

CITY OF SOMERVILLE
ORDINANCE NO. 2020-20
In City Council September 24, 2020

**AN ORDINANCE REPLACING THE EXISTING DEMOLITION REVIEW
ORDINANCE WITH AN UPDATED DEMOLITION REVIEW ORDINANCE**

WHEREAS, the City seeks to maintain and enhance its historic character; and,

WHEREAS, the demolition of significant preferably preserved buildings can have impacts on the City’s historic character; and,

WHEREAS, since 2003, a Demolition Review Ordinance has permitted the Historic Preservation Commission to review projects for proposed demolitions, and seek strategies to maintain existing preferably preserved buildings; and,

WHEREAS, the current ordinance has challenges that limit the ability to successfully preserve buildings; and,

WHEREAS, SomerVision and many of the Somerville by Design neighborhood plans often identify important preferably preserved buildings that may be at risk for demolition; and,

WHEREAS, while SomerVision and the Somerville by Design plans call for transforming some areas of the City, the plans also call for conservation of neighborhood character, particularly in the City’s residential neighborhoods; and,

WHEREAS, demolition of preferably preserved buildings is inconsistent with the goal of neighborhood conservation; now **THEREFORE**,

BE IT HEREBY ADOPTED by the City Council, in session assembled, that the Somerville Code of Ordinances is hereby amended by replacing Section 7-28 of the Code of Ordinances with the following:

7-28. Demolition Review Ordinance.

- (a) Intent and Purpose. The purpose of this ordinance is to preserve and protect significant buildings within the City of Somerville (“city”) which constitute or reflect distinctive aspects of the architectural, cultural, political, economic, or social history of the city, and which are outside of designated local historic districts; to encourage owners of such buildings and the Somerville Historic Preservation Commission (“commission”) to develop strategies to preserve, rehabilitate, or restore such buildings, rather than demolish them; or, in the alternative, to seek out persons willing to purchase and to preserve, rehabilitate, or restore such buildings, rather than demolish them; and to promote the public welfare by making the city a more attractive place in which to live. To achieve these purposes, the issuance of demolition permits for significant buildings is regulated as provided in this ordinance.

(b) Definitions. For the purposes of this section, the following words and phrases shall have the meanings set forth below:

Abutter means an abutter as defined in M.G.L.A. c. 40A.

Applicant means any person filing an application for a city permit.

Application means a written application for a permit for the demolition of a building, a building permit, or zoning relief/compliance.

Board of Survey means the board ordered to respond, by M.G.L.A. c. 143 § 8, when an owner of a building does not respond to a notice that the building is unsafe.

Building means any combination of materials forming a shelter for persons, animals or property, as well as any constructed, erected, or placed material or combination of materials in or upon the ground, excluding fences, walls, side & rear decks, sidewalks, stairs and paving on streets, driveways, and patios.

Building Official means the director of the inspection services department, or his/her designee.

Calendar Day means any day of the week, including a Saturday or a Sunday or a holiday.

City Clerk means the person holding the office of city clerk in the city.

Demolition means the act of pulling down, destroying, removing, moving, or razing a building. Demolition includes commencing the work of the destruction of 50% or more of the exterior surface area (including walls and roof) of a building. For the purposes of this section, the term “demolition” shall not include routine maintenance as long as the maintenance undertaken does not fit the definitions of demolition contained in this section.

For the purposes of this section, “demolition” does not include:

- (1) Removal, replacement, or installation of siding, roof shingles or windows;
- (2) Routine maintenance as long as the maintenance undertaken does not fit the definitions, of demolition contained in this section;
- (3) Interior renovations (except where the renovation is conducted for the purpose of compromising the integrity of the building);
- (4) Exploratory demolition, to the extent that it does not compromise the structure of the building;
- (5) Interior demolition, to the extent that it does not compromise the structure of the building; or
- (6) Minor projects as defined below.

Demolition by Neglect is a situation in which a property owner intentionally allows a property to suffer severe deterioration, until it is beyond the point of repair. A deliberate process of ongoing damage to the fabric, viability and/or functionality of a 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 Review Period means a period of time whereby a window of opportunity is enacted in order to enable the owners of a property, working with the commission or its designees, to determine ways of preserving and/or rehabilitating and/or restoring the property as an alternative to demolition.

Exempt Areas means the following:

- (1) The Assembly Square District, Brickbottom District, Inner Belt Industrial Park District, Boynton Yards, Union Square “D Blocks” (Blocks #D1-D7 as identified under the Union Square Revitalization Plan), and Grand Junction District, with boundaries as incorporated

herein on Map 1, and available on file and available for inspection in the office of the city clerk, and the office of the planning director;

(2) the local historic districts as identified in section 7-18 of the code of ordinances; and,

(3) buildings owned by the city or any of its political subdivisions.

Exploratory Demolition is the act of removing or uncovering (non-structural) building materials located on the interior of a building prior to renovation, rehabilitation, restoration, or remodeling in order to verify the existing conditions present in otherwise unexposed areas.

Final Determination means a determination that a building is preferably preserved, made by the commission in accordance with subsection (f) of this section.

Illegal Demolition means a demolition undertaken by any person without an application having been reviewed and approved by the commission and/or without building or demolition permits from the inspectional services department.

Initial Determination means a determination that a building is significant, in accordance with subsection (e) of this section.

Interior Demolition is the act of removing non-structural interior building materials for the purpose of renovating, rehabilitating, restoring, or remodeling the interior space.

Minor Project is the removal of a portion of a single-, two-, or three-unit structure for the purpose of only accomplishing one or more of the following: adding a dormer, dormer window, entry canopy, bay, or gable; adding an addition to the side or rear of the structure; adding or altering a portico, porch or deck; or, changing the shape, style or structure of a roof.

Owner means the entity with legal title to a building.

Permit means a written permit issued by the building official that allows for the demolition (as defined herein) of a building pursuant to an application.

Person means an individual, corporation, partnership, association, trust, society, or similar entity.

Preferably Preserved (Building) means a significant building, which, as the commission determines, as provided in subsection (f) of this section, that it is in the public interest to be preserved or rehabilitated or restored rather than to be demolished.

Premises means the parcel of land upon which the building proposed for demolition is located and all adjoining parcels of land under common ownership or control that are identified in the permit application.

Reasonable Economic Return means the cost to rehabilitate or restore the building to the point at which a reasonable use or a reasonable profit can be realized from the property. This may mean bringing a building up to code to the point at which it can be occupied, not necessarily to its "highest and best use," preferred use or a restoration project.

Significant (Building) means any building within the city which is listed on, or is within an area listed on, the National Register of Historic Places, or which is the subject of a pending application for listing on the National Register, or is at least 75 years old and has been determined by the commission in their initial determination to be a significant building, per subsection (e) of this section.

Voluntary means any act(s) done by design or intention, which is proposed, intended, or not accidental. An act of god is not considered voluntary, but rather is regarded as an act done without the will or choice of the applicant (or owner, if different from applicant). For the purposes of this section, the destruction of a significant building for failure to properly secure or maintain it shall be considered voluntary.

- (c) Review of Demolitions. No building in the city may undergo demolition, as defined in subsection (b) of this section, except through the provisions of this section. Demolition may only be permitted if one of the following apply:
- (1) The building does not meet the *prima facie* definition of a significant building (i.e. it is less than 75 years old, and is not currently on, or proposed to be placed on, the National Register);
 - (2) The building is located within an exempt area;
 - (3) The building is determined by the commission or its designee to not be significant, through the procedure of subsection (e) of this section;
 - (4) The building is determined by the commission to not be preferably preserved through the procedure of subsection (f) of this section, and has met any condition of such determination per subsection (f)(5)c of this section;
 - (5) The commission lifts or shortens a demolition review period per subsection (g) of this section; or
 - (6) The demolition review period, per subsection (g) of this section, is exhausted.
- (d) Notification. When the building official or planning director receives an application for a demolition permit, a building permit or a permit for zoning relief (including but not limited to special permit, site design plan review or variance), for work that will constitute demolition, as defined in this section, and is on a building that is or could be determined significant, as defined in this section, and is not within an exempt area, then the building official or planning director shall, within 10 calendar days, notify the commission or its designees in writing that a relevant application has been received. This notification shall include a copy of the application, and shall be delivered to the commission or its designees by interoffice mail, email, other electronic means, or by in-hand delivery.
- (e) Initial Determination (Determination of Significance).
- (1) Determinations by the commission. Upon receipt of a notification per subsection (d) of this section, the commission shall move to determine if a building is significant, as follows:
 - a. If a building is listed on, or is within an area listed on, the National Register of Historic Places, or the subject of a pending application for listing on the National Register, it shall be automatically determined significant, and shall be scheduled for final determination per subsection (f) of this section.
 - b. Otherwise, for buildings over 75 years old the commission or its designee shall make a written determination whether the building, which is the subject of the relevant permit application, is a significant building.
 - (2) Application and Plan Review. Prior to a determination of significance by the commission, the applicant must submit an application to the commission, using the forms developed per subsection (j)(4) of this section.
 - (3) Criteria for Determination of Significance. To determine if a building over 75 years old is significant, the commission must make a finding that the building is:
 - a. Associated with one or more important historic persons or events, or with the broad architectural, cultural, political, economic or social history of the city or the Commonwealth of Massachusetts; or,
 - b. Historically or architecturally significant (in terms of period, style, method of building construction, or association with a reputed architect or builder) either by

- itself or in the context of a group of buildings, and therefore it is in the public interest to be preserved or rehabilitated rather than to be demolished.
- (4) Procedure for Public Notice and Hearing. A determination of significance shall be made in a duly noticed public hearing by the commission, except as exempted in subsection (e)(6) of this section or waived per subsection (e)(7) of this section. The public hearing shall be held within 45 calendar days of the commission or its designees receiving a copy of the application, unless an extension of time is permitted by mutual agreement of the applicant and the commission. The commission shall give the public notice of the hearing by publishing the time, place, and purpose of the hearing in a local newspaper, at least 14 days prior to the hearing. The commission shall also mail, in a form designated by the city, a notice to the applicant, the owner of the building and abutters to the subject property within 300 feet, postmarked at least 10 days prior to the hearing. The commission shall complete the public hearing within 35 days of opening the public hearing, unless an extension of time is permitted by mutual agreement of the applicant and the commission.
- (5) Notice of Decision.
- a. If the commission determines that the building is not a significant building, this determination shall be transmitted to the building official, the applicant, the owner of the building and to the city clerk within 14 calendar days from the date of determination. The applicant shall not be required to take any further steps toward preservation of the building and the demolition may proceed, subject to all other building permit and zoning requirements.
 - b. If the commission determines that the building is significant, it shall notify the building official, the applicant, and the city clerk, of its determination within 14 calendar days from the date of determination. The owner or applicant, or their representatives, shall then be required to attend a subsequent final determination public hearing with the commission during which the commission will determine if the building is to be preferably preserved.
 - c. If the commission fails to act in accordance with this process within the prescribed timeframe, the building official may grant the demolition permit, provided that the applicant has met all other requirements under the filed applications, and shall notify the commission in writing that the permit has been granted.
- (6) Delegation. The commission may delegate the determination of significance of certain classes or types of buildings to the planning division staff, through the rules and regulations for the commission, per subsection (j)(4) of this section. The rules and regulations shall specify the classes or types of buildings to be reviewed by staff. Such delegation may include, but not be limited to, provisions to permit staff review of significance of concrete block garages, outbuildings, sheds and similar accessory buildings. Staff review of a delegated application shall be completed within 21 days of the application. If staff determines such a building does not meet the criteria of subsection (e)(3) of this section, and is therefore not be significant, this determination shall be transmitted to the building official per subsection (e)(5)a of this section. Otherwise, staff shall refer the building to the commission for a full review of the criteria under subsection (e)(3) of this section in a public hearing per subsection (e)(4) of this section.
- (7) Waiver of Initial Determination. An applicant, when submitting the required documents for an initial determination per subsection (e)(2) of this section, may voluntary select to waive initial determination. If the initial determination is waived, the building shall

immediately be determined to be a significant building, without further action from the commission, and shall be scheduled for a final determination per subsection (f)(2) of this section.

- (8) Expiration. An initial determination is valid for three years. If an applicant does not proceed to apply for final determination within three years, the review process must start over from the beginning, prior to a building being demolished. If an application does not demolish a building within three years of a determination that the building is not a significant building, the review process must start over from the beginning, prior to a building being demolished.

(f) Final Determination (Determination of Preferably Preserved).

- (1) Additional Application and Plan Review Materials. The commission may request application information, in addition to the information requested in subsection (e)(2) of this section, in the process of a final determination, as follows.

In the event that the applicant and/or owner seek to take a position that the building is of deficient structural integrity, the applicant shall submit an independent licensed structural engineer's report, from a qualified and experienced structural engineer with proven expertise in historic building techniques.

In the event that the applicant and/or owner seek to take a position that a financial hardship applies to a property, the commission may request any or all of the following. Such a request shall be subject to a vote by commissioners. If voted upon by a majority of the commission, then it will be incumbent upon the applicant to provide such information in order for the demolition review process to continue:

- a. The appraised value of the property by a licensed appraiser for the following conditions: in the property's current condition; after completion of the proposed demolition; and after rehabilitation of the existing property for continued use.
- b. An estimate from an architect, developer, contractor, or appraiser experienced in rehabilitation as to the cost to rehabilitate the building to the point of which a reasonable use or a reasonable profit can be realized from the property. Such considerations may include, but not be limited to, bringing a building up to code so it can be occupied.
- c. The amount paid for the property, the date of purchase, and the person from whom the property was purchased, a description of the relationship, if any, between the owner of record, the applicant and the person from whom the property was purchased or is being purchased, and the terms of the purchase or proposed purchase, including financing.
- d. Operation and maintenance expenses, depreciation deduction and annual cash flow before and after debt service, if any.
- e. The name of all mortgagees and the balance of all mortgages or other financing secured by the property and annual debt service.
- f. All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing and ownership of the property.
- g. Any listing of the property for sale or rent, the price asked and offers received for sale or rent, if any, within the previous five years.
- h. The assessed value of the property for the previous two assessment years.
- i. The form of ownership or operation of the property, whether sole proprietorship, for profit or not-for-profit corporation, limited partnership, joint venture or other.

- j. Any other information considered necessary by the commission to determine whether the property yields or may yield a reasonable economic return to the property owner(s).
 - k. Proof of the applicant's efforts to obtain financing, tax incentives, preservation grants and other incentives to allow the applicant to earn a reasonable economic return from the property.
 - l. Documents, including copies of invoices, detailing the applicant's efforts in ongoing maintenance and repair.
- (2) Procedure for Public Notice and Meetings. The commission shall conduct a public hearing on the application within 45 calendar days of the initial determination of significance, unless an extension of time is permitted by mutual agreement of the applicant and the commission. The commission shall give the public notice of the hearing by publishing the time, place, and purpose of the hearing in a local newspaper, at least 14 calendar days prior to the hearing. The commission shall also mail, in a form designated by the city, a notice to the applicant, the owner of the building and abutters to the subject property within 300 feet, postmarked at least 10 calendar days prior to the hearing.
- (3) Public Hearing. The commission shall complete the public hearing within 35 days of opening the public hearing regarding the determination of "preferably preserved", unless an extension of time is permitted by mutual agreement of the applicant and the commission. The applicant or their agent must present their demolition request in person to the commission and be prepared to answer questions asked by the commission. If the property applicant, their agent, or property owner is unable to address questions regarding the demolition request or the supporting documentation, the experts/professionals who prepared the information must be present. If the applicant, owner or their agent cannot attend the meeting or adequately address questions, the demolition request will be continued to a later meeting and the commission's determination will be delayed.
- (4) Peer Review. The commission may call for a peer review of any professional report, should the commission deem it necessary to make a final determination, subject to the availability of funds.
- (5) Final Determination. Upon completion of the public hearing, the commission shall determine if a significant building shall be preferably preserved, follows:
- a. The commission may, at their discretion, determine that a building is a preferably preserved building, as follows: by determining that the demolition of the building would be detrimental to the architectural, cultural, political, economic, or social heritage of the city.
 - b. The commission may, at their discretion, determine that a building is not a preferably preserved building, as follows: by determining that demolition of the building does not merit a finding under subsection (f)(5)a above; or, by making a finding that the negative impact on the heritage of the city would be exceeded by the benefit to the city of the development that would occur if the demolition were permitted to go forward.
 - c. The commission may, at their discretion, place conditions on a determination that a building is not preferably preserved, which may require an applicant to provide one or more of the following to the planning division prior to demolition:
 - 1. photographic documentation of the building to be demolished;
 - 2. architectural renderings of the building to be demolished;
 - 3. identification of materials for salvage of material; and/or,
 - 4. a plan for installation of historic or interpretive signage at or near the site.

- (6) Filing of Decision. Within 14 calendar days following the date of the public hearing, the commission or its designees shall file a final determination, in writing, with the city clerk, and shall inform the building official, the applicant and the owner of the building.
- (7) Expiration. A final determination that a building is not a preferably preserved building is valid for three years. If an applicant does not demolish a building within three years of a determination that the building is not a preferably preserved building, the process must start over from the beginning prior to a building being demolished.

(g) Process for Preferably Preserved Buildings.

- (1) Demolition Review Period. Upon the commission's final determination that said building is preferably preserved, per subsection (f) of this section, the building official shall not issue a demolition permit for building during the demolition review period. The demolition review period shall be as follows: The demolition review period shall be a maximum of 12 months. The demolition review period shall begin on the date following the day upon which the commission made the final determination that building is preferably preserved.
- (2) Alternatives to Demolition. During the demolition review period, the applicant, their agent, and/or the owner (if different from applicant), and the commission or its designees are encouraged to actively pursue alternatives to demolition of the preferably preserved building, including but not limited to, finding a buyer for the building that is willing to rehabilitate the property, rather than demolish it. The applicant, their agent, and/or the owner is encouraged to actively pursue alternatives to demolition by meeting with preservation planning staff as designees of the commission at a minimum of once per month during the demolition review period.
- (3) Shortening/Ending the Demolition Review Period. The commission may shorten or end the demolition period, at its discretion, upon determination that one of the following conditions applies:
 - a. The commission determines that there is no reasonable likelihood that either the owner or some other person or group is willing to purchase, preserve, rehabilitate or restore such building.
 - b. The commission and the applicant come to a mutually agreeable plan for a more limited demolition that adequately preserves the property and permits the applicant to meet the findings of subsection (f)(5) of this section.
 - c. The commission and the applicant come to a mutually agreeable set of strategies for addressing the heritage on the site, including but not limited to:
 1. photographic documentation of the building to be demolished;
 2. architectural renderings of the building to be demolished;
 3. identification of materials for salvage of material;
 4. a plan for installation of historic or interpretive signage at or near the site; and/or,
 5. the establishment of design standards for a replacement building, provided that the standards are limited to the reflection of elements in the building to be demolished or are intended to complement the character of adjacent buildings of historical significance.

Upon making a determination to shorten or end the demolition review period, the commission shall file a decision and inform the applicant and the building official per subsection (f)(6) of this section.

- (4) Withdrawal. If the applicant chooses not to proceed with demolition, the applicant may, at any time, inform the commission and withdraw their application without prejudice.

(5) Expiration. Upon expiration of a demolition review period, or upon a determination by the commission to shorten or end a demolition review period, an applicant shall have three years to demolish the building. If an application does not demolish a building within three years of the expiration of the review period or the determination to shorten or end the review period, the process must start over from the beginning prior to a building being demolished.

(h) Enforcement.

(1) Authority. The inspectional services division is the enforcing authority for this section. Inspectional Services Division is authorized to institute any and all actions and proceedings, in law or in equity, as they deem necessary and appropriate to obtain compliance with the requirements of this section. This may include, but is not limited to, the complete reconstruction and restoration of the demolished building.

(2) Fines. The provisions of this section may be enforced by a noncriminal disposition pursuant to M.G.L.A. c. 40, § 21D. Each violation shall be deemed a separate offense. Each day a violation occurs shall be deemed a separate offense. Unless otherwise provided, any person, firm, corporation, association or other entity violating any provision of this section shall be punished by a fine of \$300 per day, per violation, in accordance with Section 1-11 of the code of ordinances. Unpaid fines shall result in a municipal lien against the subject property.

(3) Building Permit Delay. In accordance with Section 1-11 of the code of ordinances, no building permit shall be issued for a new building on any premises where a significant building is demolished in violation of this section, for the period specified therein.

(i) City-Owned Buildings.

(1) Exemption. As noted in the definition of “exempt area,” buildings owned by the city or any of its political subdivisions are not subject to the demolition review process.

(2) Historic Commission Review. Prior to the demolition of any building owned by the city or any of its political subdivisions, the city administration shall submit information about the demolition to the commission for a non-binding review and comment.

(3) Comment Meeting. The commission shall schedule, at their next available public meeting, for the city administration to present the building to be demolished and the purpose and need for the demolition.

(4) Commission Role. After the presentation by the city administration, the commission may, within 35 days, issue comments on the demolition. Comments will be provided to the city administration and the city council. Those comments may include, but not be limited to: suggestions for photographic documentation or renderings of the building to be demolished, identification of materials for salvage and/or suggestions for installation of historic or interpretive signage at or near the site.

(5) City Council Action on Demolition. The city council may not approve any order, including appropriation of funds, that will permit the demolition of a building owned by the city or any of its political subdivisions, until the building has been submitted for review by the commission and either a) the commission has provided comments to the city council or; b) 35 days have elapsed after the date of the presentation to the commission, with no comments submitted by the commission to the city council.

(j) Other Provisions

- (1) Secure Building. Upon a determination by the commission that a building is a significant and/or preferably preserved building, the owner shall be responsible for properly securing the building in order to protect it from the weather and trespass/vandalism.
- (2) Emergency Demolition. Nothing in this section shall derogate from the authority of the building official and/or a board of survey to act under M.G.L.A. c. 143 and the State Building Code.
- (3) Historic Districts Act. If any provision of this section conflicts with the “Historic Districts Act,” M.G.L.A. c. 40(C), the Act shall prevail.
- (4) Rules and Regulations. The commission may establish rules and regulations of procedure for the implementation of this section, including but not limited to establishment of application fees, and the delegation process that is set forth in subsection (e)(6) of this section. The planning division staff shall develop application forms to accept and process submittals under this section.
- (5) Transferability. Where the owner sells or transfers ownership of a property that is in the middle of the demolition review process, that new owner may continue the review process but may be required to submit updated documentation as required by the commission.
- (6) Effect. This section shall take effect upon approval. Applications for demolition submitted prior to the approval date of this section, or any amendment thereto, shall be subject to the version of this section 7-28 in effect upon the date of application.
- (7) Severability and Reinstatement. In case any section, paragraph or part of this section for any reason shall be declared invalid by any court, every other section, paragraph and part shall continue in full force and effect. If any section, sentence, clause or phrase of this section is held invalid, the relevant section, sentence, clause or phrase in effect prior to the effective date of the section shall be reinstated in full force and effect, without further action from the city council.

AND BE IT FURTHER ADOPTED by the City Council, in session assembled, that the Somerville Code of Ordinances is hereby amended by updating Section 1-11 of the Code of Ordinances with the following penalties for violation of the demolition review ordinance:

<i>Offense</i>	<i>Fine</i>	<i>Enforcing Personnel</i>
Demolition Review (Sec. 7-28)	\$300.00; No building permit issued for 4 years after the date of unauthorized demolition	Inspectional services

Approved:

President, City Council

Approved:

Mayor