the city's four local historic districts, and adding more applications could be a large burden for the staff member. Additionally, over 83% of the buildings in Newton are over fifty years old and already requires historic review.

Figure 4.2 represents the City of Boston's trigger for review. Similar to Denver, Boston's review includes a majority of the city's building inventory. Boston requires review for all buildings located in its downtown area<sup>96</sup>, an alternative inclusion to Newton's existing trigger for review that could possibly be beneficial. Newton's diverse thirteen village downtowns are an important part of the city's make up and history, as explained in the previous chapter. The policy addition of reviewing all village center buildings might benefit the community as a whole. Additionally, the City of Boston requires review for all buildings located in Harborpark and in a neighborhood design

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<sup>95</sup> The City of Denver, "Demolition Review," accessed March 16, 2015, <https://www.denvergov.org/cpd/CommunityPlanningandDevelopment/LandmarkPreservation/DemolitionReview/tabid/443727/Default.aspx>.

<sup>96</sup> City of Boston, "Article 85 Demolition Delay," accessed March 16, 2015, <http://www.cityofboston.gov/landmarks/article85/>.

overlay district. If a building is not located in one of the three designated areas listed, review is only required if the building is fifty years or older.

Figure 4.3 represents the City of Chicago, Illinois' demolition review process trigger. Chicago is the only one of the three policy alternatives listed that is specific to only reviewing total demolitions for buildings that are city designated. The buildings requiring review are rated "red" or "orange" in the Chicago Historic Resources Survey.<sup>97</sup> Buildings in the city rated "red" possess some architectural feature or historical association that made them potentially significant in the broader context of the City of Chicago, the State of Illinois, or the United States of America. A building that is rated "orange" possesses some architectural feature or historical association that made them potentially significant in the context of the surrounding community.<sup>98</sup> Any application that is submitted for a building neither rated "red" or "orange" does not require further review. Supplementary research is required to learn how frequently this survey is updated.

A possible missing factor in the City of Newton is large scaled surveying. A majority of the city's historic preservation staff's time is committed to demolition delay reviews. Due to this notion, little surveying and few National Register for Historic Places designations have been an unfortunate reality in recent years. Until a solution to this problem is put in place, Chicago's process for trigger of review cannot be considered for the City of Newton because of insufficient building data. Nevertheless the concept of creating a list based upon staff surveying could be beneficial to Newton, in addition to keeping an age trigger.

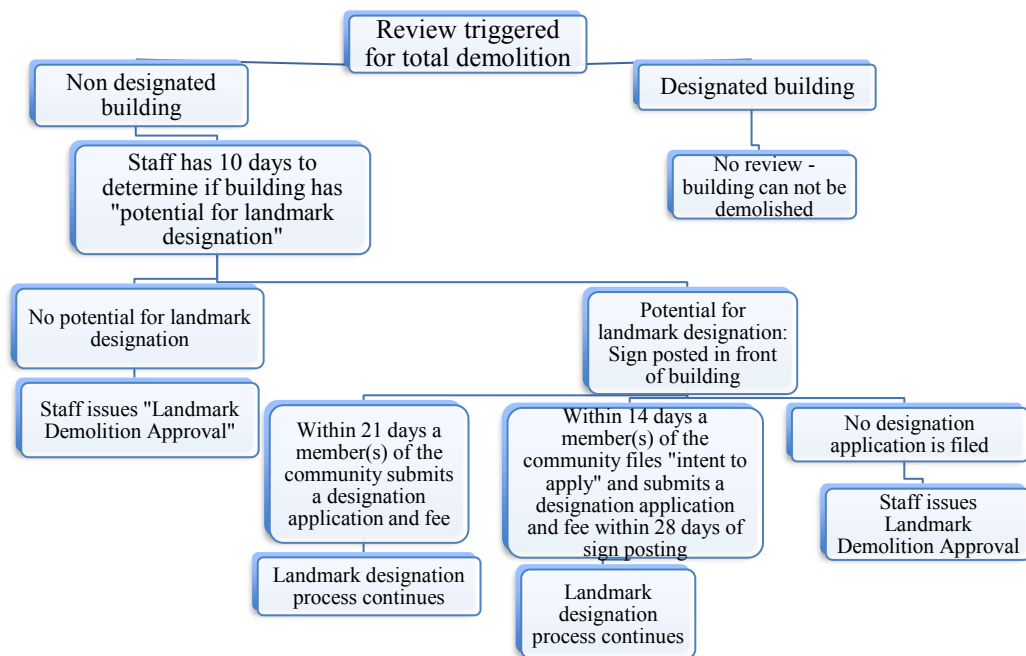
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<sup>97</sup> City of Chicago, "Demolition Delay," accessed March 16, 2015, [http://www.cityofchicago.org/city/en/depts/dcd/supp\\_info/demolition\\_delay.html](http://www.cityofchicago.org/city/en/depts/dcd/supp_info/demolition_delay.html).

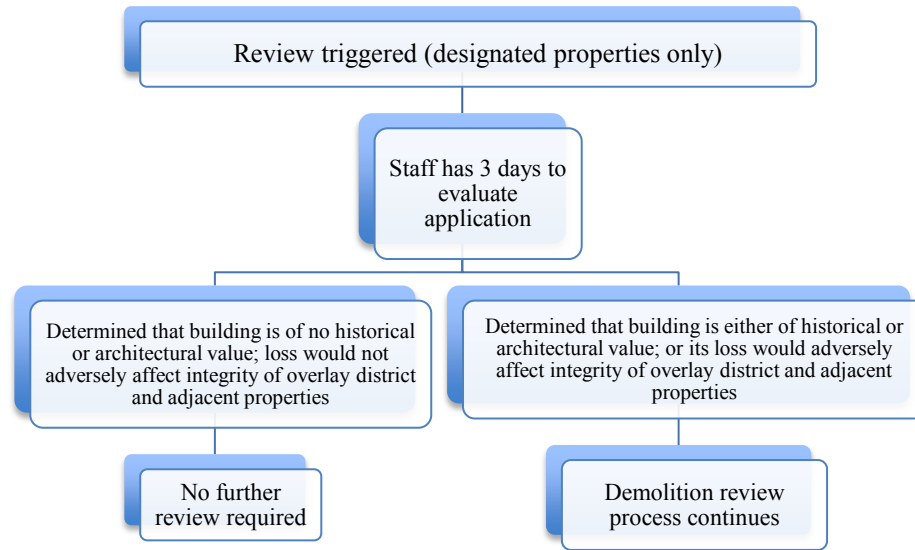
<sup>98</sup> Ibid.

## 4.2 Initial Staff/Community Review Process

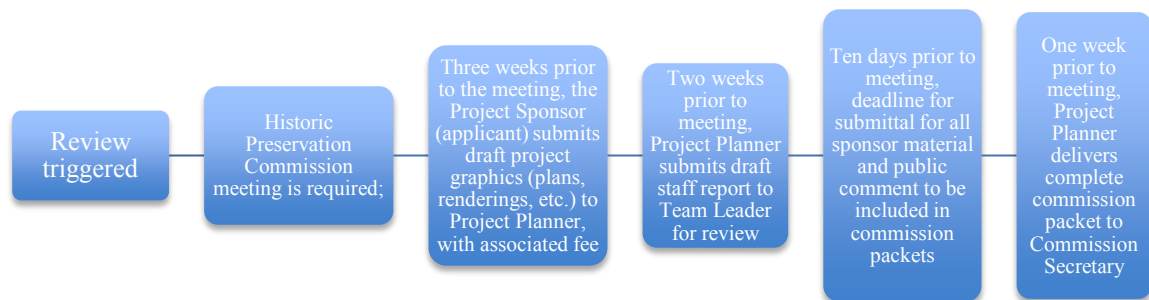
In this section the author will review policy alternatives of the initial staff and community review step of the process. Once an application is triggered for review, a staff member(s) or member(s) of the commission are allotted a certain amount of time to conduct initial research. This review is typically done in order to determine whether or not the demolition application must be heard in a public hearing; or in the City of Denver's case, community review is required in order to further review.



**Figure 4.4: The City of Denver's Initial Staff/Community Review Process.**



**Figure 4.5: The City of Phoenix's Initial Staff/Community Review Process.**



**Figure 4.6: The City of San Francisco's Initial Staff/Community Review Process.**

Figure 4.4 represents the City of Denver. Denver is unique in the sense that the city relies on the community for saving of non-designated buildings threatened by demolition. If an application comes in for demolition of a designated building, no further review is required because the building cannot be demolished. Once an application is submitted for a non-designated building, the staff has ten days to determine whether or

not a building has “potential for designation,” but it is up to the community to actually submit an application for designation.<sup>99</sup> If the staff initially finds that the building has no potential for landmark designation, then a “Landmark Demolition Approval” is issued. If the staff does determine that the building has potential for landmark designation, a sign is posted in front of the building. After this, the community has either twenty one days to submit a complete designation application, with the associated fee; or fourteen days to file “intent to apply” and within twenty eight days of the sign posting, file a complete designation application, with the associated fee. If the community submits the application in time, then the landmark designation process continues. If no designation application is filed, then staff issues a “Landmark Demolition Approval.”<sup>100</sup> Furthermore, it is much more expensive for non-owners to submit an application, than it is for the current building’s owner. This policy alternative could possibly be somewhat beneficial to Newton. It would reduce staff time on non-designated buildings; and it would give the community the opportunity to have their voices and concerns heard louder. Today in Newton, it is possible for the community to initiate designation a building, but this alternative would provide them with a better strategic process and more urgent deadline.

Figure 4.5 represents staff preliminary review in the City of Phoenix, Arizona. In Phoenix only designated properties are subject to review, and staff only has three days to make an initial determination.<sup>101</sup> If within that short time, staff determines that the building is of no historical or architectural value, and its loss would not adversely affect the integrity of the overlay district and adjacent properties, then no further review is

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<sup>99</sup> City of Denver.

<sup>100</sup> Ibid.

<sup>101</sup> City of Phoenix, “Historic Preservation Approvals and Guidelines,” accessed March 16, 2015, <https://www.phoenix.gov/pdd/historic/historicservices>.

required and the building can be quickly demolished. On the other side, if staff does determine that the building is of either historical or architectural value, or its loss would adversely affect the integrity of the overlay district and adjacent properties, then the demolition review process continues to the next step. Because the City of Newton's historic preservation staff currently has fifteen initial days to make a determination of whether or not a building has historical significance, which serves a positive safety net, the policy alternative would more than likely be detrimental to Newton.

Figure 4.6 signifies staff review and participation in San Francisco, California. Similar to Phoenix, review is only triggered in San Francisco for designated buildings.<sup>102</sup> In contrast to Phoenix, every designated building's application is immediately sent to a meeting, with prior staff review. Included in the staff review is three weeks prior to the meeting, the applicant, known as the "project sponsor," must submit draft project graphics (plans, renderings, etc.) to the historic staff, known as the "project planner" with the associated fee. Two weeks prior to the meeting, the project planner submits a draft staff report to the commission's designated "team leader" for review. Ten days prior to the meeting, all sponsor material and public comment must be submitted and included in the commission packets. Lastly, one-week prior, the project planner must deliver a complete commission packet to the commission's secretary.<sup>103</sup> As discussed in the previous section, this policy alternative would only be possible if Newton had a stronger surveying and National Register designating system in place, and the necessary staff time. Additionally, both Figure 4.4 and 4.6 mention a fee. It could be beneficial to the City of Newton to introduce a fee for demolition review applications.

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<sup>102</sup> San Francisco Planning Department, "Application Packet for Certificate of Appropriateness," accessed March 16, 2015, <http://www.sf-planning.org/Modules/ShowDocument.aspx?documentid=477>.

<sup>103</sup> Ibid.

### 4.3 No Further Review Necessary Process

This section is unique to the rest listed in this chapter. A process for “no further review necessary” occurs after an initial staff review and determination that no further review is required for a specific demolition application. The building and its application’s decision are allotted a certain amount of time of validity. In some instances, this type of process is done on its own, with the intention that a homeowner or developer will have zero obstacles and time constraints in the future regarding demolition review when one wants to begin a project in the near future.



**Figure 4.7: The City of Denver’s No Further Review Necessary Process.**



**Figure 4.8: The City of Pittsfield’s No Further Review Necessary Process.**

Figure 4.7 represents the City of Denver<sup>104</sup>, and Figure 4.8 represents the City of Pittsfield, MA.<sup>105</sup> In Denver once a decision is made that no further review is necessary, staff issues a “Certificate of Non-Historic Status” that is valid for five years. In Pittsfield, once the no further review necessary determination is made, staff issues a “pre-determination” that is valid for one year. This section proposes a policy alternative for Newton’s “not historic” or “not preferably preserved” determinations. Currently, those determinations have no expiration date as there is not one specified in the city’s ordinance as discussed in the previous chapter. Both figures represent a scenario that could take place during the city’s demolition review process, but also one that, as seen in the cases of Denver and Pittsfield, a developer or homeowner could initiate before filing for a demolition application. This alternative could be very beneficial to the City of Newton. For the situations that a developer or homeowner initiates this policy alternative, the purpose is that for the one or five-year span, the property requires zero historic preservation review for any type of project. This alternative saves the time and efforts of a developer, historic staff member, or a building owner attempting to sell. Additionally, this alternative ensures that review will be required in the future if the building is not torn down, and it has possibly retained historical or architectural significance that was not acknowledged prior.

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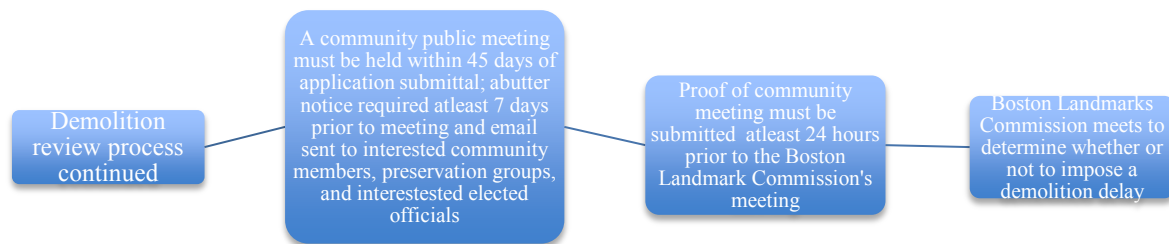
<sup>104</sup> City of Denver, “Certificate of Non-Historic Status,” accessed March 16, 2015, <https://www.denvergov.org/cpd/CommunityPlanningandDevelopment/LandmarkPreservation/CertificateofNonHistoricStatus/tabid/438136/Default.aspx>.

<sup>105</sup> City of Pittsfield, “Demolition Delay Ordinance for the Preservation of Historically Significant Structures,” accessed March 16, 2015, [http://www.cityofpittsfield.org/document\\_center/Demolition\\_Delay\\_Ordinance\\_Forms.pdf](http://www.cityofpittsfield.org/document_center/Demolition_Delay_Ordinance_Forms.pdf).

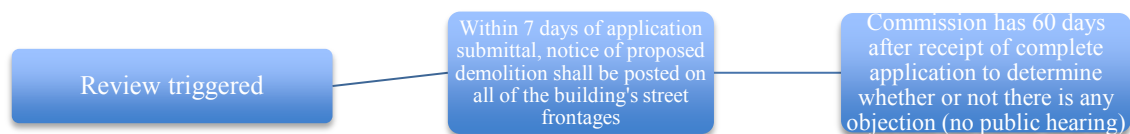


#### 4.4 Public Hearings Process

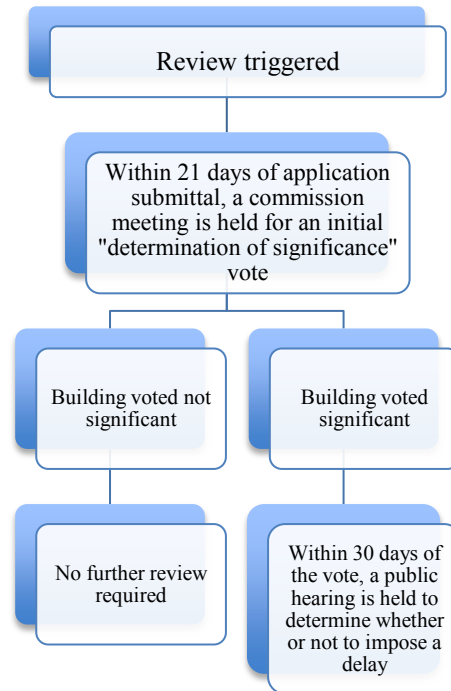
In the following section the author will review policy alternatives for the public hearing process. As discussed in chapter two, the public hearing step can be critical to the imposing demolition's public awareness and community involvement. All aspects of the application, applicant's and community's input, and research conducted are taken into account at the public hearing, and it is there that it is voted upon whether or not to impose a demolition delay.



**Figure 4.9: The City of Boston's Public Hearings Process.**



**Figure 4.10: The City of Philadelphia's Public Hearing Process.**



**Figure 4.11: The Town of Weston's Public Hearing Process.**

Figure 4.9 represents the City of Boston's public hearings process. Boston stands out in the fact that it requires demolition applicants to hold a public meeting specifically for the community prior to the Landmark Commission's formal public hearing.<sup>106</sup> The community meeting must be held within forty five days of the application submittal, and the applicants are required to notify the project's abutters at least seven days prior to the meeting. Additionally, an email containing information regarding the community meeting must be sent to interested community members, preservation groups, and interested elected officials.<sup>107</sup> Proof of the community meeting must be submitted at least twenty four hours prior to the Commission's meeting, and at the Commission's public hearing, a determination is made on whether or not to impose a delay. The process provides the

<sup>106</sup> The City of Boston.

<sup>107</sup> Ibid.

community and project abutters with a sense of further understanding of what exactly is being proposed on the property site. Currently abutters and other interested individuals are only able to see the agenda prior to the meeting, unless they come into City Hall to view the application, and typically are discouraged to learn that the information they were seeking is not in the city's initial project file. It could be beneficial to the City of Newton to put the task of informing the community, abutters, and interested historic preservation enthusiasts on the applicant. However, due to the fact that currently in Newton if the application is for total demolition, then plans are not required to be submitted, and the applicant would most likely have very little to show and discuss at the community meeting. The motive for the ordinance not requesting plans is due to the fact that the initial staff and board's decisions are solely based upon the existing building. An opportunity to be further explored might be requiring a community meeting if the applicant returns to the Newton Historical Commission to request a waiver. At the time of a waiver of delay request, plans are required.

Figure 4.10 represents the City of Philadelphia's demolition delay public hearing process, or lack thereof. Once review is triggered, notice of the proposed demolition is posted on all of the building's street fronts within seven days of the application's submittal. The commission has sixty days to determine whether or not there is any objection, and no public hearing is required.<sup>108</sup> This policy would not be beneficial to Newton; however an addition to the existing policy should be explored regarding the notification provided to the community and abutters of proposed demolition sites. Currently the City of Newton practices similar signage techniques for properties

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<sup>108</sup> City of Philadelphia, "Historic Preservation Ordinance," accessed March 16, 2015, <http://www.phila.gov/historical/PDF/ordinance.pdf>.

attending Special Permit Public Hearings, as well as posting notice in local newspapers. This policy alternative could be beneficial to the Newton Historical Commission as community and abutter input is important to the process.

Figure 4.11 represents the Town of Weston, Massachusetts' process once review is triggered. There is little to no preliminary staff review, and every applicant that triggers review is required to attend within twenty one days of submittal, an initial commission meeting for "significance determination."<sup>109</sup> If the building is voted not significant, then no further review is required. If the building is voted significant, then a public hearing is held within thirty days of the first vote to determine whether or not to impose a delay. Currently in Newton the agendas for the public meetings are already very lengthy, and the allowance of historic staff to be able to conduct initial site visits, typically with the commission's chair, and internally sign off on up to half of the applications has proven beneficial to the City of Newton's demolition delay process. This process has allowed the commission during its' public hearing, to be able to spend more time reviewing the buildings that have been pre-determined to have some sort of historical significance.

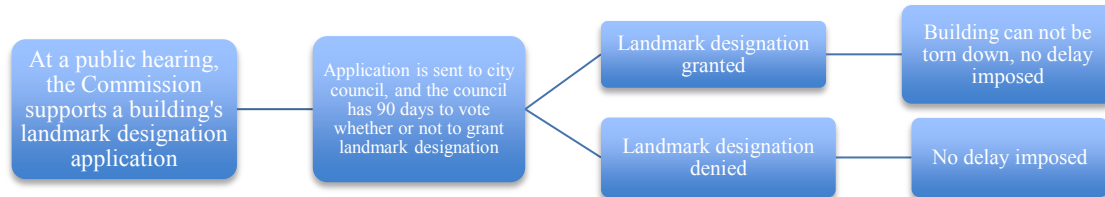
#### **4.5 Delay Period**

The delay period is the most significant and key step in the process. The imposing of a demolition delay guarantees a temporary halt to the building's demolition. The delay's purpose is to create a difficult hurdle in the demolition process, and has been proven successful in demolition delay ordinances all around the country. Due to possible economic, social, and time constraints that might be placed upon a homeowner,

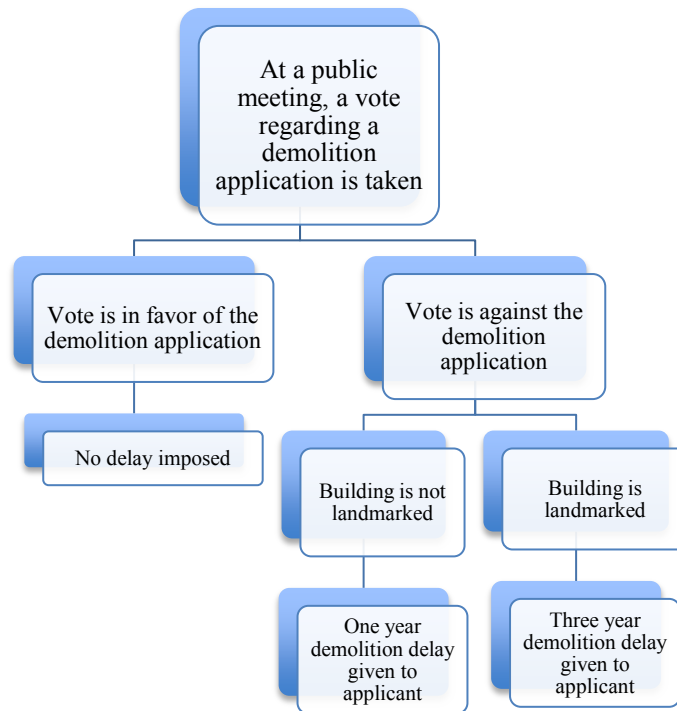
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<sup>109</sup> The Town of Weston, "The A-B-C's of the Demolition Delay Process," accessed March 16, 2015, <http://westhistcomm.org/wp-content/uploads/2013/11/ABCDemoDelay.pdf>.

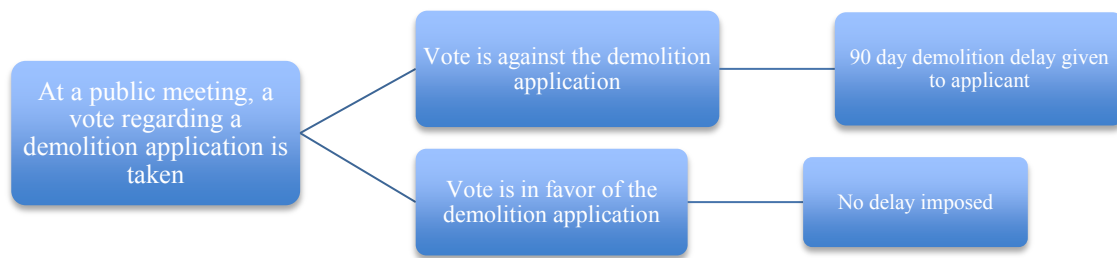
contractor, or developer, the delay furthers the building's chances of being saved from the wrecking ball.



**Figure 4.12: The City of Denver's Delay Period.**



**Figure 4.13: The City of Phoenix's Delay Period.**



**Figure 4.14: The City of Boston’s Delay Period.**

Figure 4.12 represents the City of Denver’s lack of demolition delay. If the historic commission supports a building’s designation, then the application is sent to city council. The city council has ninety days to vote whether or not to grant the building landmark designation. If the building is not granted landmark designation, then the building can be torn down. Once a building is designated as a landmark by city council, the building can never be torn down and is saved from the impending demolition.<sup>110</sup> Similarly, in Newton once a building is designated a landmark, it is nearly impossible to demolish the building. This alternative further pushes a demand for the City of Newton to implement a policy that makes it possible to survey, nominate, or even designate deserving buildings at a higher rate.

Figure 4.13 comes from the City of Phoenix, where even a designated building is not automatically given permanent protection, instead only a demolition delay is imposed for the building. The delay’s length varies in two years with the deciding factor being whether or not a building is landmarked.<sup>111</sup> At the public hearing, if the vote is in favor of the demolition application then the building can be demolished. If the vote is against the

<sup>110</sup> City of Denver.

<sup>111</sup> City of Phoenix.

demolition application, then a one-year delay is imposed for non-landmarked buildings, or a three-year delay is imposed for a landmarked building. Parts of this policy could be beneficial to Newton in the sense that the length of delay for buildings either listed on or eligible for listing on the National Register of Historic Places could be increased.

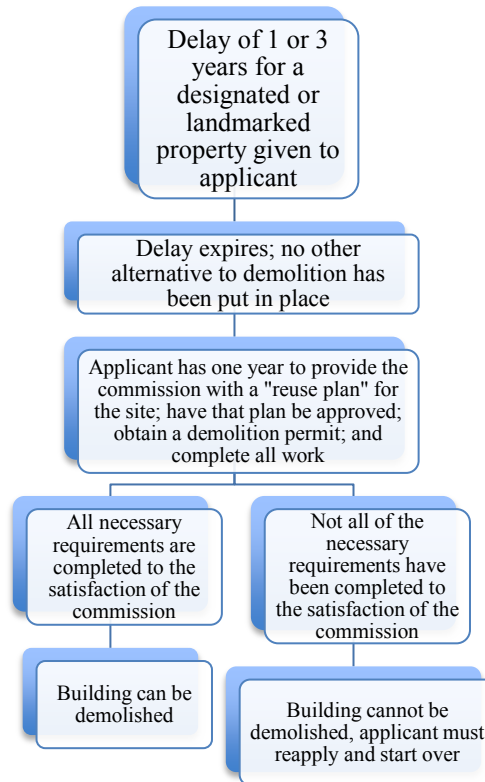
Lastly, Figure 4.14 represents the City of Boston's demolition delay period. Boston's implementation of demolition delay is similar to Newton. At the public hearing the Landmarks Commission votes whether or not it is in favor of the application. If the commission is in favor, then demolition is given the green light. If the vote is against the application, then a ninety-day delay is imposed.<sup>112</sup> This delay period is much shorter than the City of Newton's and could be detrimental to Newton if accepted. Currently, Newton's demolition delay period's length is one of the Newton Historical Commission's greatest weapons against developers. By looking at the various types of delays given, if any, Newton must begin to consider how effective the current delay is against the demolition of buildings on which a delay is imposed.

#### **4.6 Post Delay-Imposed Staff Review**

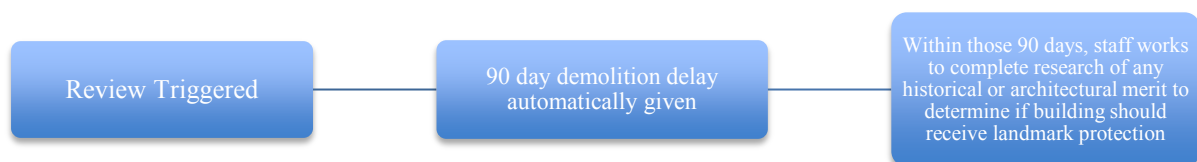
Many ordinances and demolition delay processes have regulations in place for circumstances in which staff review is required once a delay is imposed upon a building. It is important to the success of the ordinance, that it is further upheld after a determination has been made. Post-staff review also ensures that any additional requirements of the ordinance are upheld by the demolition applicant, prior to the issuance of a demolition permit by the Inspectional Services Department.

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<sup>112</sup> City of Boston.



**Figure 4.15: The City of Phoenix's Post Delay-Imposed Staff Review.**



**Figure 4.16: The City of Chicago's Post Delay-Imposed Staff Review.**

Post delay-imposed staff review is a successful policy in Newton. However it is one that could benefit from minor improvements. Figure 4.15 represents the City of Phoenix, and its further staff review requirement. An applicant has exactly one year since



the delay's expiration to provide the commission with a "reuse plan" for the site, have the plans approved, obtain a building permit, and complete the work. Phoenix's requirement of an approved "reuse plan" to all buildings that have had a delay imposed still allows staff and the community an opportunity to provide input into the demolition project.<sup>113</sup> By implementing a policy such as this in Newton, a developer would not be able to find a loophole in Newton's demolition delay process by simply waiting out a delay. If this policy appears too extreme, a tactic could be to only use this policy alternative for buildings listed on the National Register of Historic Places. This specific group of buildings has national historic significance and is arguably more worthy of saving.

Lastly, Figure 4.16 represents the City of Chicago, and is different in the sense that a ninety-day delay is automatically given once the review is triggered. It is not until after a delay is imposed that staff further review and research the property to determine whether or not the building is worthy of landmark protection.<sup>114</sup> Newton could benefit in looking further into whether a building should be designated after a delay is imposed, especially those listed on the National Register of Historic Places. However, as discussed earlier Newton's historic staff's time is already limited, and this policy alternative would prove challenging.

#### **4.7 Policy Alternatives Conclusion**

By examining the various steps taken during the demolition delay process, as well as contrasting policy alternatives implemented all around the country, the City of Newton can begin to explore options for new policies, major and minor additions to existing

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<sup>113</sup> City of Phoenix.

<sup>114</sup> City of Chicago.

policies, and have a further understanding of not only what is and isn't currently working, but also what aspects of the ordinance can be improved upon. Newton's trigger for review is currently successful and does not need any major change, however in the section of initial staff and community review, the notions of further community involvement and application fees were explored. Additionally, the author explained the possibility of having a deadline for the determinations in which either the historic staff or the commission decided in favor of the demolition application. The section regarding public hearings further reiterated the importance of community input in the demolition delay process, and a suggestion was made for applicant held community meetings in the case where the applicant is applying for a demolition delay waiver. The importance of the actual delay period was next discussed, and the proposal of extending the delay, specifically for buildings listed or eligible for listed on the National Register of Historic Places is touched upon. Lastly, additional occurrence of staff review and requirements after a delay has been imposed further enforces the ordinance and its goals. In the next chapter the author will provide recommendations for the City of Newton's Demolition Delay Ordinance, with many of them stemming in whole or in part from policy alternatives discussed in this chapter.

## **CHAPTER 5: RECOMMENDATIONS**

This chapter is the author's recommendations for the City of Newton's Demolition Delay Ordinance. The author will provide recommendations for the six different areas addressed in chapter four. Using the same multi-step process of demolition delay reviews, as previously followed, recommendations will be offered for "trigger for review," "staff review process," "no further review necessary," "public hearings," "delay periods," and "post delay-imposed reviews." The different policy recommendations provided in this chapter are currently being used in various communities all across the United States. As stated in chapter two, Mantell, Harper, and Propst recommended that because state historic preservation enabling legislation differs significantly from state to state, it is unwise to rely upon a single historic preservation ordinance model. Also the notion that it is important to provide recommendations that will work in that specific community was touched upon in chapter two by Miller. The following groups will be continuously mentioned and considered in the recommendations: Newton's historic preservation staff and Newton Historical Commission, the City of Newton's Aldermen, developers, homeowners, historic preservation enthusiasts, and the community and project abutters. These groups are the ones that will be affected the most by any changes made to the ordinance.

As previously discussed throughout the report, the City of Newton's trigger for review, for any building that is not located within one of the city's four local historic districts, is any building over fifty years of age. Due to the fact that over 83% of Newton's building stock currently meets the fifty-year criteria, few buildings are able to

fall through the cracks of review. This follows Miller's recommendation<sup>115</sup> of not making the safety net too small, and shadows the National Park Service's National Register requirement that a building must normally be at least fifty years of age. One of chapter two's provided reasons of importance for a demolition delay is the notion that it is in place to better the community. As touched upon in chapter three, the city's thirteen diverse and unique villages are a vital part of the community. In addition to the discussed trigger for review conditions, the City of Boston requires review for all buildings located within its downtown and Harborpark areas. By recommending that review be triggered for at least a section of buildings located within the village's cores, the ordinance can continue to serve as an important community tool.

Newton's staff review process allows for room for improvements. As discussed in chapter three, Newton's historic staff currently has fifteen days once an application is submitted to conduct an initial site visit and preliminary research. From my experience as a staff member of Newton's Planning and Development Department, I would recommend that the fifteen days be extended to at least twenty-five days, or at the very least changed to fifteen business days. Most of the historic research of a property is conducted after the staff has made their initial determination of whether or not a building has historical significance. By allowing the staff an extra ten days to conduct further historical research, there is a greater chance that a building with no obvious historical significance could be identified and sent to a Newton Historical Commission meeting. A possible scenario where this recommendation would be useful would be when an application is submitted for demolition review by staff and upon an initial site visit the building is deemed to have no historical significance and allowed to be demolished. After more research was

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<sup>115</sup> Chapter two, page 22.

conducted after the staff decision, it is discovered that a prominent figure of Newton's history had once resided in this building. An appeal on the staff's decision can be made, but by giving the staff additional time to conduct research, this situation could be avoided altogether.

In chapter two it was discussed that it is nearly impossible to identify all historically significant buildings in one town or city. In order to begin to identify at least a portion of the significant buildings, a city or town must conduct survey research. The City of Newton has been awarded grants by the state to survey its building stock constructed during particular years, but the author recommends a further push for more staff, staff time, and resources to conduct additional survey research. This will allow for additional National Register of Historic Places nominations, and possible worthy landmark designations. Naturally by additional surveying in the city, this group of buildings will grow. This recommendation will not only save on staff time, it will also increase the number of buildings that could be subject to a harsher demolition delay.

If the aldermen and city officials are apprehensive about financing additional staff and staff time for conducting survey research, the author recommends that the city require a fee with the submittal of a demolition review to help fund this additional expense. As was pointed out in the previous chapter, numerous other cities and towns across the country have a fee system in place for demolition review applications. The idea of a fee being associated with the City of Newton's demolition review applications was initially brought up last year with no result, as the concern over the ultimately failed moratorium on demolition took priority at that time.<sup>116</sup> The author strongly recommends

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<sup>116</sup> Information provided by the City of Newton's Planning Staff.

that an application fee be readdressed, as the City of Newton's Planning Department currently requires fees for other current planning applications, such as for special permits.

Currently when staff makes a "not historic" determination, or the Newton Historical Commission makes a "not preferably preserved" determination, whether or not the building's application was for a full or partial demolition, the building could be fully demolished at any time in the near or distant future. In the preceding chapter four, the alternative for an expiration date for decisions on buildings deemed to have no historical significance was explored. The expiration dates discussed ranged from one year to five years. The author recommends that this policy alternative be put in place with an expiration date of a minimum of five to ten years. The recommendation of as much as ten years reflects the political pressure that developers and homeowners commonly put on the city's alderman and officials to preserve historic buildings, as the recommendation is a much longer period than the policy alternatives provided in chapter five. As discussed in chapter three, the reason the city does not have expiration dates for these types of determination are because there is nothing written in the current ordinance. This recommendation will further enforce an efficient demolition delay system that Miller recommends, but also ensures that review will be required in the future if the building is not torn down, and it has possibly retained historical or architectural significance that was not previously acknowledged. If the city starts with a minimum of a ten-year expiration date, then this policy alternative will not affect any staff, developers, home owners, and community members for a whole decade, and by then most of those involved will not even be aware of the initial application. Projects all over the city are happening at a rapid

rate, and by not affecting the near future this recommendation can have its intended impact with little to no resistance.

The importance of community input on the demolition delay process has been throughout this entire report. In chapter two, one of Miller's recommendations is to keep the community informed. Unfortunately during the author's time in Newton, there have been calls and conversations with direct abutters expressing their concerns over a demolition project. In these exchanges, these individuals mention that they did not either receive notice of the public hearing until after the meeting, or did not receive notice at all. To address these issues, a recommendation is made here for the City of Newton to make a stronger attempt at informing the community, and especially direct abutters when there is a public hearing.

As pointed out in the previous chapter, many cities and towns have strict requirements for public hearing notices. These include lawn signs in the front of the property that display the date of the meeting and intent for demolition, as well as publication in local newspapers. Both of these types of public notice are recommended for the City of Newton, as both are already required for buildings attempting to receive a special permit from the city's Board of Aldermen. The lawn signs for the special permit applicants are paid for and handed out in the same office in city hall where a lawn sign for demolition review applicants could be handed out. Also, the City of Newton's Planning and Development Department currently has a sizeable number of various email groups for different segments of the department. The author recommends that an email group be created for community members interested in the city's historic preservation efforts, as well as interested political groups or members. Not only could an email group

be useful for a way to distribute the Newton Historical Commission's agendas, minutes, and updates, but also as a tool for education.

Many members of the community come into city hall to look at the demolition review applications that have been submitted, and at times have questions that only the developer or homeowner can answer. As shown in the last chapter, the City of Boston requires community meetings prior to the Boston Landmark's Commission's own public hearing. Also as suggested in chapter four, because applicants for total demolition in Newton should not submit any proposed replacement plans, there would be little to show community members prior to the public hearing.

However, it should be noted that a large percentage of total demolition applicants who have received a one-year or eighteen month demo delay return to a public hearing for waiver of the delay. Currently, it is required that the applicant provide proposed detailed plans for new construction to the commission. The author recommends requiring that applicants hold a community meeting, prior to returning to a public hearing in attempt to receive a waiver. The applicant must provide to the commission, at the night of the public hearing, receipts showing that notices of the community meeting were sent via certified mail to direct abutters, as well as a brief outcome of the community meeting. Additionally the applicant must send out an email to other interested community members and political individuals or groups. The city's historic staff member is required to be included in the email group, and would also be made aware of the meeting. The recommendation of the applicants holding community meetings further stresses the importance of community input.



Another one of Miller's recommendations was making sure that the delay was not too short, with Skelly pointing out in chapter two that due to time and economic constraints, longer delay periods have better results in preserving buildings. Currently the City of Newton has an eighteen month delay for buildings either listed or deemed eligible for listing on the National Register of Historic Places that have been found preferably preserved, and a one year delay for all other buildings found preferably preserved. The author recommends that the delay periods be extended. Understanding that, like many proposed ordinance changes in Newton that could affect so many groups in the city, there could be difficulty with this recommendation getting through the Board of Aldermen, the recommendation could be to only extend the length of the delay for the buildings listed or deemed eligible for listing on the National Register of Historic Places. The delay would be extended from eighteen months to two to three years, again depending on the success of the ordinance amendment getting through the Board of Aldermen. It is particularly important to protect the city's noted historical buildings. This furthers the importance of the author's previous recommendation for more surveying in the city, in order to expand the list of the city's buildings deserving to be listed on the National Register of Historic Places.

Currently in Newton, once a structure is found preferably preserved by the Newton Historical Commission, a demolition delay begins, and little to no research is conducted on the structure. One of Miller's recommendations is that the structure be designated, if possible. As discussed in the previous chapter, the City of Chicago's historic preservation staff conducts the majority of its research on a building once a delay is imposed. In contrast to Chicago, Newton does conduct research prior to a public

hearing which is important and influential to the commission's determination, however it is recommended that further research at least be attempted after the commission's determination. If a building that has been found preferably preserved by the Newton Historical Commission is not listed or deemed eligible for listing on the National Register of Historic Places, it is recommended that the building be surveyed and possibly applied to be listed on the National Register of Historic Places, thus gaining further protection and a longer demolition delay. Through the author's experience as a member of the Newton's Planning and Development Department's staff, it has been seen first hand how difficult this recommendation would be for the current historic staff due to the existing over bearing work load. Further attempts should be made by the city to hire additional outside consultants to conduct the necessary survey work associated with this recommendation. However even with the recommended application fees, the author understands that this recommendation is far reaching.

The last recommendation is related to the duties of the city's historic staff after a delay has expired. Currently once the one-year or eighteen month delay has expired, the Newton Historical Commission and city's staff member has no further jurisdiction and the house can be demolished and a new house built, regardless of how the new structure ties into the existing neighborhood. At the point of the delay's expiration, the city can regulate the proposed new building for compliance with conservation, fire, and engineering requirements, state building code, and with the city's zoning ordinance. However, due in part to the outdated zoning requirements discussed in chapter three, a developer's so called "McMansions" can still be built all over the city.

As shown in the previous chapter, the City of Phoenix requires that applicants provide “re-use plans” for all designated buildings that have had a delay imposed. Thus a developer cannot simply wait out the delay and avoid any type of design review. A recommendation of a requirement of design review for all buildings found to be preferably preserved has a strong chance of appearing too extreme for developers, the community, and the Board of Aldermen. However, it is recommended that similar “re-use plans” be considered a requirement for buildings that are, at a minimum, listed on the National Register of Historic Places. If no form of preservation of an existing building can be agreed upon, this recommendation ensures that a building and property that has historic significance at a local or national level, will be at the very least be replaced with a building that ties correctly in the character of the neighborhood and the existing building. Similar to Phoenix, this recommendation also includes that the plans must be approved before the expiration of the two-year period after which a demolition delay was imposed. It is understood that this recommendation will add to the already large workload of current historic staff, and Newton Historical Commission’s lengthy agendas. However it is significant enough that it be considered.

It should be noted that the City of Newton’s Demolition Delay Ordinance is one of the strongest of its kind in the state. However, after examining other demolition review processes around the country, there are many policy alternatives and adaptations that Newton can impose in its ordinance. These additions and amendments are intended to further ensure the protection of Newton’s building stock deemed historically significant. Additionally, the listed recommendations are also intended to have a positive impact on the city’s historic staff, homeowners, and community members. In contrast, some of the

recommendations provided by the author have the possibility to impose a challenge for developers, but only if dealing with projects involving historically significant buildings. The recommendations of this chapter only begin to provide the City of Newton with an even stronger historic preservation tool against the city's rapid pace and escalation of development.

## **CHAPTER 6: ASSESSMENT FOR THE FUTURE**

Over the course of this report, the author has discussed the importance and purpose of a Demolition Delay Ordinance, specifically in the City of Newton, Massachusetts. In Newton, historic preservation was determined to be an important and integral component of Newton's Comprehensive Plan. In Newton's current Demolition Delay Ordinance, a structure is deemed "preferably preserved" because "the loss of which is considered to be detrimental to the historic resources and heritage of the city." With the continuing rise of Newton's popularity and desirability, development in the city is at an all-time high.

Although the Demolition Delay Ordinance has been amended since its adoption in 1985, it is currently struggling to match up with the high demand of new construction in the city, and the capability of contractors to wait out delays with ease. A large number of homeowners have learned that once their home is given a delay and the clock has already started ticking, developers will pay more for their property since the homeowner has already begun the delay. The City of Newton's Demolition Delay Ordinance is meant to be the city's legal historic preservation tool, but with the increasing number of residential teardowns in the city, the ordinance's success is decreasing.

This report examined policies used in other cities and towns across the country, and in the last chapter, "Recommendations" provided the author's recommendations for policy alternatives to be implemented into the City of Newton's Demolition Delay Ordinance.

The recommendations that the author provided were supported by findings discussed in the chapters two, three, and four. Naturally each recommended policy

alternative would have different results when or if implemented into Newton's Demolition Delay Ordinance. It is difficult to assess how the recommendations will pan out, but there should be plans and implementation guidelines in place to refer to when they are looked at in the future. Policy maintenance, monitoring, and evaluation procedures can be designed to forestall some of the failures.

First, when reviewing the successes and failures of the implemented policy alternatives, the overall ordinance and its purpose and goal should be consistently referred to and kept in mind. To recap, Newton's Demolition Delay Ordinance's purpose and goal is to preserve structures whose loss would be damaging to the city. The main issue today is the increasing number of demolitions of those buildings, which the city and community relies on the ordinance to attempt to preserve.

Over the course of the implementation of the recommended policies and practices into the existing ordinance, it should be reinforced that no changes of the implementations be done intentionally. This refers back to the previous paragraph's point of making sure a change is still fulfilling its original purpose of providing support to the overall ordinance. This might be discovered through feedback and discussions by all of the major groups that the proposed implementations are most likely to affect. This group includes, but is not limited to, historic staff, the Newton Historical Commission, the Board of Aldermen, developers, the community and abutters, and interested historic preservationists. The recommendations provided by the author were specific to the problem addressed, and should continue to remain as such.

There should also be a systematic approach to measuring the effects, both positive and negative, that the ordinance's policy and practice implementations are causing. These

effects would be both short and long term and both should be measured through quantitative data. For example, through comparing the number of applications and demolitions in the five years prior and after the installment of proposed policy changes to the ordinance. A recommendation in which this assessment approach would be useful would be the increase in the length of the demolition delay. With this type of implementation, before and after comparisons could be discussed. Additionally, comparisons of the implemented policy could be addressed and taken into consideration, both in the short and long term. In the long-term, if a policy is not having the desired effect, the flexibility of the alternative should be taken into account. The alternative policy is not necessarily a permanent solution, and can be reassessed in the future to adapt to current situations.

Next the question, “Is the implemented policy change or alteration having the intended effect?” should be asked. A method for answering this question would be to examine and measure actual versus anticipated performances. This could be done by historic staff reviewing demolition review outcomes, specifically pertaining to a adapted policy alternative. Where this method of assessing the implementation is useful, would be the extension of the number of days the staff has to review an application. The intended effect would be allowing staff time to further research a property before making an initial decision instead of after which is mostly the case today, a property that may not initially appear to have some sort of historical significance, but actually does possibly by association of an event or persons, is not overlooked and allowed to be demolished or substantially altered. Quantitative and qualitative data could be observed and recorded. Additionally, the method of before and after comparisons would be useful in this

situation, specifically for the evaluation of changes the policy has produced since its implementation.

All of the implemented policy alternatives should be reexamined to determine whether or not they should be continued, modified, or terminated. Again, the method of comparing actual versus planned performances should be in place, the pros and cons for both short and long term occurrences should be discussed, and various records, documents, and other physical evidence ought to be taken into consideration. Other helpful methods include receiving feedback, ratings, and observations from all of the groups mentioned earlier that are being affected by the changes. All of the results from the various methods should be examined together in order for the city to decide how to proceed in the future, and whether or not the new policy has been successful and a proper fit for the ordinance and the community.

In the future, the author recommends additional research to be conducted in order to continue to improve the City of Newton's Demolition Delay Ordinance. This could include reexamining the recommendations that may seem a bit unrealistic to be implemented in the city at this time. For example, conducting additional surveys, although touched upon numerous times in this report, seems far-fetched considering the available amount of dedicated staff time, as well as the current political environment. Perhaps once the prominent policy has had the desired results, the policy alternative of additional surveying can be explored by the city. Additionally, the ordinance should be further reviewed for possible recommendations either over-looked or not explored by the author.



As touched upon in chapter three, the Planning and Development Department is currently working on zoning reform for the entire city's zoning ordinance, instead of working and producing amendments, section by section. Once the new changes are executed and in working order, it is essential for a reexamination of the Demolition Delay Ordinance to be made with the new policy implementations. As previously suggested, Newton's current zoning ordinance and its regulations are a major contributing factor to the high rate "McMansions" that are replacing smaller, affordable homes. Naturally once the zoning bylaws are altered to fit today's development habits, the demolition rate has a chance of decreasing.

The purpose of this report was to look at Newton's Demolition Delay Ordinance at many different angles. It can be argued that Newton's ordinance is one of the stronger in the state, and perhaps the country, for a city of its size due to its existing lengthy delay period. However due to the reasons stated in this report, there is room for improvement at this time in Newton. A common word used in the city by staff, developers, Aldermen, and abutters is "demolition," and the city is losing historic building stock at an accelerating rate. The National Historic Preservation Act states that, "The preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans." The City of Newton must reevaluate its Demolition Delay Ordinance now to confirm that its purpose and goals are being fulfilled, and make the appropriate amendments; in order to ensure that the city will not lose the same historic building stock that first made the city desirable and has since made it America's best city to live in.

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