

CITY OF NEW BEDFORD

In the Year Two Thousand and Nine

AN ORDINANCE

***RELATIVE TO AMENDING CHAPTER 2, SECTION 2-157
DEMOLITION DELAY OF BUILDINGS AND STRUCTURES***

Be it ordained by the City Council of the City of New Bedford as follows:-

SECTION 1.

Chapter 2, is hereby amended by deleting Sections 2-157; 2-158; 2-159; 2-160; 2-161; 2-162; 2-163; 2-164; 2-165 and 2-166, and inserting in place thereof, the following new Sections in their entirety and replacing them with the following:

Sec. 2-157. Demolition Delay of Buildings and Structures-Purpose

The purpose of Sections 2-157 through 2-157.9 is preserving and protecting significant buildings and structures within New Bedford, which constitute or reflect distinctive features of the architectural, cultural, economic, political or social history of the City and limiting the detrimental effect of demolition on the character of the City. Through Sections 2-157 through 2-157.9, owners of Preferably Preserved Historic Buildings and Structures are encouraged to seek out alternative options that will preserve, rehabilitate or restore such buildings, and residents of the City are alerted to impending demolitions of significant buildings.

By preserving and protecting significant buildings, structures, streetscapes and neighborhoods, this Ordinance promotes the public welfare by making the City a more attractive and desirable place in which to live and work. To achieve these purposes, the New Bedford Historical Commission is authorized to advise the City Council with respect to demolition permit applications. The issuance of demolition permits is regulated as provided by this Ordinance.

Sec. 2-157.1. Same-Definitions

The following words and phrases in Sections 2-157 through 2-157.9 are defined as set forth below:

- a) "Applicant" Any person or entity who files an application for a demolition permit. If the applicant is not the owner of the premises upon which the building is situated, the applicant must submit a notarized authorization letter from the owner of record indicating assent to the filing of the complete application.
- b) "Building" Any combination of materials forming a shelter for persons, animals, or property.
- c) "Commission" The New Bedford Historical Commission, which has the powers and duties and acts as the New Bedford Historical Commission. The Commission may designate one or more of its members to act in its behalf between the Commission's regular monthly meetings.
- d) "Demolition" The intentional act of substantially pulling down, destroying, defacing, removing or razing a building or structure or commencing the work of total, substantial or partial destruction

with the intent of completing same. In addition to complete demolition of a building, the following actions shall require a demolition permit:

1. Removal of a roof for the purpose of raising the overall height of a roof; rebuilding the roof to a different pitch; or adding another story to a building.
 2. Removal of one or more exterior wall(s) or partition(s) of a building.
 3. Gutting of a building's interior to the point where exterior features (windows, etc.) are impacted.
 4. Removal of more than 25% of a structure's overall gross square footage as determined by the Department of Inspectional Services.
 5. The lifting and relocating of a building on its existing site or to another site.
 6. Altering a building's key-character defining features, making it non-eligible to be listed in the National Register of Historic Places.
- e) "Historic District" Any designated or nominated assembly or group of buildings and structures within the City regulated under Chapter 40C (Historic Districts Act) of the General Laws of Massachusetts; or the Regulations of the National Register of Historic Places.
- f) "Historically Significant Building or Structure" Any building or structure within the City which is in whole or in part seventy-five (75) years or older and which has been determined by the Commission or its designee to be historically significant because such building is: 1) associated with one or more historic persons or events, or with the broad architectural, cultural, economic, political or social history of the City of New Bedford; 2) or historically or architecturally important (in terms of period, style, method of building construction or association with a famous architect or builder) either by itself or in the context of a group of buildings or structures.
- g) "Preferably Preserved Historic Building or Structure" Any historically significant building or structure which is determined by the Commission, because of the important contribution made by such building or structure to the historical and/or cultural resources of the City, to be in the public interest to be preserved or rehabilitated rather than to be demolished.
- h) "Structure" Any combination of materials assembled, constructed, erected or maintained at a fixed location such as walls, fences, statues, monuments, bridges and burial grounds.

Sec. 2-157.2. Same-Regulated Buildings and Structures

The provisions of Sections 2-157 through 2-157.9 shall apply only to any building or structure that, in whole or in part, was built seventy-five (75) or more years prior to the date of the application for the demolition permit, and is:

- a) A building or structure listed or eligible to be listed on the National Register of Historic Places, or within an area listed on the National Register of Historic Places, or on the State Register of Historic Places (based on the *Secretary of Interior's Standards*), or, if applicable, on the New Bedford Historic Resources List.

- b) A building or structure importantly associated with one or more historic persons or events, or with the broad architectural, cultural, economic, political or social history of the City, or;
- c) A building or structure which is historically or architecturally significant in terms of period style, method of building construction or association with a significant architect or builder either by itself or as a part of a group of buildings, or;
- d) A building or structure located within 150 feet of a Federal, State or local Historic District boundary.

Sec. 2-157.3. Same-Procedures for review and approval of Demolition Permits

No demolition permit for a building or structure, which is in whole or in part seventy-five (75) years or more old, shall be issued without following the provisions of Sections 2-157 through 2-157.9. If a building is of unknown age, it shall be assumed that the building is over 75 years old for the purposes of application for a demolition permit.

- a) Upon receipt of a complete application for a demolition permit, the Department of Inspectional Services shall certify whether the subject building or structure is seventy-five (75) years or older within five (5) business days from applicant's filing date.
- b) If the subject building or structure is certified to be seventy-five (75) years old or older, the Department of Inspectional Services shall file Form E-1 (Demolition-Historic) with the Commission for review within five (5) business days from applicant's filing date.
- c) Within ten (10) calendar days from receipt of Form E-1 from the Department of Inspectional Services, the Commission shall determine whether the subject building or structure is a regulated building or structure as defined in this Ordinance. The Commission's determination under this Section shall hereinafter be referred to as the "classification determination."
- d) If the Commission determines the building or structure is neither regulated by this Ordinance nor is it either an Historically Significant or Preferably Preserved Historic Building or Structure, the classification determination of the Commission shall be filed with the City Council and the Department of Inspectional Services and the applicant and or property owner (via Certified US Mail) within ten (10) calendar days from the receipt of Form E-1.
- e) Upon receipt of the Commission's findings, that the building or structure is neither regulated by this Ordinance nor is it either an Historically Significant or a Preferably Preserved Historic Building or Structure, and with the approval of the City Council, the Department of Inspectional Services shall, subject to Massachusetts Building Codes and other applicable laws and regulations, issue the demolition permit.
- f) If the Commission determines that the subject building or structure is an Historically Significant Building or Structure and Preferably Preserved Historic Building or Structure, the Commission shall notify the applicant and/or property owner of the classification determination (via Certified US Mail) within ten (10) calendar days from the receipt of Form E-1, who then shall submit to the Commission three (3) copies of a demolition plan which shall include the following items presented on standard letter-size (8.5" x 11") format:
 1. A scaled map showing the location of the subject building or structure and references to abutting properties;

2. Statement of the reason for proposed demolition and data supporting said reason, and;
 3. A narrative description of proposed development plans for the property.
- g) The Commission shall announce the scheduling of a public hearing to be held within forty-five (45) calendar days from the date of receiving a complete demolition plan and shall file with the City Council, the Department of Inspectional Services and the applicant and/or property owner (via Certified US Mail), the notice of its intent to hold a public hearing to review the application and demolition plan. Said notice shall include the date, time and location of the scheduled hearing.
 - h) In addition to the notice requirements stated above, notice of the public hearing held by the Commission shall also be sent by the Commission to the immediate abutters to the subject property, and other such persons, departments or organizations in such manner as the Commission may determine appropriate.
 - i) The Commission shall publish in a newspaper of local circulation, notice of the date, time and place of such public hearing. Such notice shall specify the address of the subject building, and shall be published in said newspaper at least fourteen (14) days prior to the date of such public hearing.
 - j) The time limits for the public hearing may be extended by written agreement between the applicant and the Commission. A copy of any such agreement shall be filed in the Office of the City Clerk.
 - k) The Commission shall conduct a public hearing and, within five (5) business days from the closing of said public hearing, shall notify in writing the property owner/applicant (via Certified US Mail), the City Council, the Department of Inspectional Services and any other parties of interest its findings to support that:
 1. The subject building is an Historically Significant and a Preferably Preserved Historic Building or Structure.
 2. The subject building is neither an Historically Significant nor a Preferably Preserved Historic Building or Structure.
 3. The subject building is Historically Significant, but is not a Preferably Preserved Historic Building or Structure.
 - l) In the event the specified time period lapses without the issuance of a finding by the Commission, the subject building shall be deemed to not be either Historically Significant or a Preferably Preserved Historic Building or Structure.
 - m) Upon submission of the Commission's findings to the City Council that the subject building is Historically Significant and a Preferably Preserved Historic Building or Structure or that the subject building is Historically Significant, but is not a Preferably Preserved Historic Building or Structure, the findings and application shall be placed on the calendar for the next regular City Council meeting following said submission and the City Council shall, at the first meeting which the applicant and the Commission's findings appear, refer the Commission's findings and application to the Committee on Appointments and Briefings for a public hearing. The

Committee shall hold a public hearing before the expiration of 90 days after the vote to refer the findings and application.

- n) At its first regular City Council meeting following the public hearing before the Appointments and Briefings Committee, the City Council shall:
 - 1. For buildings in an Historic District, accept the Commission's determination that the subject building is a Preferably Preserved Historic Building or Structure and, if the applicant is not issued a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship in accordance with Massachusetts General Law, Chapter 40C, or a substantially equivalent City certification for properties not regulated by Chapter 40C, deny a demolition permit; or
 - 2. Accept or reject the Commission's determination that the subject building is both an Historically Significant and a Preferably Preserved Historic Building or Structure. In the event the City Council accepts the Commission's determination, no demolition permit may be issued before the expiration of nine (9) months from the date of the vote of acceptance. The City Council may provide for a longer period of delay, not to exceed twelve (12) months. In the event the City Council votes to reject the Commission's determination that the subject building is both an Historically Significant and a Preferably Preserved Historic Building or Structure, a building permit shall be issued without further delay, subject to the Massachusetts Building Code and all other applicable laws and regulations.
 - 3. Accept or reject the Commission's determination that the subject building is an Historically Significant but is not a Preferably Preserved Historic Building or Structure. In the event the City Council accepts the Commission's determination that the subject building is an Historically Significant but is not a Preferably Preserved Historic Building or Structure, then the City Council shall vote to approve the demolition permit without further delay, subject to the Massachusetts Building Code and all other applicable laws and regulations.. In the event the City Council votes to reject the Commission's determination that the subject building is an Historically Significant but is not a Preferably Preserved Historic Building or Structure, no demolition permit may be issued before the expiration of six (6) months from the date of the City Council vote of rejection. The City Council may provide for a longer period of delay, not to exceed twelve (12) months.
- o) Upon submission of the Commission's findings to the City Council that the subject building is neither an Historically Significant nor a Preferably Preserved Historic Building or Structure, then, at the next scheduled regular meeting of the City Council, the City Council shall vote to approve the demolition permit without delay or referral for public hearing.
- p) Upon a determination by the Commission that any building or structure which is the subject of an application is a Preferably Preserved Historic Building or Structure, no building permit for new construction or alterations on the premises shall be issued until the City Council has voted on said application.
- q) Following a vote by the City Council to approve the issuance of a demolition permit, the Commissioner of Inspectional Services shall issue the demolition permit, provided that all plans for future use and development of the site have been filed with the Department of Inspectional

Services and have been found to comply with all regulations pertaining to the issuance of a building permit. All approvals necessary for the issuance of such building permit, including without limitation, any necessary zoning variances or special permits, must be granted, and all appeals from the granting of such approvals must be concluded, prior to the issuance of a demolition permit under this Section.

- r) A demolition permit is applicable for up to 180 days after issuance. If there is no action taken on said permit after 180 days, an extension must be granted through the Commissioner of Inspectional Services. Any extension granted by the Commissioner of Inspectional Services shall not exceed 185 days. A demolition permit shall be active for no longer than 365 days.

Sec. 2-157.4. Same-Notice.

The Commission shall require that the applicant post on the subject property, a notice, in a form designated by the Commission, visible from the public way, of the public hearing required pursuant to this Ordinance.

Sec. 2-157.5. Same-Emergency Demolition.

Nothing in this Ordinance shall be construed to derogate in any way from the authority of the Building Inspector derived from Chapter 143 of the General Laws; however, the Building Inspector shall make reasonable efforts to inform the Chairperson of the Commission of his intentions to cause demolition before he initiates same.

Sec. 2-157.6. Same-Historic Districts Act.

Nothing in this Ordinance shall be deemed to conflict with the provisions of the Historic Districts Act, Massachusetts General Law, Chapter 40C, with respect to requirements of notice, hearing and issuance by the Commission of a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship prior to the demolition of a building in an Historic District. Any temporary building erected or maintained in an Historic District pursuant to a certificate issued by the Commission may be demolished in a manner consistent with the terms of such certificate.

Sec. 2-157.7. Same-Enforcement.

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

Sec. 2-157.8. Same-Penalty.

- a) Any owner of a building or structure who causes said building to be demolished without first obtaining a demolition permit in accordance with the provisions of Sections 2-157 through 2-157.9 shall be subject to a fine in the amount of \$300.00 for each offense, each day that the violation exists constituting a separate offense, until a restoration of the demolished building is completed or unless otherwise agreed to by the Commission.

- b) If a building subject to the provisions of Sections 2-157 through 2-157.9 is demolished without first obtaining a demolition permit, no building permit shall be issued for a period of two years from the date of the demolition on the subject parcel of land or any adjoining parcels of land under common ownership and control unless the building permit is for the faithful restoration, or unless otherwise agreed to by the Commission.
- c) Said fines shall be issued pursuant to the provisions of Section 17-18 of the Code of Ordinances of the City of New Bedford.
- d) Nothing contained herein shall limit the City from pursuing any other legal remedies that may be available pursuant to the Massachusetts Building Code or other applicable Federal, State or local laws or regulations.

Sec. 2-157.9. Same-Severability.

In case any Section, Paragraph or part of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, every other Section, Paragraph or part shall continue in force and in effect.

SECTION 2.

This Ordinance shall take effect in accordance with the provisions of Chapter 43 of the General Laws.