

City of Malden Demolition and Alteration Delay Ordinance

I. INTENT and PURPOSE.

This Demolition and Alteration Delay Ordinance (the “Ordinance”) is enacted for the purpose of preserving and protecting Significant Buildings, structures, monuments and sites, within the City of Malden (the “City”) which constitute or reflect distinctive features of the architectural, cultural, economic, political or social history of the City and to limit the detrimental effect of demolition and alteration of Buildings on the character of the City.

Through this Ordinance, owners of Preferably Preserved Buildings 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 and alterations of Significant Buildings.

The Ordinance provides a predictable process for reviewing requests to demolish or alter Buildings by:

1. establishing an appropriate waiting period during which the City and the Applicant can propose and consider alternatives to the demolition or alteration of a Building of historical, architectural, cultural or urban design value to the City;
2. providing an opportunity for the public to comment on the issues regarding the demolition or alteration of a particular Building; and
3. minimizing the number and extent of demolition and alteration of Buildings of historical, architectural, cultural or urban design value to the City.

By preserving and protecting Significant Buildings, 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 Malden Historical Commission is authorized to advise the Building Commissioner with respect to applications for Demolition Permits and Building Permits for Alteration. The issuance of Demolition Permits and Building Permits for Alteration is regulated as provided by this Ordinance.

EFFECTIVE DATE. This Ordinance is effective upon passage and is intended to and shall apply prospectively to all pending applications under review for which a Demolition Permit and/or Building Permit for Alteration, has not been issued as of the date of enactment of this ordinance, and to all applications filed after the date of the enactment of this Ordinance. It shall not be effective as to any Demolition Permit and/or Building Permit for Alteration already issued as of the date of passage.

II. DEFINITIONS.

ALTERATION: Any construction or renovation to an existing Building, other than repair or demolition and excluding interior renovations.

APPLICANT: Any person or entity who files an application for a demolition permit or building permit for an alteration. If the Applicant is not the owner of the Building, the owner must provide written consent to the filing of the application. If the Applicant is an entity, Applicant must provide the names of its principals, i.e., trustees, beneficiaries of realty trusts, officers and stockholders of corporations.

BUILDING: A building, structure, monument or site, in whole or in part, or exterior feature or façade of a building, structure, monument or site.

BUILDING PERMIT FOR ALTERATION: The building permit issued by the Building Commissioner for alteration of a Building pursuant to an application therefore.

BUILDING COMMISSIONER: The City Building Commissioner or the Building Inspector authorized to issue Demolition Permits and Building Permit.

COMMISSION: The Malden Historical Commission, as established by the City pursuant to Massachusetts General Laws, Chapter 40, Section 8D.

DEMOLITION: The act of pulling down, destroying, removing, dismantling or razing a Building, in whole. This shall include “demolition by neglect,” namely, a process of ongoing damage to the fabric, viability and/or functionality of an unoccupied or occupied Building leading towards and/or causing its eventual demolition due to decay and/or structural failure and/or severe degradation over a period of time as a result of a general lack of maintenance, and/or failure to secure the Building from pests or vandals, and/or failure to take reasonable measures to prevent the ingress of water, snow, ice, and wind through the roof, walls, or apertures.

DEMOLITION PERMIT: The building permit issued by the Building Commissioner for Demolition of a Building pursuant to an application therefore.

PREFERABLY PRESERVED BUILDING: A Significant Building which the Commission determines, following a public hearing, that it is in the public interest to be preserved rather than demolished or altered. A Preferably Preserved Building is subject to the twelve-month demolition or alteration delay period of this Ordinance.

SIGNIFICANT BUILDING: A Building, which is, in whole or in part:

1. Listed on, or located within an area listed on, the National Register of Historic Places; or
2. Found eligible for listing on the National Register of Historic Places; or
3. Surveyed, or located within an area surveyed, by the Commission or City, in accordance with the survey and inventory procedures of the Massachusetts Historical Commission and said survey/inventory form is on file with the Massachusetts Historical Commission; or
4. Listed on the List of Significant Buildings as identified for future survey and inventory, as provided by this Ordinance; or
5. Of any age, and which has been determined by the Commission to be significant based on any of the following criteria:
 - a. The Building is importantly associated with one or more historic persons or events or with the broad architectural, cultural, political, economic or social history of the City or the Commonwealth; or
 - b. The Building is historically or architecturally important, in terms of period, style, method of building construction or association with a recognized architect or builder, either by itself or in the context of a group of buildings; or
 - c. The Building is one whose loss would have a significant negative impact on the historical or architectural integrity or urban design character of the neighborhood.

III. PROCEDURE.

1. Criteria for Review for Demolition Permits.

No Demolition Permit shall be issued without compliance with the provisions of this Ordinance for any Building of any age.

2. Criteria for Review for Alteration Permits.

No Alteration Permit shall be issued without compliance with the provisions of this Ordinance for a Building which is, in whole or in part:

- A. Listed on, or located within an area listed on, the National Register of Historic Places; or
- B. Found eligible for listing on the National Register of Historic Places; or
- C. Surveyed, or located within an area surveyed, by the Commission or City, in accordance with the survey and inventory procedures of the Massachusetts Historical Commission and said survey/inventory form is on file with the Massachusetts Historical Commission; or
- D. Listed on the List of Significant Buildings as identified for future survey and inventory, as provided by this Ordinance.

3. Application and Required Documentation.

An Applicant proposing to demolish or alter a Building subject to this Ordinance shall file with the Building Commissioner an Application form provided by the Commission for the purpose, containing the following:

- a) The address of the Building to be demolished or altered.
- b) The owner's name, address and telephone number.
- c) Proof of ownership, i.e., deed, property tax assessment.
- d) The Applicant's name, address and telephone number, if other than the owner.
- e) Written authorization from owner (if Applicant is not owner)
- f) Information about the Building that includes:
 - Narrative description of Building
 - Photos - of all sides of the Building, current (with dates), in color, 3 x 5 inches in size or larger.
 - plot plan - showing the property boundaries and Building's footprint
 - map - showing the location of the Building, surrounding properties and streets.
- g) Information about the proposed alteration or reuse of the property and/or reconstruction or replacement of the Building, that includes:
 - Narrative description
 - Site plan
 - Building elevation plans (if new building is proposed)
- h) Failure to provide complete and/or accurate documentation will cause a delay in the review process and may result in a rejected Application.

4. Initial Action by Building Commissioner.

The Building Commissioner shall forward a copy of the Application to the Commission.

5. Written Determination of Significance.

The Commission shall, within seven (7) calendar days after receipt of the Application, make a written determination of whether the Building is a Significant Building. The Commission may delegate its authority to make a determination of Significance to one or more members of the Commission or to a municipal employee.

If the Commission does not make a written determination and notify the Building Commissioner within seven (7) calendar days of receipt of the Application, the Building Commissioner may proceed to issue the Demolition Permit or Building Permit for Alteration.

6. Criteria for Determination of Significance.

The Commission shall use the following criteria to determine whether a Building is a Significant Building.

- A. The Building is listed on, or is within an area listed on, the National Register of Historic Places; or
- B. The Building has been found eligible for listing on the National Register of Historic Places; or

- C. The Building has been surveyed or is within an area surveyed, by the Commission or City, in accordance with the survey and inventory procedures of the Massachusetts Historical Commission and said survey/inventory form is on file with the Massachusetts Historical Commission ; or
- D. The Building is listed on the List of Significant Buildings as identified for future survey and inventory, as provided by this Ordinance; or
- E. The Building is historically or architecturally important, in terms of period, style, method of building construction or association with a recognized architect or builder, either by itself or in the context of a group of buildings; or
- F. The Building is importantly associated with one or more historic persons or events or with the broad architectural, cultural, political, economic or social history of the City or the Commonwealth; or
- G. The Building is one whose loss would have a significant negative impact on the historical or architectural integrity or urban design character of the neighborhood.

7. Determination that Building is Not a Significant Building.

Upon determination by the Commission that the Building is not a Significant Building, the Commission shall notify the Building Commissioner and Applicant in writing, and the Building Commissioner may proceed to issue the Demolition Permit or Building Permit for Alteration.

8. Determination that Building is a Significant Building.

Upon determination by the Commission that the Building is a Significant Building:

- A.** The Commission shall notify the Building Commissioner and Applicant in writing; and
- B.** No Demolition Permit or Building Permit for Alteration may be issued at this time; and
- C.** The Commission shall determine whether the Building is Preferably Preserved.

9. Determination Whether a Building is a Preferably Preserved Building. The Commission shall use the following procedure to determine whether a Building is Preferably Preserved:

A. Application and Required Documentation.

If the Commission determines that the Building is a Significant Building, Applicant shall provide the Commission with ten (10) copies of the Application and Required Documentation described in Section 2 of this Ordinance.

B. Public Hearing Required.

If the Commission determines that the Building is a Significant Building, it shall hold a public hearing within thirty (30) calendar days of the written notification to the Building Commissioner. A notice containing the date, time, place and purpose of the public hearing shall be posted by the Commission with the City Clerk for a period of not less than seven (7) calendar days prior to the date of hearing; mailed to the Applicant, Ward City Councilor and City Councilors at Large, Mayor and the property owners of all directly abutting properties; and at the Applicant's expense, shall be

published in a local newspaper at least fourteen (14) calendar days prior to the date of the public hearing.

- C. Timeframe for Decision.
Within fourteen (14) calendar days after the public hearing, the Commission shall provide written notice of determination whether the Building is Preferably Preserved. The time for the Commission to make its decision may be extended in writing by agreement between the Commission and Applicant.
- D. Notification to Building Commissioner that Building is not Preferably Preserved.
If the Commission determines that the Building is not Preferably Preserved, the Commission shall notify the Building Commissioner and Applicant in writing within ten (10) calendar days of said determination, and the Building Commissioner may issue the Demolition Permit or Building Permit for Alteration.
- E. Notification to Building Commissioner that Building is Preferably Preserved.
If the Commission determines that the Building is Preferably Preserved, the Commission shall notify the Building Commissioner and Applicant in writing of the basis for determining that a Building is Preferably Preserved, within ten (10) calendar days of said determination, and no Demolition Permit or Building Permit for Alteration may be issued for a period of twelve (12) months from the date of the Commission's determination, unless otherwise agreed to by the Commission.
- F. Effect of No Notification to Building Commissioner.
If the Commission does not notify the Building Commissioner in writing of its determination within ten (10) calendar days of the public hearing, unless the time for the Commission's determination has been extended in writing by agreement between the Commission and Applicant, the Building Commissioner may proceed to issue the Demolition Permit or Building Permit for Alteration.

10. Upon Determination that a Building is a Preferably Preserved Building.

- A. No Demolition Permit and No Permit for Alteration.
Upon a written determination by the Commission that a Building is a Preferably Preserved Building, no Demolition Permit or Building Permit for Alteration shall be issued for a period of twelve (12) months from the date of the determination, unless otherwise agreed to by the Commission.
- B. No permit for new construction of alteration.
Upon a written determination by the Commission that a Building is a Preferably Preserved Building, no building permit for new construction or alterations of the Building shall be issued for a period of twelve (12) months from the date of the determination, unless otherwise agreed to by the Commission.

11. Issuance of Demolition Permit or Building Permit for Alteration.

A. Within 12-month Delay Period.

The Building Commissioner may proceed to issue a Demolition Permit or a Building Permit for Alteration for a Preferably Preserved Building within the twelve-month delay period if the Commission notifies the Building Commissioner in writing that the Commission finds:

- i. There is no reasonable likelihood that either the owner or some other person or group is willing to purchase, preserve, rehabilitate or restore the Building; or
- ii. For at least six (6) months the owner has made continuing, bona fide and reasonable efforts to locate a purchaser to preserve, rehabilitate and restore the Building, and that such efforts have been unsuccessful; or
- iii. that the intent and purpose of this Ordinance is served even with the issuance of the Demolition Permit or the Building Permit for Alteration.

B. Following 12-month Delay Period.

Following the twelve-month delay period, the Building Commissioner may proceed to issue the Demolition Permit or Building Permit for Alteration.

IV. Administration.

Schedule of Fees. The Commission is authorized to adopt a schedule of reasonable fees to cover the costs associated with the administration of this Ordinance which shall be reviewed and approved by the City Council. Any amendment to Commission fees shall be reviewed and approved by the City Council.

V. List of Significant Buildings.

The Commission may proactively develop a List of Significant Buildings identified for future survey and inventory and which will be subject to this Ordinance. Buildings proposed for the List of Significant Buildings shall be added following a public hearing by the Commission. The inclusion of certain buildings on such a List shall have no bearing on whether a Building not listed may qualify as a Significant Building under this Ordinance upon application for a Demolition Permit or application for a Building Permit for Alteration.

VI. Historic Districts Act.

Following a determination that a Building is Significant and Preferably Preserved, the Commission may recommend to the Mayor and City Council that the Building be protected through the provisions of Massachusetts General Law, Chapter 40C, the Historic Districts Act (the "Act"). The steps required under the Act shall be followed prior to the establishment of a local historic district. Nothing in this Ordinance shall be deemed to conflict with the provisions of the Act. If any of the provisions of this Ordinance do so conflict, the Act shall prevail.

VII. **Emergency Demolition.**

If the Building Commissioner determines in the Building Commissioner's sole discretion and authority that a Building subject to this Ordinance presents an immediate threat to public health or safety due to its deteriorated condition and there is no reasonable alternative to the immediate demolition or alteration of the Building, then the Building Commissioner may issue an emergency Demolition Permit or Building Permit for an Alteration to the owner of the Building. The Building Commissioner shall provide copies to the Commission of any emergency permits and notice, violation notice, or other orders or permits issued to the owner of the Building. Nothing herein shall be construed to conflict with or derogate in any way from the Building Commissioner's enforcement obligations under the Code of the City of Malden, statutory obligations under Massachusetts General Laws Chapter 143, or the Massachusetts State Building Code.

VIII. **Enforcement and Remedies.**

1. The Building Commissioner is specifically authorized to institute any and all actions and proceedings, in law or equity, as the Building Commissioner may deem necessary and appropriate to obtain compliance with the requirements of this Ordinance or to prevent a threatened violation thereof.
2. Any owner of a building subject to this Ordinance that demolishes the Building without first obtaining a Demolition Permit or alters a Building without first obtaining a Building Permit for Alteration in accordance with the provisions of this Ordinance shall be subject to all fines issued by the Building Commissioner, including but not limited to: enforcement fines of up to \$1,000.00 per day in accordance with the Massachusetts State Building Code, work without permit fees and fines, as determined by the Building Commissioner, and all other violation fines and fees as determined by applicable regulations enforced by the Building Commissioner. Each day a violation exists shall constitute a separate offense.