



CITY OF SOMERVILLE, MASSACHUSETTS
LAW DEPARTMENT

MEMORANDUM

TO: Francis X. Wright, Jr., City Solicitor

FROM: Anne M. Thomas, Special Counsel

RE: Ordinance amending the Local Historic District Map
To create one new multi-building district consisting
Of 197, 222, and 221 Morrison Avenue

DATE: July 7, 2010

I have read the Mayor's Letter, the Proposed Ordinance, and the Staff Report and recommend approval by the Law Department with the proviso that the "Now Therefore" clause be amended on the floor to correct an omission. The Ordinance refers to "Sections *[in the plural]* 7-26 of Chapter 7, Article II, of the Code of Ordinances". It should refer to "Sections 7-16 through 7-26 . . ."

Section 7-26 deals strictly with enforcement of the Historic District Ordinance. In past similar Ordinances, the reference was to "Sections 7-16 through 7-26". Brandon puts together these draft Ordinances, basically copying from most recently adopted version. About two ordinances ago, the reference to Section 7-16 was inadvertently omitted, and the two most recent Ordinances amending the Historic District Maps, which were passed earlier this spring, referred only to Section 7-26.

I don't think it is incorrect to refer to Sections 7-16 through 7-26, although if there were no precedent and I were drafting the Ordinance, I would limit the reference to Section 7-20, which deals with Historic District Changes; and Section 7-18, which sets forth the process for establishing Historic Districts and is referenced in Section 7-18.

For your convenience, I have attached a copy of the Historic District Ordinance. I hope this is not making a mountain out of a molehill.

Somerville, Massachusetts, Code of Ordinances >> PART II - CODE OF ORDINANCES >> Chapter 7 - HOUSING >> ARTICLE II. - HISTORIC DISTRICTS >>

ARTICLE II. - HISTORIC DISTRICTS*

Editor's note—

The list of historic districts in the City of Somerville and the official map designating such districts are not printed in this article but are on file in the office of the city clerk. They are created by Ord. No. 1985-2, 3-7-85; Ord. No. 1989-6, 10-26-89 and Ord. No. 2003-01, 2-27-03.

State law reference—Historic districts, M.G.L.A. c. 40C.

Sec. 7-16. - Historic preservation and historic district policy.

Sec. 7-17. - Definitions.

Sec. 7-18. - Historic districts.

Sec. 7-19. - Historic preservation commission.

Sec. 7-20. - Historic district changes.

Sec. 7-21. - Historic district certificates of appropriateness, nonapplicability or hardship.

Sec. 7-22. - Historic preservation commission meetings and determinations.

Sec. 7-23. - Appeals of determinations.

Sec. 7-24. - Maintenance and repair.

Sec. 7-25. - Amendments.

Sec. 7-26. - Enforcement.

Sec. 7-27. - Penalties and fines.

Sec. 7-28. - Demolition review ordinance.

Sec. 7-29. - Minimum maintenance standards.

Secs. 7-30—7-40. - Reserved.

| Sec. 7-16. - Historic preservation and historic district policy.

It is hereby declared a matter of public policy that the protection, enhancement, preservation and use of historical resources or value is a public necessity and is required in the interest of education, prosperity, safety and welfare of the people. The purpose of this article is to:

- (1) Protect, enhance and preserve cultural and historical resources, including those districts which represent or reflect elements of the city's cultural, social, economic, political or architectural history;
- (2) Safeguard the city's historical and cultural heritage by improving historical and cultural resources and by creating historic districts;
- (3) Foster wider public awareness of and pride in the accomplishments of the past;
- (4) Encourage private efforts of citizens of the city in support of such purposes;
- (5) Promote the use of historic districts as a stimulus to local business and industry;
- (6) Enhance the city's image to residents, visitors and tourists and make the city a more attractive and desirable place in which to live and work.

(Code 1963, § 18-1)

| Sec. 7-17. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Altered includes the words "rebuilt," "reconstructed," "restored," "removed" and "demolished" and the

phrases "changed in exterior color" and "any alteration to exterior physical appearance or exterior architectural feature visible from a public way."

Building means a combination of materials forming a shelter for persons, animals or property.

Commission means the historic preservation commission created under this article.

Constructed includes the words "built," "erected," "installed," "enlarged" and "moved,"

Exterior architectural feature means such portion of the exterior of a building or structure as is open to view from a public street, public way, public park or public body of water, including but not limited to the architectural style and general arrangement and setting thereof; the kind, color and texture of exterior building materials, the color of paint or other materials applied to exterior surfaces and the type and style of windows, doors, lights, signs and other appurtenant exterior fixtures.

Historic district is an area designated in accordance with section 7-18 that contains one or more parcels or lots of land, or one or more buildings or structures on one or more parcels or lots of land.

Person aggrieved means the applicant, an owner of adjoining property, an owner of property within the same historic district as property within 100 feet of said property lines and any charitable corporation in which one of its purposes is the preservation of historic structures or districts.

Structure means a combination of materials other than a building, including a sign, fence, wall, hitching post, terrace, walk or driveway.

(Code 1963, § 18-2)

Cross reference—Definitions and rules of construction, § 1-4.

Sec. 7-18. - Historic districts.

The city may, by ordinance adopted by two-thirds vote of the board of aldermen, establish historic districts subject to the following provisions:

(1) *Process.* Prior to the establishment of any historic district in the city, an investigation and report on the historical and architectural significance of the buildings, structures or sites to be included in the proposed historic district or districts shall be made by an historic district study committee or by an historic district commission, as provided in this section. The buildings, structures or sites to be included in the proposed historic district may consist of one or more parcels or lots of land, or one or more buildings or structures on one or more parcels or lots of land. The study committee or the commission shall transmit copies of the report to the planning board, and to the state historical commission for their respective consideration and recommendations. Not less than 60 days after such transmittal the study committee or commission shall hold a public hearing on the report after due notice given at least 14 days prior to the date thereof, which shall include a written notice given by certified mail, postage prepaid, return receipt requested, to the owners as they appear on the most recent real estate tax list of the board of assessors of all properties to be included in such district or districts. The committee shall submit a final report with its recommendations, a map of the proposed district or districts and a draft of a proposed ordinance to the board of aldermen.

(2) *Formation of historic district study committee.* An historic district study committee may be established in the city by vote of the board of aldermen for the purpose of making an investigation of the desirability of establishing an historic district or districts therein. The study committee shall consist of not less than three nor more than seven members appointed by the mayor, subject to confirmation by the board of aldermen including: one member from two nominees submitted by the Somerville Historical Society or, in the absence thereof by the Society for the Preservation of New England Antiquities; one member from two nominees submitted by the local chapter of the American Institute of Architects; and one member from two nominees of the board of realtors, if any, covering the area. If, within 30 days after submission of a written request for nominees to any of the organizations herein named, no such nominations have been made, the appointing body may proceed to appoint the study committee without nominations by such organization.

(Code 1963, § 18-3; Ord. No. 1993-2, 2-25-93)

Sec. 7-19. - Historic preservation commission.

(a) *Generally.* This article shall be administered by an historic preservation commission with the following terms, composition and administrative matters.

(b) *Appointment; terms; vacancies.* The historic preservation commission shall consist of seven members, and seven alternates, appointed by the mayor and subject to confirmation by the board of aldermen. All of the members and at least five of the alternates shall be residents of the city. Each member and alternate shall serve for a term of three years; except that the initial appointments shall be for two members and two alternates to serve a term of one year, two members and two alternates to serve a term of two years, and three members and three alternates to serve a term of three years. Vacancies shall be filled in the same manner as the original appointment for the unexpired term. In case of the absence or inability to act, or unwillingness to act because of self-interest on the part of a member of the commission, his or her place shall be taken by an alternate member designated by the chairman. Each member and alternate shall continue in office after expiration of his or her term until a successor is duly appointed and qualified.

(c) *Composition.* The commission membership shall be composed of the following: one member, preferably a professional architectural historian, chosen from three nominees submitted by the Somerville Historical Society or the Society for the Preservation of New England Antiquities; an architect, preferably a person registered in the commonwealth, chosen from three nominees submitted by the local chapter of the American Institute of Architects; a licensed real estate broker chosen from three nominees submitted by the regional chapter of the board of realtors; a city planner, preferably with knowledge about allied local activities and boards; a lawyer with knowledge of real estate and historic preservation law; and two citizen members who, through education or experience, have demonstrated a commitment to historic preservation. Two or more of the members so appointed shall be residents of a designated historic district. The alternate members shall include at least one resident of a designated historic district, one landscape architect, one licensed general contractor or building tradesperson and four persons with a background in any of the other categories represented by the regular members of the commission. If, within 30 days after the submission of a written request for nominees to any of the above named organizations, no such nominations have been submitted, the mayor may make such appointment without nomination by said organization. To the extent a person meets more than one of the foregoing specific membership requirements, then each such specific membership requirement so met shall be satisfied by such person's membership on the commission.

(d) *Compensation.* No member or alternate shall receive compensation for his or her service on the commission, but shall be reimbursed, subject to availability of appropriated funds, for his or her actual expenses reasonably and necessarily incurred in performance of his or her official duties.

(e) *Conflict of interest.* If any commission member or alternate is employed or to be employed by the city or to have directly or indirectly a financial interest in any contract with the city, the classification of "special municipal employee" should be obtained from the board of aldermen, and all other requirements as set forth under Chapter 268A of the General Laws, shall be met.

(f) *Officers.* The commission shall elect before the end of its fourth regular meeting during the first year and every May thereafter, a chairman, vice-chairman, and a secretary. All officers, except the secretary, shall be elected from its own members. Whenever the secretary shall not attend a meeting of the commission, the commission shall elect a secretary pro tempore who shall take the minutes of the meeting. The records of the commission shall set forth every determination made by the commission, the vote of every member participating in such determination and the absence or failure to vote of every other member.

(g) *Expenses.* The commission may enter into contracts and may, if necessary, subject to appropriation, employ clerical and technical assistance of consultants and incur other expenses appropriate to the carrying on of its work.

(h) *Gifts.* The commission may accept money gifts and expend the same for the carrying on of its work. The commission may also administer on behalf of the city any properties or easements, restrictions or other interests in real property which the city may have or may accept as gifts or otherwise and of which the city may designate the commission as the administrator.

(i) *Record keeping and rules.* The commission shall keep a permanent record of its resolutions, transactions and determinations and of the vote of each member participating therein, and may adopt and amend such rules and regulations not inconsistent with the provisions of this article and prescribe

such forms as it shall deem desirable and necessary for the regulations of its affairs and the conduct of its business. The commission shall file a copy of any such rules and regulations with the city clerk. An annual report of the commission's activities shall be filed with the state historical commission under provisions of Chapter 40C, Section 15 of the General Laws and shall be submitted to the city clerk for filing.

(j) *Powers and duties.* The commission shall have, in addition to the powers, authority and duties granted to it by this article, such other powers, authority and duties as may be delegated or assigned to it from time to time by vote of the board of aldermen.

(Code 1963, § 18-4; Ord. No. 1990-7, § 1, 5-10-90)

Sec. 7-20. - Historic district changes.

(a) *Enlargements or reductions.* An historic district may be enlarged or reduced or an additional historic district in the city created in the manner established under section 7-18 for creation of the initial district, except that in the case of the enlargement or reduction of an existing historic district the investigation, report and hearing shall be by the historic preservation commission having jurisdiction over such historic district instead of by a study committee.

(b) *Additional districts.* In the case of creation of an additional historic district the investigation, report and hearing shall be by the historic preservation commission instead of by a study committee unless the commission recommends otherwise.

(c) *Notice.* If the district is to be reduced, written notice, as provided in section 7-18 for creation of the initial district, shall be given to said owners of each property in the district.

(d) *Filing requirements.* No changes to the boundaries of an historic district shall become effective until a map setting forth the changes to the boundaries of the historic district has been filed with the city clerk and has been recorded in the South Middlesex registry of deeds and the provisions of Chapter 36, Section 13A of the General Laws, shall not apply.

(Code 1963, § 18-5)

Sec. 7-21. - Historic district certificates of appropriateness, nonapplicability or hardship.

(a) *Considerations of commission.* In passing upon matters before it the commission shall consider, among other things, the historic and architectural value and significance of the site, building or structure, the general design, arrangement, texture, material and color of the features involved, and the relation of such features to similar features of buildings and structures in the surrounding area. In the case of new construction or additions to existing buildings or structures, the commission shall consider the appropriateness of the size and shape of the building or structure both in relation to the land area upon which the building or structure is situated and to buildings and structures in the vicinity, and the commission may in appropriate cases impose dimensional and setback requirements in addition to those required by applicable ordinance or bylaw. The commission shall not consider interior arrangements or the other categories of exclusions specified in subsection (c) of this section. The commission may after public hearing set forth in such manner as it may determine the various designs of certain appurtenances, such as light fixtures, which will meet the requirements of an historic district and a roster of certain colors of paint and roofing materials which will meet the requirements of an historic district, but no such determination shall limit the right of an applicant to present other designs or colors to the commission for its approval. The commission shall not make any recommendation or requirement except for the purpose of preventing developments incongruous to the historic aspects or the architectural characteristics of the surroundings and of the historic district.

(b) *Submission requirements.* Except for the exclusions noted in subsection (c) of this section, no building or structure within an historic district shall be constructed or altered in any way that affects exterior architectural features unless the commission shall first have issued a certificate of appropriateness, a certificate of nonapplicability or a certificate of hardship with respect to such construction or alteration.

Any person who desires to obtain a certificate shall file with the commission an application for a certificate of appropriateness, a certificate of nonapplicability or a certificate of hardship, as the case may be, in such form as the commission may reasonably determine, together with such plans, elevations, specifications, material and other information, including, in the case of demolition or removal, a statement of the proposed condition and appearance of the property thereafter, as may be reasonably deemed necessary by the commission to enable it to make a determination on the application.

No building permit for construction of a building or structure or for alteration of an exterior architectural feature within a historic district and no demolition permit for demolition (full or partial) or removal of a building or structure within an historic district shall be issued by inspectional services until the certificate required by this section has been issued by the commission.

(c) *Exclusions.* The authority of the commission shall not extend to the review of the following categories of buildings, structures or exterior architectural features of the historic district and, in this event, the buildings, structures or exterior architectural features so excluded may be constructed or altered within the historic district without review by the commission:

- (1) Temporary structures or signs, subject, however, to such conditions as to duration of use, location, lighting, removal and similar matters as the commission may reasonably specify;
- (2) Storm doors and windows, screens, window air conditioners, lighting fixtures, antennae, lawn statuary and similar appurtenances, or any of them;
- (3) The color of paint;
- (4) Signs of one foot square or less in area in connection with use of a residence for a customary home occupation or for professional purposes, provided only one such sign is displayed in connection with each residence and if illuminated is illuminated only indirectly; and one sign in connection with the nonresidential use of each building or structure which is not more than 12 square feet in area, is appropriately located and consists of letters or symbols or trademark compatible with the character of the area and if illuminated only indirectly; or either of them;
- (5) The reconstruction, substantially similar in exterior design, type of use and size of a building, structure or exterior architectural feature damaged or destroyed by storm or other disaster, provided such reconstruction is begun within one year thereafter and carried forward with due diligence.

Upon request by an applicant, the commission shall issue a certificate of nonapplicability with respect to construction or alteration in any category then not subject to review by the commission in accordance with the provisions of this subsection.

(d) *Issuance procedures.* The commission shall have the following powers, functions and duties related to issuance of certificates:

(1) If the commission determines that the construction or alteration for which an application for a certificate of appropriateness has been filed will be appropriate for or compatible with the preservation or protection of the historic district, the commission shall cause a certificate of appropriateness to be issued to the applicant. In the case of a disapproval of an application for a certificate of appropriateness the commission shall place upon its records the reasons for such determination and shall forthwith cause a notice of its determination, accompanied by a copy of the reasons therefor as set forth in the records of the commission, to be issued to the applicant. The commission may make recommendations to the applicant with respect to appropriateness of design, arrangement, texture, material and similar features. Prior to the issuance of any disapproval the commission may notify the applicant of its proposed action accompanied by recommendations of changes in the applicant's proposal which, if made, would make the application acceptable to the commission. The commission shall, as feasible, identify sources of additional information, technical assistance and financial incentives, which may eliminate the area of concern. If, within 14 days of the receipt of such notice, the applicant files a written modification of his or her application in conformity with the recommended changes of the commission, the commission shall cause a certificate of appropriateness to be issued to the applicant.

(2) In the case of a determination by the commission that an application for a certificate of appropriateness or for a certificate of nonapplicability does not involve any exterior architectural feature, or involves an exterior architectural feature which is not then subject to review by the

commission in accordance with the provisions of subsection (c) of this section, the commission shall cause a certificate of nonapplicability to be issued to the applicant.

(3) The commission shall determine if the construction or alteration for which an application for a certificate of appropriateness has been filed is inappropriate, or in the event of an application for a certificate of hardship, the commission shall determine if, owing to conditions especially affecting the building or structure involved, (e.g. handicapped access), but not affecting the historic district generally, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant. The commission shall also determine whether such application may be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of this article. If the commission determines that owing to such conditions failure to approve an application will involve substantial hardship to the applicant and approval thereof may be made without such substantial detriment or derogation, or in the event of failure to make a determination on an application within the time specified in section 1-22(d), the commission shall cause a certificate of hardship to be issued to the applicant.

(4) Each certificate issued by the commission shall be dated and signed by its chairman, vice-chairman, secretary or such other person designated by the commission to sign such certificates on its behalf. Each certificate issued by the commission shall also be accompanied by a document substantiating in sufficient detail the basis of the determination. Certificates are valid for one full year from the date of issuance and must be revalidated by the commission if substantial work has not been completed by the end of this period.

(5) The commission shall file with the city clerk and with the city building department a copy or notice of all certificates, determinations of disapproval and substantiating documents issued by it.

(Code 1963, § 18-6; Ord. No. 1989-6, § 2, 10-31-89)

Sec. 7-22. - Historic preservation commission meetings and determinations.

(a) *Voting.* The commission shall hold meetings at the call of the chairman and at the request of two members of the commission, and in such other manner as the commission shall determine in its rules. A majority of the members of a commission shall constitute a quorum. The concurring vote of a majority of the members of the commission shall be necessary to issue a certificate of appropriateness, a certificate of nonapplicability or a certificate of hardship.

(b) *Review of applications for certificates.* The commission shall determine promptly, and in all events within 14 days after the filing of an application for a certificate of appropriateness, a certificate of nonapplicability or a certificate of hardship, as the case may be, whether the application involves any exterior architectural features which are subject to approval by the commission. If the commission determines that such application involves any such features which are subject to approval by the commission, the commission shall hold a public hearing on such application unless such hearing is dispensed with as hereinafter provided.

(c) *Hearing on application for certificates.* The commission shall fix a reasonable time for the hearing on any application and shall give public notice of the time, place and purposes thereof at least 14 days before said hearing in such manner as it may determine, and by mailing, postage prepaid, a copy of said notice to the applicant, to the owners of all adjoining property and other property deemed by the commission to be materially affected thereby as they appear on the most recent real estate tax list of the board of assessors, to the city planning board, to any person filing written request for notice of hearing, such request to be renewed yearly in December, and to such other persons as the commission shall deem entitled to notice.

(d) *Period of determination.* As soon as convenient after such public hearing, but in any event within 45 days after the filing of the application, or within such further time as the applicant may allow in writing, the commission shall make a determination on the application. If the commission shall fail to make a determination within such period of time, the commission shall thereupon issue a certificate of hardship.

(e) *Waiver of public hearing.* A public hearing on an application need not be held if such hearing is waived in writing by all persons entitled to notice thereof. In addition, a public hearing on an application may be waived by the commission if the commission determines that the exterior architectural feature

involved or its category or color, as the case may be, is so insubstantial in its effect on the historic district that it may be reviewed by the commission without public hearing on the application; provided, however, that if the commission dispenses with a public hearing on an application, notice of the application shall be given to the owners of all adjoining property and other property deemed by the commission to be materially affected thereby as above provided and ten days shall elapse after the mailing of such notice before the commission may act upon such application.

(Code 1963, § 18-7)

Sec. 7-23. - Appeals of determinations.

- (a) *Court appeal.* A person aggrieved by a determination of the commission may, within 20 days after the filing of the notice of such determination with the city clerk, appeal to the South Middlesex Superior Court.
- (b) *Court option.* The court shall hear all pertinent evidence and shall annul the determination of the commission if it finds the decision of the commission to be unsupported by the evidence or to exceed the authority of the commission, or may recommend the case for further action by the commission, or make such other decree as justice and equity may require.
- (c) *Other options.* The remedy provided by this section shall be exclusive but the parties shall have all rights of appeal and exception as in other equity cases.
- (d) *Costs.* Costs shall not be allowed against the commission unless it shall appear to the court that the commission acted with gross negligence, in bad faith or with malice in the matter from which the appeal was taken. Costs shall not be allowed against the party appealing from such determination of the commission unless it shall appear to the court that such party acted in bad faith or with malice in making the appeal to the court.

(Code 1963, § 18-8)

Sec. 7-24. - Maintenance and repair.

Nothing in this article shall be construed to prevent the ordinary maintenance, repair or replacement of any exterior architectural feature within an historic district which does not involve a change in design, material, color or the outward appearance thereof, nor to prevent landscaping with plants, trees or shrubs, nor construed to prevent the meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition, nor construed to prevent any construction or alteration under a permit duly issued prior to the effective date of the ordinance from which this article derives.

(Code 1963, § 18-10)

Sec. 7-25. - Amendments.

This article enabling the creation of historic districts may from time to time be amended in a manner not inconsistent with the provisions of Chapter 40C of the General Laws, by a two-thirds vote of the board of aldermen, provided that the substance of such amendment has first been submitted to the historic preservation commission and the state historical commission, for their recommendation and their recommendations have been received or 60 days have elapsed without such recommendations.

(Code 1963, § 18-11)

Sec. 7-26. - Enforcement.

The South Middlesex Superior Court shall have jurisdiction to enforce the provisions of Chapter 40C of the General Laws and this article enacted thereunder and the determinations, rulings and regulations issued

pursuant thereto and may, upon the petition of the mayor or the board of aldermen or of the commission, restrain by injunction violations thereof; and, without limitation, such court may order the removal of any building, structure or exterior architectural feature constructed in violation thereof, or the substantial restoration of any building, structure or exterior architectural feature altered or demolished in violation thereof, and may issue such other orders for relief as may be equitable.

(Code 1963, § 18-9)

Sec. 7-27. - Penalties and fines.

Whoever violates any of the provisions of this article shall be punished by a fine in accordance with the provisions of section 1-11. Each day during any portion of which a violation continues to exist shall constitute a separate offense.

(Code 1963, § 18-9; Ord. No. 2005-11, § 7, 7-14-2005)

Sec. 7-28. - Demolition review ordinance.

(a) *Intent and purpose.* The purpose of this section is to preserve and protect significant buildings within the City of Somerville ("city") by providing advance notice of their proposed demolition, which constitute or reflect distinctive features of the architectural, cultural, political, economic, or social history of the city, and which are outside the designated historic district; to encourage owners of such preferably preserved significant buildings and members of the Somerville Historic Preservation Commission ("commission") 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 commission is empowered to advise the building inspector with respect to the issuance of demolition permits. The issuance of demolition permits for significant buildings is regulated as provided in this section.

Exclusions. This section shall not apply to any building or structure located within the boundaries of the proposed Assembly Square District or the Inner Belt Industrial Park District, which districts are shown on the maps attached hereto.

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

Applicant means any person filing an application for a demolition permit. However, if the applicant is not the owner of the building or structure that is subject of the application, the owner to give written authorization for the demolition, including a statement of ownership and identification of his or her authorized agent, on the application.

Application means an application for a permit for the demolition of a building or structure.

Board of survey means the board ordered to respond, by Massachusetts General Laws Chapter 143 Section 8, when an owner of a building or structure does not respond to a notice that the building or structure is unsafe. The board shall consist of the city engineer, the head of the fire department, and one disinterested person to be appointed by the building inspector.

Building means any combination of materials forming a shelter for persons, animals or property.

Building inspector means the person occupying the office of superintendent of inspectional services, or any person otherwise authorized to issue demolition permits in the city.

Business day means a day that is not a recognized municipal or federal holiday, and is not a Saturday or Sunday.

Chairperson means the head of the commission, the person performing the functions of the chairperson in the event no one holds that title, or any other person to whom the chairperson delegates authority to act according to this section.

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

Demolition means the act of pulling down, destroying, removing, or razing a building or structure or

commencing the work of total or substantial destruction with the intent of completing the same. For the purposes of this section, the term "demolition" shall not include routine maintenance, interior renovations, removal or construction of porches, decks, windows or other types of renovations for which commission approval is generally not required.

Final determination means a determination made by the commission in accordance with subsection 7-28 (2)d of this chapter.

Initial determination means a determination made by the commission in accordance with subsection 7-28 (2)d of this chapter.

Owner means the person with legal title to a building or structure.

Permit means a permit issued by the building inspector for demolition of a building or structure pursuant to an application.

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

Preferably preserved significant building or structure means any significant building or structure, which the commission determines as provided in the definition of *significant building or structure* of this chapter, that it is in the public interest to be preserved or rehabilitated rather than to be demolished.

Premises mean the parcel of land upon which the demolished building or structure was located and all adjoining parcels of land under common ownership or control.

Significant building or structure means any building or structure within the city which:

(1) 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

(2) Is at least 50 years old, and is or has been determined by the commission to be a significant building or structure after a finding that the building or structure is either:

a. 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 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 or structures, and therefore it is in the public interest to be preserved or rehabilitated rather than to be demolished.

Structure means any constructed, erected, or placed material or combination of materials in or upon the ground, excluding sidewalks, stairs and paving on streets, driveways, parking areas, and patios.

Voluntarily 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 chapter, the destruction of a significant building or structure for failure to properly secure it shall be considered voluntary.

(c) *Computation of time.* The day from which a period runs is excluded. The last day is included, unless it is a municipal or federal holiday or a Saturday or Sunday, in which case the period runs to the end of the next day business day

(d) *Procedure.*

(1) When the building inspector receives a demolition permit application for a significant building or structure, he or she will within seven business days notify the commission in writing that a demolition permit application has been received by forwarding a copy of the application to the commission by interoffice mail and fax, or by in-hand delivery.

(2) Board's determinations.

a. Initial determination: The commission or its designee shall make a written determination whether the building or structure, which is the subject of the demolition permit application, is a significant building or structure, within 30 days of receiving a copy of the application.

If the commission determines that the building or structure is not a significant building or structure, this determination shall be transmitted to the building inspector, the applicant, the building owner and to the city clerk. The applicant will not be required to take any further steps and the permit may be granted by the building inspector.

2. If the commission determines that the building or structure is a significant building, it shall notify the building inspector, the applicant, and the city clerk, of its determination.

3. If the commission fails to act in accordance with subsections 7-28(2)a. through 7-28(2)a.2 within the prescribed time periods, the building inspector shall grant the demolition permit, provided that the applicant has met all other requirements under the demolition permit application, and shall notify the commission in writing that the permit has been granted.

b. Demolition plan review: After the commission's initial determination that a demolition permit application involves a significant building or structure, the applicant for a demolition permit may submit to the commission a demolition plan that shall include:

1. A brief description of the type of building or structure.
2. A scaled plot plan showing the location of the significant building or structure on the property and with reference to neighboring properties
3. Photographs of all street facade elevations and portions of the building or structure visible from a public way.

c. Public hearing: The commission shall conduct a hearing on the application and the initial determination within 45 days of its initial determination. 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 commission, a notice to the applicant, the building owner and abutters to the property, which is the subject of the application, at least 14 days prior to the hearing.

d. Final determination: Within 21 days following the date of the public hearing, the commission shall file a final determination, in writing, with the city clerk. If the commission determines that the demolition of the significant building or structure would be detrimental to the architectural, cultural, political, economic, or social heritage of the city, such building or structure shall be considered a preferably preserved building or structure.

(3) Upon the commission's final determination that said building or structure is preferably preserved, it shall so advise the building inspector, the applicant and the building owner (if different from applicant). Upon this determination, the building inspector shall not issue a demolition permit for building or structure for a period of nine months from the date upon which the commission made the final determination that building or structure is preferably preserved. During the nine month delay, the applicant, the owner (if different from applicant), and the commission are required to actively pursue alternatives to demolition of the preferably preserved building or structure, including but not limited to, finding a buyer for the building or structure that is willing to rehabilitate the property, rather than demolish it.

(4) Upon a determination by the commission that a building or structure is a preferably preserved building or structure, the owner shall be responsible for properly securing the building or structure.

(5) Notwithstanding the preceding, the building inspector may issue a demolition permit at anytime, upon receipt of written advice from the commission 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 or structure.

(6) Emergency demolition: Nothing in this [section] shall derogate from the authority of the building inspector to act under Massachusetts General Laws Chapter 143 and the state

building code.

(7) Enforcement:

a. The commission and the building inspector are each specifically 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 article, or to prevent a threatened violation thereof.

b. Anyone who voluntarily demolishes a significant building or structure without complying fully with the provisions of this section shall be subject to a fine in accordance with the provisions of section 1-11.

c. No building permit shall issue for a new building or structure on any premises where a significant building or structure is voluntarily demolished in violation of this section for a period of two years after the date of demolition.

(8) Historic Districts Act: If any provision of this section conflicts with the "Historic Districts Act," Massachusetts General Laws Chapter 40(C), the Act shall prevail.

(9) Severability: 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.

(Ord. No. 2003-05, §§ 1-4, 5-22-2003; Ord. No. 2005-11, § 8, 7-14-2005)

Editor's note—

The proposed Assembly Square District or the Inner Belt Industrial Park District maps mentioned in this section are not set out herein but are on file and available for inspection in the office of the city clerk.

Cross reference—Demolition and fire details, § 5-8; Demolition of buildings at fires, § 5-36; Demolition of buildings, § 11-105.

| Sec. 7-29. - Minimum maintenance standards.

(a) This section is intended to preserve and protect significant buildings in the City of Somerville in conjunction with the demolition review ordinance and the ordinance creating and protecting historic districts.

Exclusions. This section shall not apply to properties in receipt of a residential exemption as determined by the board of assessors.

(b) For the purposes of this section and unless the context of usage clearly indicates another meaning, terms and words shall have the meaning given in the demolition review ordinance and the ordinance creating and protecting historic districts set forth in Article II, Chapter VII, Sections 7-16—7-28 of the Somerville Code of Ordinances

(c) No owner or person with an interest in real property that is within a local historic district, is on the National Register of Historic Places, or has been determined to be a "significant" building or structure shall fail to preserve or otherwise permit a deterioration or decay of any significant exterior architectural feature, including, but not limited to, balustrades, bargeboards, belt courses, brackets, buttresses, chimneys, corbelling, cornices, cresting, decorative carvings, dentils, finials, gable ends, masonry, pediments, porches, roofing, shutters, siding, spires, stained glass, towers, and window sashes and casings, provided that such deterioration or decay is not otherwise regulated by the state building code. Nothing in this section shall be construed to prohibit a property owner from installing replacement siding.

(d) Nothing in this section shall be construed to require a property to be renovated or restored to original conditions.

(e) Procedure.

(1) If any property is suspected of being in deterioration and decay and is potentially "significant", a duly noticed public meeting shall be scheduled before the historic preservation

commission to determine if the property is "significant". The property owner and direct abutters shall be provided with written notification regarding the public meeting and advised of their ability to provide comment.

(2) Historic preservation staff shall state in writing the findings of fact in support of such determination of violation of the minimum maintenance standards ordinance and shall issue and cause to be served upon the owner and/or other parties in interest therein an order to repair within a time to be specified in the written decision those features of the structure that do not comply with subsection (b). Findings made by the historic preservation staff may be appealed to the planning board. To perfect such an appeal, a written application must be filed by an aggrieved party with the historic preservation staff within ten business days following receipt of the order. A hearing on the appeal shall be held within 60 days of the written application.

(f) *Enforcement.* The provisions of this section may be enforced by the historic preservation staff, by noncriminal disposition pursuant to G. L. c. 40, § 21D. Each day on which a violation exists shall be deemed a separate offense. No fine shall be levied in accordance with G. L. c. 40, § 21D unless and until the historic preservation staff sends a written notice to the person responsible for each violation indicating the nature of the violation and ordering corrective action. The notice shall also set forth the time period when corrective measures must be completed. The notice shall state that failure to correct the violation within the specified time period will result in the fines. If after the allotted time period has expired and after the hearing of an appeal, if any, by the planning board, corrective action has not been completed, any person, firm, corporation, association or other entity violating any provision of this section shall be punished by a fine of \$100.00 per day.

(g) If, after the allotted time period has expired and after the hearing of an appeal, if any, the owner or person with an interest in property has failed to meet the requirements of this section, the city may enter the property, subject to applicable law, to correct the violations of this section. The city shall charge the expenses incurred in doing such work or having work done or improvements made to the owner of record of such property. If such work is done or improvement made at the expense of the city, then such expenses shall be assessed as a lien on the real estate, lot, or lots upon which such expense was incurred. Subject to applicable law, the city is authorized to enter upon private property at all reasonable hours for the purpose of completing the work necessary for correcting the violations of this section.

(h) *Severability:* 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.

(Ord. No. 2008-11, 6-25-2008)

Secs. 7-30—7-40. - Reserved.