

**LOVELAND HISTORIC PRESERVATION COMMISSION  
REGULAR AGENDA  
MONDAY, MARCH 19, 2012 6:00 PM  
CITY MANAGER'S CONFERENCE ROOM  
500 E. THIRD STREET**

THE CITY OF LOVELAND DOES NOT DISCRIMINATE ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, RELIGION, AGE OR DISABILITY IN THE PROVISION OF SERVICES. FOR DISABLED PERSONS NEEDING REASONABLE ACCOMMODATION TO ATTEND OR PARTICIPATE IN A CITY SERVICE OR PROGRAM, CALL 962-2303 OR TDD #962-2620 AS FAR IN ADVANCE AS POSSIBLE.

**6:00 PM**

- I. CALL TO ORDER**
- II. ROLL CALL**
- III. APPROVAL OF THE AGENDA**
- IV. APPROVAL OF PREVIOUS MEETING'S MINUTES**

- V. REPORTS** 6:00-6:10
  - a. Citizen Reports  
*This agenda item provides an opportunity for citizens to address the Commission on matters not on the consent or regular agendas.*
  - b. Council Update (John Fogle)
  - c. Staff Update (Bethany Clark)

- VI. AGENDA – CONSIDERATION OF NEW BUSINESS**
  - a. Larimer Home Improvement Program (Amy Irwin) 6:10-6:30
  - b. Historic Preservation Month Planning 6:30-6:45
  - c. Historic Sites Inventory/Demo Delay Provisions Discussion 6:45-7:15
  - d. Next Meeting's Agenda/Action items 7:15-7:20

- VII. COMMISSIONER COMMENTS** 7:20-7:25  
*This agenda item provides an opportunity for Commissioners to speak on matters not on the regular agenda.*

- VIII. ADJOURN**

1 **City of Loveland**  
2 **Historic Preservation Commission**  
3 **Meeting Summary**  
4 **February 20, 2012**

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5 A meeting of the Loveland Historic Preservation Commission was held Monday, February 20, 2012 at 6:00 P.M.  
6 in the City Manager's Conference Room of the Civic Center at 500 East Third Street, Loveland, CO. Historic  
7 Preservation Commissioners in attendance were: Robin Ericson, Jim Cox, David Berglund, Trudi Manuel, Matt  
8 Newman and Cara Scohy. Staff members, Bethany Clark, Greg George, Tom Hawkinson and Nikki Garshelis were  
9 also present. HPC Member, Laura McGinley and City Council Liaison, John Fogle, were absent.

10  
11 **Guests:** Ashley Dinger and Carl Dinger, III from Dinger Carousels and Bill Meirath from the Loveland Historical  
12 Society were present.

13  
14 **CALL TO ORDER**

15 *Commission Chair Cox* called the meeting to order at 6:00 p.m. He asked the members to limit their discussion  
16 of each item to three minutes to allow for all commissioners' input.

17  
18 **APPROVAL OF AGENDA**

19 *Commission Chair Cox asked for approval of the agenda. Commissioner Newman motioned to approve the*  
20 *agenda, Commissioner Scohy seconded and the motion passed unanimously.*

21  
22 **APPROVAL OF MINUTES**

23 *Commissioner Newman motioned for approval of the minutes. The motion was seconded by Commissioner*  
24 *Ericson and the motion passed unanimously.*

25  
26 **CITIZEN REPORTS**

27 *Bill Meirath* from the Loveland Historical Society expressed his appreciation for the HPC's assistance with the  
28 historic register application for the Mariano Medina Cemetery. The HPC thanked him for all his hard work with  
29 the project.

30  
31 **STAFF UPDATE**

- 32 • *Bethany Clark* reported that the Open Lands presentation on the Agilent property is scheduled for  
33 February 29 and indicated the HPC should submit comments as a group after the event by March 8.  
34 *Greg George* said that he has met with Bill Cahill and Gary Havener regarding the railroad issue and he  
35 will keep everyone updated.

36  
37 **CONSIDERATION OF NEW BUSINESS**

38  
39 **DINGER CAROUSEL PRESENTATION**

- 40 • *Ashley Dinger and Carl Dinger, III*, from Dinger Carousels, gave a presentation about Charlotte Dinger's  
41 Carousel collection. Their presentation included:
  - 42 ○ The history of carousels
  - 43 ○ Locations in Colorado where carousels are still operating
  - 44 ○ The artists who create the carousel art
  - 45 ○ Examples of the carved figures such as lions, goats, a polar bear and various horses
  - 46 ○ The circa 1922 Grand Dentzel Carousel. The Dinger's are looking for a permanent  
47 location for Charlotte Dinger's carousel. Carousel details include:
    - 48 ■ Revenue from the operation of the carousel is approximately \$230,000  
49 annually (\$1.25 per ride) and could be higher.

- The carousel weighs 25,000lbs and is 50 feet in diameter
- It has 48 animal figures and 2 chairs
- The carousel requires an inside a structure.

#### **HISTORIC BUILDING FEE WAIVERS**

*Greg George, Director of Development Services, was asked by the HPC to attend the February meeting to clarify the proposed Historic Building Fee Waiver Policy. The expressed concern was over waiving the fees up front.*

- *Greg George* reported that the proposal presented by Bethany Clark on historic property fee waivers last month was consistent with the City's actions. The City's policy is to waive the fees up front, he said. By not collecting fees, he explained, the property owner has that extra money to apply to the work. If the property owner does not comply with the plans outlined in the application, the policy has a built in procedure to gain compliance or the property owner will bear the penalty, he said. In addition, there are inspections during the process to ensure that quality work is being completed. The building inspector and the historic preservation staff liaison will review the work, he said. The City does not manage to the exception, he stated.
- *Tom Hawkinson*, Building Division Manager, agreed and added that the property owners who will be utilizing the historic fee waivers are not typically people who come in to cheat the system. They are people who have pride of restoring their historic properties and who contribute to the neighborhood's property values, he said.
- *Commissioner Ericson* said that she had an experience with an insurance company paying for work and a waiver benefiting the property owner instead of the company.
- *Commissioner Manuel* expressed concern that the policy referred to "refunds" instead of "waivers." Other commissioners agreed that they preferred "waiver."
- After some more discussion and questions, the commissioners agreed that their concerns were addressed but they would amend their motion to exclude insurance company projects and replace the word "refund" with "waiver."

*Commissioner Berglund made the motion to adopt the Historic Building Fee Waiver Policy as outlined in Exhibit A with the changes to:*

1. *Remove projects paid for by insurance.*
2. *Replace "refund" with "waiver" throughout policy.*

*The motion was seconded by Commissioner Manuel and the motion passed unanimously.*

#### **COMMISSION AND HISTORIC PRESERVATION PROGRAM EVALUATION**

*Bethany Clark* asked the HPC if they would like to assess what is working well and not working well with the historic preservation program. She introduced a self-assessment tool from the National Trust for Historic Preservation for commissions. Commissioner Ericson asked where the funds would come from for the assessment. She added that the HPC does not have any funds, unlike the Fort Collins program. Bethany explained that issues like funding could be brought out during an assessment. Greg George suggested that funding could be a request to City Council if the HPC presented a need for it. Commission Chair Cox asked Bethany to research other communities to see what kind of budgets they have, if any. He also asked her to research what kind of programs they have and if they are successful programs. Commissioner Ericson stated that the HPC has already researched this twice when Marc Cittone and Tangier Barnes worked for the City of Loveland. The information should be somewhere, she added.

#### **HPC MONTH PLANNING**

*Bethany Clark* reported that a Historic Preservation Month planning meeting is scheduled for 5:30p.m. on Wednesday in the Main Floor conference room. She asked the Commission to confirm the event they would be coordinating. After some discussion, the HPC decided on holding a workshop on paint colors for historic houses.

Commission Chair Cox said he would try to schedule the expert in linseed oil to do a presentation.  
Commissioner Ericson said she would schedule the room. The workshop will run from 6:00p.m. to 9:00p.m.  
Commissioner Manuel asked if an explanation of the differences between the HPC and the LHS would be helpful to include in the workshop and everyone agreed it was a good idea.

#### **REVIEW SAVING PLACES CONFERENCE**

Commissioners reported on their best experiences at the recent Saving Places Conference which included:

- Historic Cemetery workshop
- How to repair historic logs
- Saving Native American Places
- Documenting rural ranches
- Reading historic sites (the value of postcards)
- How to measure the condition of wood and masonry
- Survey LA (grant from Getty, interactive map program, utilizing interns)
- Luncheon speakers were good, especially James W. Loewen, author of *Lies My Teacher Told Me*

#### **NEXT MEETING AGENDA (MARCH 19, 2012)**

- *Historic Preservation Month*
- *Demo Review Process*

#### **COMMISSIONER COMMENTS**

- Commissioner Ericson reported her frustration with the code enforcement process. She said recently, while reviewing an historic property, she discovered garbage on the property and reported it to Bethany who gave the information to the Code Enforcement staff. The staff requested that she fill out a complaint form. She said she did not think she should have been asked to fill out the form. It put her in an awkward position as an HPC member, she said. Greg George explained that the Code Enforcement officers can only respond without a complaint form if there is a threat to public safety. After further discussion, it was determined that a code enforcement officer had talked to the property owner about the issue.

**Meeting adjourned at 8:08p.m.**



## Community & Strategic Planning

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### Staff Update

**Meeting Date:** March 19, 2012  
**To:** Loveland Historic Preservation Commission  
**From:** Bethany Clark, Community & Strategic Planning

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#### Staff Update Format:

The staff update contains *informational* items. Five minutes is set aside on the agenda for brief questions and comments on staff update items. If a more in-depth discussion or extensive questions on a specific item is desired, staff requests that the HPC Chair establish if it is the Commission's consensus to have a longer discussion. Staff will be happy to answer questions on any item with individual commissioners after the meeting.

If the staff update indicates that staff will be pursuing a particular course of action, no comment from the Commission indicates that the Historic Preservation Commission is supportive of that course of action.

#### Staff Update Items:

##### Odd Fellows Building

The Odd Fellows Restoration/Rehabilitation is, for the most part, complete. There are some minor touchups that need to be done, such as staining the interior trim around the new lodge entry door. Additionally, there are some issues with the rear gutter that the contractor is working to resolve.

##### Pulliam Building Historic Structure Assessment

The Historic Structure Assessment project has officially begun. Glaser Associates Architects has put together a great team of consultants to evaluate the various components of the building and make recommendations as to the condition and repairs that need to be made.

##### Rialto Theater Expansion

The Ribbon Cutting for the new Rialto Theater Center is scheduled for 5pm on Wednesday, April 11<sup>th</sup>. Various grand opening events are scheduled between April 11<sup>th</sup> and 14<sup>th</sup>. See the City's website for more details.

## Historic Preservation Month Progress Report

We have had a few activities confirmed for the month of May (please see calendar). The following organizations have responded with their events:

- Loveland Museum/Gallery
- Loveland Garden Club
- Loveland Historical Society (several tentative dates)
- The Swan House
- Loveland Odd Fellows

Other businesses/organizations have indicated they would like to hold an event for Historic Preservation Month, but have not yet submitted an activity:

- Kitchen Alley

There are also several organizations that held an event last year that have not yet responded with any events for this year:

- Timberlane Farm Museum
- United Way / Henderson House
- Anthology Book Company
- NOVO Restoration
- Namaqua Chapter Daughters of the American Revolution

### **Other Items in the Works:**

#### **1. HPC Event – Painting your Historic Home**

- Jim was working to get in contact with the Linseed Oil Paint speaker from the Saving Places Conference. Updates?
- Robin – books and other materials for historic paint colors. Also mentioned working with Embassy to have a room donated for speaker.

#### **2. Downtown Banners**

- Two of the banners are in for repairs and Greg has approved the purchase of 4 additional banners which will total 10 banners. We are requesting all 10 banners to be hung for the duration of May in downtown.

### **3. Library Display**

- Trudi is working with Jennifer Cousino at the Museum to put together items for the reserved display case at the Library. Suggested items were those relating to paints and colors used on historic structures. A calendar of May events will also be on display
- Display that was at library last year will be on display in the window of the Odd Fellows Building.

### **4. Difference between LHS and HPC**

- Robin and Trudi discussed this a little – any more discussion?
- Some possible ideas to consider:
  - Could work with our Public Information Office to create a video (interview HPC and LHS) and have it run on the City's Cable Channel.
    - If not a video, could have scrolling information – might not hold people's attention as long
  - Work with Reporter-Herald to get an article in newspaper

### **5. Historic Landmark Plaques and Proclamation by City Council**

- Robin – any idea if Home Depot will still donate plaques?
- Three properties that need plaques:
  - 1005 North Garfield Avenue – Remington House
  - 247 East 4<sup>th</sup> Street – Larimer County Bank/Stroh Building
  - 234 East 4<sup>th</sup> Street – McCluskey's Mercantile (Henry's)
    - Property owner contacted me, said they never received a plaque and wondered why others had theirs
- Will have proclamation scheduled for May 1<sup>st</sup> City Council meeting

### **6. Newspaper Ads**

- Robin historically has worked with the Reporter Herald to have ad space donated for HP Month Events. Do you wish to continue this, or pass along to another Commission Member?

# May 2012

| Sun                                | Mon                       | Tue | Wed                                  | Thu                         | Fri  | Sat   |
|------------------------------------|---------------------------|-----|--------------------------------------|-----------------------------|--|---|
|                                    |                           | 1   | 2                                    | 3                           | 4  | 5<br>LHS Homes Tour   |
| 6                                  | 7                         | 8   | 9                                    | 10                          | 11<br><b>Night on the Town</b><br>Museum/Gallery 75 Year activities 6-8<br>Preserving History (LHS Presentation) | 12<br>Garden Club-Heirloom plant sale                                 |
| 13<br><b>Mother's Day</b>          | 14                        | 15  | 16                                   | 17                          | 18<br>Old Time Kitchen<br>Gadgets-Swan House 12pm<br>Sock Hop (Odd Fellows) 7-10pm                               | 19<br>MS Planting 9-12<br>Old Time Kitchen<br>Gadgets-Swan House 12pm |
| 20<br><i>LHS Cemetery Tour 2pm</i> | 21                        | 22  | 23                                   | 24<br><i>LHS Slide Show</i> | 25   | 26<br><b>High School Graduations</b>                                  |
| 27<br><i>Bike Tour</i>             | 28<br><b>Memorial Day</b> | 29  | 30<br>Lone Tree Ice Cream Social 3pm | 31                          |  |   |





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**To:** Historic Preservation Commission  
**From:** Bethany Clark, Community & Strategic Planning  
**Date:** March 19, 2012  
**RE:** Historic Sites Inventory/Demo Delay Provisions

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On February 21<sup>st</sup>, Staff presented to City Council the recommendation from the Historic Preservation Commission to add 37 properties to the Loveland Historic Sites Inventory. City Council had several concerns with the Inventory, as well as the demolition review process that some properties on the Inventory would be required to go through per our Municipal Code. There was discussion from City Council regarding notifying property owners who are on the Inventory, as well as some discussion about possible changes to the demolition review process. The City Council made a motion to “refer back to Staff and HPC to review the Municipal Code provisions with special attention to notification and demolition delay provisions for past as well as prospective properties.”

The Historic Preservation Commission will need to play more of a lead role when this item goes back to City Council. For that reason, staff would like to open this item up for discussion to hear how the Commission would like to address the concerns of City Council, what recommendations there are in regards to the demolition review provisions, and to hear any concerns that the Commission may have. To aid in the process, staff has put together some resources to consider (Attachments A-D) including a comparison of demolition review procedures from other Colorado municipalities.

Staff is requesting that Commission members review the video of the City Council meeting when this item was presented, if members have not already done so. This video is available on the City website.

### **Attachments**

Attachment A: Demolition Review Comparison

Attachment B: *Protecting Potential Landmarks through Demolition Review*, by Julia H. Miller

Attachment C: Non-Historic Status Application – Denver Landmark Preservation Program

Attachment D: Flowchart of Loveland’s Demolition Review Process

Historic Demolition Review Comparison

|                                     | Demo Review of Non-Designated Properties |    | Applies To:  |                           |                |                       | Delay Period:                |                       | Non-Consensual Designation Permitted?                       |    | Initial Review By: |                                   |                 | Decision Made   | Notes   |
|-------------------------------------|--|----|--|---------------------------|----------------|-----------------------|------------------------------|-----------------------|---|----|--------------------|-----------------------------------|-----------------|---|---|
|                                     | Yes                                      | No | Over 50 Years  | Constructed Prior to 19xx | ID'd on Survey | Geographic Area       | # of days for initial review | Total potential delay | Yes   | No | Staff              | Committee                         | Full Commission |   |   |
| Alamosa, CO (pop. 8,780)            |  | X  |  |                           |                |                       | --                           | --                    |   | X  |                    |                                   |                 |   | Review only of designated sites or districts.   |
| Boulder, CO (pop. 97,385)           | X  |    | X  | X 1940                    |                |                       | 14 days                      | 180 days              | X   |    | X                  | X                                 |                 | Determination of no significant impact, permit is issued. If significant and probable cause to believe that the building may be eligible for designation as an individual landmark, referred to landmarks board for public hearing. Landmark board determines: no historical significance, permit issued; historical significance, stayed for up to 180 days for Board to submit application or take other action deemed necessary such as moving, salvaging, etc.  | Initial City Manager review to determine if proposal would be a significant impact. Review of permit applications for all accessory buildings over fifty years old, all on-site relocations of buildings over fifty years old, and all demolition and off-site relocations for primary buildings constructed during or after 1940. The city manager and two members of the landmarks board review all demolition and off-site relocation permit applications for buildings built prior to 1940. |
| Broomfield, CO (pop. 55,889)        |  | X  |  |                           |                |                       | --                           | --                    |   | X  |                    |                                   |                 |   | Review only of landmark sites or districts.   |
| Castle Rock, CO (pop. 48,231)       | X  |    |  | X 1945                    |                |                       | not specified                | not specified         |   | X  | X                  |                                   |                 | Staff determines if structure meets criteria. If so, a cultural resource survey is done and upon completion a public hearing will be held with the Historic Preservation Board for the demolition request. Board forwards recommendation to Town Council.   |   |
| Colorado Springs, CO (pop. 416,427) |  | X  |  |                           |                |                       | --                           | --                    | X   |    |                    |                                   |                 |   | Reviews building permits for designated properties.   |
| Denver, CO (pop. 600,158)           | X  |    |  |                           |                | X*<br>*All properties | 10 days                      | 141 days              | X   |    | X                  |                                   |                 | Staff determines if structure may have potential for designation. If it may have potential for designation, the application is forwarded to council person in that ward, at-large council persons, neighborhood organizations within 200 feet, and historic preservation entities. If no application for nomination comes forward within 21 days, the demo permit is issued.  | In order to provide certainty in the demolition process, an owner of a structure that is not pending designation and is neither designated nor in a district for designation may apply to have the structure officially declared to be non-historic and have a certificate to that effect.  |
| Durango, CO (pop. 16,887)           |  | X  |  |                           |                |                       | --                           | --                    | X*<br>*Greater significance and 6/7 vote for nomination     |    |                    |                                   |                 |   |   |
| Fort Collins, CO (pop. 143,986)     | X  |    | X  |                           |                |                       | 10 days                      | 90-120 days           | X   |    |                    | X                                 |                 | Director and Chair review property to determine level of eligibility. If individually eligible and proposed demo determined to be detrimental it is brought to Commission for Preliminary hearing where applicant makes case and Commissioners comment. If no alternative plan can be agreed upon, it is brought to a final hearing. Application is approved (with or without conditions), or consideration is postponed for various reasons, one being to explore the benefits to the City of designation. | A lot of information is required for a final hearing:<br>1. A completed Colorado Cultural Resource Survey Architectural Inventory Form for the property.<br>2. A report regarding the effect that the removal or demolition of the structure (or portion thereof) will have on the character of the site and the adjacent properties.<br>3. Final approved plans.   |
| Golden, CO (pop. 18,867)            |  | X  |  |                           |                |                       | --                           | --                    |   | X  |                    |                                   |                 |   | Demo review only for designated properties or districts.  |
| Grand Junction, CO (pop. 58,566)    |  | X  |  |                           |                |                       | --                           | --                    |   | X  |                    |                                   |                 |   |   |
| Greeley, CO (pop. 92,889)           | X  |    | X*<br>* over 40 years  |                           |                |                       | 10 days                      | varies                | X*<br>*overwhelming historic importance to entire community |    | X                  |                                   |                 | Determines if potential significance exists - if it exists, staff makes the information available to interested parties and makes comments/ suggestions to Building Divison. Comments shall recognize the historical significance or lack thereof concerning the building for which a permit has been requested. The Historic Preservation Specialist may also make suggestions of ways to make the changes more compatible or acceptable with the age or type of structure.                                |   |
| Lafayette, CO (pop. 24,453)         | X  |    | X  |                           |                |                       | 10 days                      | 145 days              | X*<br>*overwhelming historic importance to entire community |    |                    | X                                 |                 | Review committee determines if property would meet criteria and should be reviewed by the full board. Public hearing is held and Board may issue a stay of demolition up to 90 days during which the Board may pursue action to preserve including consulting interested groups, entering into negotiations to move the building or salvage materials, or landmark the property.  |   |
| Lakewood, CO (pop. 142,980)         |  | X  |  |                           |                |                       | --                           | --                    |   | X  |                    |                                   |                 |   | Review only for designated properties or districts  |
| Littleton, CO (pop. 41,737)         |  | X  |  |                           |                |                       | --                           | --                    | X*<br>*overwhelming historic importance                     |    |                    |                                   |                 |   |   |
| Longmont, CO (pop. 86,270)          | X  |    | X*<br>* Outside original Town of Longmont square-mile plat, identified in an architectural survey as historically significant. |                           | X              |                       | 10 days                      | 90 days               | X*<br>* Requires petition of 100 citizens                   |    |                    | X*<br>*Staff and 1 council member |                 | Review to determine if reasonable cause to believe structure may be eligible for designation w/out owner consent. If believed, forwarded to council for public hearing and stayed for 45 days.  |   |

Historic Demolition Review Comparison

|   | Demo Review of Non-Designated Properties |    | Applies To:   |                           |   |                 | Delay Period:                |                        | Non-Consensual Designation Permitted? |    | Initial Review By: |           |                 | Decision Made  | Notes  |
|---|--|----|---------------|---------------------------|---|-----------------|------------------------------|------------------------|---------------------------------------|----|--------------------|-----------|-----------------|--|--|
|   | Yes                                      | No | Over 50 Years | Constructed Prior to 19xx | ID'd on Survey                                | Geographic Area | # of days for initial review | Total potential delay  | Yes                                   | No | Staff              | Committee | Full Commission |  |  |
| <i>Louisville, CO</i><br>(pop. 18,376)        | X  |    | X             |                           |   |                 | 21 days                      | 60 days (or 180 days?) |                                       | X  |                    | X         |                 | Probable cause to believe the building may be eligible for designation as an individual landmark; forwarded to Commission for public hearing. A copy of the determination, including the reasons why building may be eligible for designation, shall be provided to the property owner within fourteen days of the determination. If Commission finds the building may have signifiance and meet criteria, application is suspended for 180 days during which they will take any action authorized and they deem necessary including consulting with civic groups, public agencies, recommending acquisition of the property, explore moving the building, or salvage materials. If no landmark or district designation has not been completed within the 180 days the City will issue the permit. Prior to issuance of a permit, Commission may require applicant to provide historical information, photographs, plans, or maps to document and keep record of the demolished structure. |  |
| <i>Loveland, CO</i><br>(pop. 66,859)          | X  |    |               |                           | X*<br>* ID'd as Potentially Eligible Resource |                 | 15 days                      | 180 days               |                                       | X  |                    | X         |                 | Full or partial demolition permits for properties ID'd on Survey as 'Potentially Eligible' for the National Historic Register are reviewed by Staff and 2 Commissioners.   |  |
| <i>Steamboat Springs, CO</i><br>(pop. 12,088) | X  |    |               |                           | X*<br>* Eligible Resource                     |                 | 30 days                      | 60 days                |                                       | X  |                    |           | X               | Demo requests go to public hearing. HPC advises owner about benefits of designation, discuss alternatives, etc. Owner may provide proof that deferring demo would cause a Hardship, or that property is a Dangerous Building - HPC must issue approval immediately. Without such proof, HPC issues Certificate of Approval 30 days after hearing.  |  |
| <i>Westminster, CO</i><br>(pop. 106,114)      |  | X  |               |                           |   |                 | --                           | --                     |                                       | X  |                    |           |                 |  | Only demolition review for landmark properties or in historic district |
| <i>Windsor, CO</i><br>(pop. 18,644)           |  | X  |               |                           |   |                 | --                           | --                     | X                                     |    |                    |           |                 |  |  |

*Italics* indicates Colorado CLG Municipality

*A National Trust preservation law publication . . .*

## Protecting Potential Landmarks Through Demolition Review

*by Julia H. Miller*



**NATIONAL TRUST**  
for HISTORIC PRESERVATION®

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The National Trust's Law Department provides educational materials and workshops on legal developments in historic preservation law for the benefit of citizens, organizations, and governmental institutions throughout the United States. Through this work, the Trust helps communities protect their heritage, their homes and businesses, their neighborhoods, and their history.

For further information, contact the Law Department at 202-588-6035 or send an email to [law@nthp.org](mailto:law@nthp.org). Also visit our website at [www.nthp.org/law.html](http://www.nthp.org/law.html).

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Cover Photo: Redwood Street Historic District, Baltimore, MD (Historic American Buildings Survey, NPS)

# Protecting Potential Landmarks through Demolition Review

By Julia H. Miller\*

Last year, the wrecking ball fell twice in downtown Baton Rouge—almost. Two historic buildings, the 1910 S.H. Kress Building, the site of a 1960 civil rights protest at the then all-white, lunch counter of the five and dime, and the adjacent Welsh & Levy Building, built in 1885, were spared only after the owner backed off his plans to demolish the buildings for a surface parking lot in response to public outcry. The fate of a third building, the Old Baton Rouge Ice Plant, proved less fortunate. This 1880s one-story brick building was demolished for a riverfront condominium project. Once used for ice production, the building had been located on the Mississippi River on one of the city's few remaining intact blocks dating from the Nineteenth Century.

Baton Rouge has since taken steps to protect its unprotected resources and other communities can too. Through the adoption of a “demolition review ordinance,” older buildings (generally those over 50 years) cannot be demolished without review by a preservation commission or special committee to determine whether a building is historically significant. If the building qualifies as significant, then a commission may delay the issuance of a demolition permit to explore preservation alternatives, such as designating the building as a historic landmark or finding a purchaser who may be interested in rehabilitating the building.

## What is a Demolition Review?

Demolition review is a legal tool that provides communities with the means to ensure that potentially significant buildings and structures are not demolished without notice and some level of review by a preservation commission. This process creates a safety net for historic resources to ensure that buildings and structures worthy of preservation are not inadvertently demolished.

Demolition review does not always prevent the demolition of historically significant buildings or structures. Rather, as the name suggests, it allows for review of applications for demolition permits for a specific period of time to assess a building's historical significance. If the building is deemed significant, then issuance of the permit may be delayed for a specific period of time to pursue landmark designation, or alternatively, to explore preservation solutions such as selling the property to a purchaser interested in rehabilitating the structure or finding alternative sites for the proposed post-demolition project.

## What is the Difference between “Demolition Review Laws” and “Demolition Delay” or “Interim Protection” Provisions used in Preservation Ordinances?

**Demolition review laws** are typically, but not exclusively, separate and distinct from historic preservation ordinances. They preclude the demolition of *any* building or structure over a certain age, or any building or structure identified for protection—regardless of significance—for a specific period of time, to allow for a determination of historical or architectural merit. Historic properties may or may not be designated as a landmark at the culmination of this process, depending upon a law's specific terms, and such laws may or may not include a

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\*Special Counsel and Legal Education Coordinator, National Trust for Historic Preservation

“demolition delay” or “waiting period” component.

The nomenclature can be confusing. Demolition review laws are sometimes called “demolition delay ordinances” or simply, “demolition ordinances.”

**Demolition delay provisions** in historic preservation ordinances are used to prevent the demolition of buildings or structures that have already been designated as historic landmarks or as contributing structures in a historic district for a specific amount of time, usually ranging from 6 to 24 months. During that time, the preservation commission, preservation organizations, concerned citizens, and others may explore alternatives to demolition, such as finding a purchaser for the structure or raising money for its rehabilitation.

These provisions are typically used by communities that lack the authority to deny demolition permits. For example, in North Carolina, local jurisdictions generally only have the authority to delay a demolition permit up to 365 days unless the structure at issue has been determined by the State Historic Preservation Officer to have “statewide significance.” *See* N.C. Gen. Stat. § 160A.400.14.

**Interim protection provisions** are also found in preservation ordinances. They preclude the demolition or alteration of buildings or structures during the period in which the building is under consideration for historic designation. The objective is to preserve the status quo pending designation and to prevent anticipatory demolitions. For further information, see Edith M. Shine, “The Use of Development Moratoria in the Protection of Historic Resources,” 18 PLR 3002 (1999).

### **Why Do Communities Adopt Demolition Review Procedures?**

Demolition review procedures help to prevent the demolition of historically significant buildings. Given the vast numbers of older buildings in cities and towns across the United States, it is virtually impossible for a community to identify all buildings that should be protected under a historic preservation ordinance in advance. By establishing a referral mechanism, communities can be assured that buildings meriting preservation will not fall through the cracks. The delay period provides an opportunity for the municipality or other interested parties to negotiate a preservation solution with the property owner, or to find persons who might be willing to purchase, preserve, rehabilitate, or restore such buildings rather than demolish them.

Demolition review procedures have also been adopted to protect buildings that may not meet the standards for designation but nonetheless embody distinguishing features that help to make a community an attractive place to live or work. For example, demolition review provisions are being used to address the proliferation of “teardowns” in many of our older neighborhoods. By delaying demolition for a period of time, concerned residents may be able to negotiate the preservation of character-defining houses on a case-by-case basis. *See, e.g.* Santa Monica, California, and Highland Park, Illinois.

### **Which Properties are Subject to Demolition Review Procedures?**

Demolition review ordinances typically set forth objective criteria for determining which properties are subject to review. For example, a demolition review ordinance may require some level of review for all buildings built before a specific date or all buildings that have attained a certain age on the date the permit application is filed. Many communities use “50 years” as the critical benchmark. *See, e.g.* Boston, Massachusetts, Boulder, Colorado, and New Castle, Delaware. A few jurisdictions have opted for a shorter time period, largely in recognition of their younger building stock, *see, e.g.* Santa Monica, California (which uses a 40-year benchmark), and Gainesville, Florida (all structures listed in the state’s “master site

file" and/or 45 years of age). Still others utilize a specific date. See, e.g. Alameda, California, and Weston, Massachusetts, which protect all buildings constructed prior to 1945.

Alternatively, the demolition ordinance may only apply to properties identified on a historic survey or listed on a state historic register or the National Register of Historic Places. Chicago, for example, requires review for the roughly 6,200 buildings designated as "red" or "orange" on its 1996 Historic Resources Survey. Montgomery County, Maryland, stays the issuance of a demolition permit for properties included on its Locational Atlas and Index of Historic Sites.

Finally, some communities limit the scope of protection afforded to buildings located within a specific geographic area. Baton Rouge's newly-enacted demolition ordinance, for example, applies only to its downtown buildings. Boston's law governs any buildings located in its downtown area, Harborpark, and neighborhood design overlay districts, in addition to all those that are at least 50-years old.

Keep in mind that the viability of this system may depend upon an applicant's representation or a permit official's ability to verify or accurately determine a building's age. Boston addresses this issue by insisting that all demolition permit applications be referred to the city's landmark commission. Staff to the commission makes the determination as to whether the building is subject to review.

In Wilton, Connecticut, the burden of establishing the age of the building rests on the demolition permit applicant. Applications must include a statement regarding the size and age of the building or structure to be demolished with verification through independent records such as tax assessment records or the city's cultural resource survey. Santa Monica bases its age determination on the date the original permit for the building or structure was issued. Alameda, California's law provides that the age is to be determined by review of city records. Weston, Massachusetts, protects against the potential problem that the date of a building or structure cannot be determined by record by also requiring the review of all properties of "unknown age."

### **What Actions Generally Trigger Demolition Review?**

All demolition review procedures are triggered by the filing of an application for a demolition permit. The scope of demolition work requiring review, however, varies from jurisdiction to jurisdiction. In addition, requests for permits to move or substantially alter buildings may also require review.

In Boulder, demolition review is required for the demolition or removal of any building over fifty years old. Demolition includes the act of either demolishing or removing—

- Fifty percent or more of the roof area as measured in plan view (defined as the view of a building from directly above which reveals the outer perimeter of the building roof areas to be measured across a horizontal plane); or
- Fifty percent or more of the exterior walls of a building as measured contiguously around the "building coverage"; or
- Any exterior wall facing a public street, but not an act or process which removes an exterior wall facing an alley.

[Illustrations omitted.] To meet the exterior wall retention standard,

- The wall shall retain studs or other structural elements, the exterior wall finish, and the fully framed and sheathed roof above that portion of the remaining building to which such wall is attached;



- The wall shall not be covered or otherwise concealed by a wall that is proposed to be placed in front of the retained wall; and
- Each part of the retained exterior walls shall be connected contiguously and without interruption to every other part of the retained exterior walls.

In Davis, California, the city's demolition review procedures apply to "the destruction, removal, or relocation of a structure not classified as an 'incidental structure,' or the permanent or temporary removal of more than twenty-five percent (25%) of the perimeter walls of a structure." Incidental structures are accessory buildings such as sheds, fences, play structures, and so forth.

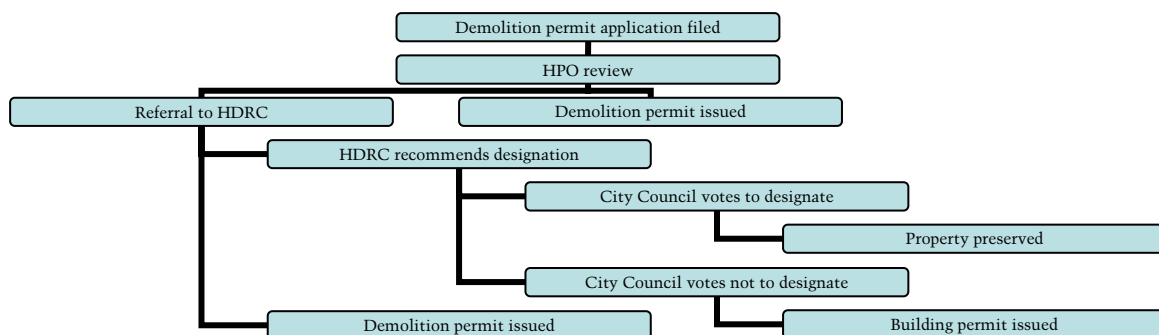
In Newton, Massachusetts, the demolition review requirement applies to any permit, without regard to whether it is called a demolition permit, alteration permit, or building permit, if it involves total and partial demolitions. A "total demolition" is "[t]he pulling down, razing or destruction of the entire portion or a building or structure which is above ground regardless of whether another building or structure is constructed within the footprint of the destroyed building or structure." A "partial demolition" is "[t]he pulling down, destruction or removal of a substantial portion of the building or structure or the removal of architectural elements which define or contribute to the character of the structure."

A few jurisdictions have narrowed the number of applications requiring review by limiting referrals to projects entailing the demolition of at least 500 square feet of gross floor area. *See, e.g.,* Concord, New Hampshire, and Monroe, Connecticut.

### How is Demolition Review Accomplished?

Under typical demolition review procedures, the permitting official is directed to refer a demolition permit application to a review body for an initial or preliminary determination of significance. In San Antonio, for example, all demolition permits are referred to the city's Historic Preservation Officer (HPO) to determine within 30 days whether or not a building or structure is historically significant. If the HPO finds the building significant, the HPO is required to forward the application to the Historic and Design Review Commission (HDRC) for review and recommendation as to significance. If the HDRC concurs in the HPO's finding of significance, then the Commission must recommend designation to the City Council. Buildings and structures not deemed significant at any time during these proceedings may be demolished.

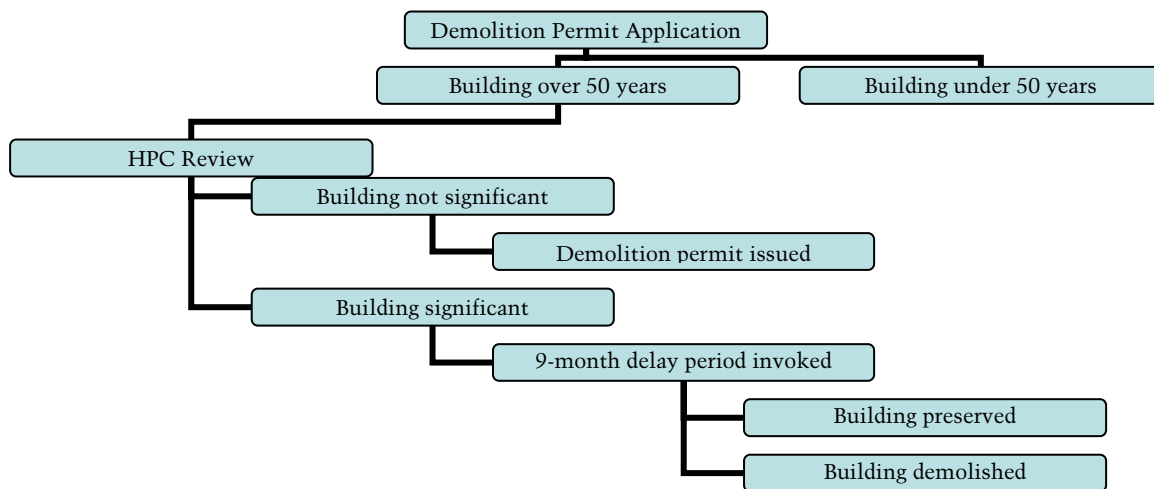
#### San Antonio Demolition Review Process



Santa Monica and Chicago also delay issuance of a demolition permit to allow for the landmark designation of the building, if warranted. In Santa Monica, the demolition permit may be issued if no application to designate is filed within 60 days. Chicago's demolition ordinance delays issuance of permit up to 90 days "in order to enable the department of planning and development to explore options to preserve the building or structure, including, but not limited to, possible designation of the building or structure as a Chicago Landmark in accordance with Article XVII of Chapter 2-120 of this code."

Some demolition review laws simply provide for a delay in the issuance of a permit to explore preservation-based solutions. New Castle County, Delaware utilizes this approach. The county may delay issuance of a demolition permit for any building "thought to be over 50 years old" for a period up to 10 days, during which time the Historic Review Board must make a determination whether the building is historically significant. If the building is deemed significant, then the board may order further delay up to 9 months from the date the application was initially filed to seek demolition alternatives.

#### New Castle County Demolition Review Process



In Boston, the Inspectional Services Department must transmit a copy of an application for a permit to demolish a building to the Boston Landmarks Commission within three days. The commission staff, in return, must make a determination within 10 days as to whether the building is (1) subject to review and (2) significant under specific criteria. If the property is determined not to be significant, then no further review is required. If the property is significant, the commission must hold a public hearing to determine whether the building should be subject to demolition delay. A decision on whether to delay the permit must be made within 40 days from the date the demolition permit application was initially filed.

To invoke the delay period, the commission must find that, in considering the public interest, it is preferable that the building be preserved or rehabilitated rather than demolished. Factors for consideration include: (a) the building's historic, architectural, and urban design significance; (b) whether the building is one of the last remaining examples of its kind in the neighborhood, the city, or the region; and (c) the building's condition. If the commission finds that the building is subject to demolition delay, issuance of the demolition permit may be delayed for up to 90 days from the close of the public hearing. A "Determination of No Feasible Alternative" may be issued during the public hearing or prior to the expiration of the 90-day period if the commission finds that there are no feasible alternatives to demolition.

### **Who Makes the Determination of Significance?**

In most cases, the historic preservation commission makes the determination of significance, with initial review by the staff to the commission. *See, e.g.,* Boston, Massachusetts, Davis, California, and San Antonio, Texas. Variations, however, do exist from community to community. In Santa Monica, for example, demolition permit applications are forwarded directly to each of the members of the landmarks commission. In Boulder, initial review is performed by the city manager and two designated members of the landmarks board. If the property is significant, then the matter is referred to the city's landmarks board. In the cities of Keene and Concord, New Hampshire, the demolition review committee, comprised of three members of each city's heritage commission, is responsible for conducting the initial review, making an official determination of significance, and holding a meeting to explore preservation alternatives.

### **What Evidence Must be Submitted for Review?**

Most jurisdictions require the submission of sufficient information to enable the decision maker to make an informed decision on a building's age and significance. In Santa Monica, for example, a completed application form must be submitted to the landmarks commission, along with a site plan, eight copies of a photograph of the building, and photo verification that the property has been posted with a notice of intent to demolish.

Boston requires the submission of photographs of both the subject property and any surrounding properties with a demolition permit application. In addition, the applicant must provide a map identifying the location of the property, a plot plan showing the building footprint and those in the immediate vicinity; plans for site improvements, including elevations if a new structure is planned, and the notarized signatures of all owner's-of-record along with proof of ownership. Additional materials may be required if a public hearing on the issue of whether the property is "preferably preserved" is held. Items such as a structural analysis report, adaptive reuse feasibility studies, the availability of alternative sites for the proposed project, effects of post-demolition plans on the community, and other materials the commission may need to make a feasibility determination may be requested.

Newton, Massachusetts has comparable requirements. In the case of partial demolitions involving alterations or additions, the town also requires the submission of proposed plans and elevation drawings for the affected portion of the building.

### **What Standards are Used to Determine Historical Significance?**

In Gainesville, Florida, the preservation planner is essentially charged with determining whether the structure would qualify as a landmark under the city's historic preservation ordinance. A demolition permit may be issued if the planner finds that the structure "is not designed in an architectural 'high style' or a recognized vernacular building pattern, and it does not have historic events or persons associated with it."

In New Castle County, Delaware, the Historic Review Board makes a determination as to whether the building or structure is historically significant, based on the criteria for listing in the New Castle County Register of Historic and Architectural Heritage.

In Baton Rouge, Louisiana, the city's planning commission is charged with determining whether "[t]he structure is individually listed on the National Register of Historic Places or included in a National Register Historic District, or the structure is classified as National Register Eligible or Major Contributing in the historic building survey of the Central Business District."

In Westfield, Connecticut, individual findings of significance are not made. Rather, to invoke the 90-day, demolition delay period, the structure must be listed in or located within a historic district listed in the National Register of Historic Places, the State Register of Historic Places, the Westfield Historical Commission Register of Historic Places, or a local historic district created under the city's historic preservation ordinance. To be included on the city's historic register, the property must "contain or reflect distinctive and demonstrably important features of architectural, cultural, political, economic or social significance to the City of Westfield."

In Boulder, a preliminary finding on whether there is "probable cause" for designation as an individual landmark is made. If there is "probable cause," then the matter is required to be referred to the landmark commission for a public hearing on the eligibility of the building for designation as a landmark. In addition to determining whether the building meets the objectives and standards for landmark designation under its preservation ordinance, the Boulder commission must also take into account: (1) "[t]he relationship of the building to the character of the neighborhood as an established and definable area;" (2) "the reasonable condition of the building;" and (3) "the reasonable projected cost of restoration or repair." If the building is found to merit designation, then a delay period not to exceed 180 days from the date the demolition permit application was initially filed may be invoked.

Cities and towns enacting demolition review procedures in Massachusetts may not invoke a delay period until the building or structure at issue is found to be both "significant" and "preferably preserved." The term "preferably preserved" essentially means that it is in the public's interest to preserve the building. In some cases, a determination may be made to seek landmark status. Newton's "demolition delay ordinance" is illustrative. Under the city's law, a significant building is "any building or structure which is in whole or in part fifty years or more old" and which:

(1) is in any federal or state historic district, or if in any local historic district, is not open to view from a public street, public park or public body of water; or

(2) is listed on or is within an area listed on the National Register of Historic Places or eligible for such listing, or listed on or is within an area listed on the State Register of Historic Places, or eligible for such listing; or

(3) has been determined by the commission or its designee to be a historically significant building after a finding that it is:

a) importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the City of Newton, the Commonwealth of Massachusetts or the United States of America; or

b) historically or architecturally important by reason of period, style, method of building construction or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures; or

c) located within one hundred fifty (150) feet of the boundary line of any federal or local historic district and contextually similar to the buildings or structures located in the adjacent federal or local historic district.

A building or structure is "preferably preserved" if issuance of the requested demolition permit "would result in the demolition of a historically significant building or structure whose loss would be detrimental to the historical or architectural heritage or resources of the City of Newton."

## What Procedures are Used to Evaluate Significance?

The notice and hearing requirements set forth in demolition review ordinances normally address two concerns. One is meeting the constitutional rights of the applicant to due process. The other is ensuring that the community knows about the pending demolition and has a meaningful opportunity to participate in the proceedings. Determinations of significance are generally held upon review by a city's historic preservation commission at a public hearing.

**Notice.** Individual notice is often required when specific findings are made affecting the applicant's request for a demolition permit. For example, in Boulder, notice must be provided to the applicant upon a finding by an initial review committee that probable cause exists that the building or structure may be eligible for designation as an individual landmark. The applicant is also entitled to notice of the public hearing before the full commission regarding the property's eligibility for landmark status and notice of the commission's final decision to stay the demolition permit for a period of 180-days to explore preservation alternatives.

Public notice requirements under demolition review ordinances can also be extensive. In situations where delay periods may be invoked for the purpose of exploring preservation alternatives, public awareness can be critical. In Monroe, Connecticut, for example, concerted efforts are made to inform the public. The city's ordinance requires publication of notice in newspaper of general circulation and individually-mailed notice to the city's historic district commission, the town historian, the Monroe Historical Society, and all abutting property owners. In addition, the city is required to post for at least 30 days a 36 by 48" sign visible from nearest public street with the words "DEMOLITION" printed on the sign with the letters being at least 3 inches in height. Among other requirements, Gainesville, Florida, requires that the historic preservation planner post a sign on the property "notifying the public of the owner's intent to demolish the structure in order to allow interested parties to come forward and move the structure upon consent of the owner."

**Hearings.** Public hearings are typically required under demolition delay provisions to determine whether the building or structure posed for demolition is historically significant. See, e.g. Baton Rouge, Louisiana, Boston, Massachusetts, Boulder, Colorado, Westfield, Connecticut, Gainesville, Florida, and Concord, New Hampshire. Some demolition delay laws also use the public hearing format to consider alternatives for demolition delay. The Westfield, Connecticut, ordinance, for example, specifically states that "[t]he purpose of said Hearing shall be to discuss, investigate and evaluate alternatives that will allow for the preservation of such buildings, structures, features/components or portions thereof." It provides, however, that [t]he applicant's intended use/reuse of the property is not a topic of the hearing."

## How Long Do Delay Periods Typically Run?

The delay periods invoked under demolition review ordinances run from 30 days to two-years, with most falling within the 90-day to six-month range. In some jurisdictions, the length of the delay period may be prescribed by state law. For example, in Connecticut, § 29-406(b) of the Connecticut General Statutes authorizes any town, city, or borough to impose a waiting period of not more than ninety days. Also note that the effective length of equivalent waiting periods can vary significantly, depending upon the date upon which the delay is measured. Boston, for examples, measures its 90-day delay period from the close of the public hearing. Chicago, in comparison, measures its 90-day delay period from the application filing date.

Communities with longer delay periods sometimes include specific provisions that enable the issuance of a demolition permit prior to the expiration of the waiting period if spe-

cific conditions are met. For example, in Lake Forest, Illinois, the city's 2-year waiting period for all demolition permits may be waived or shortened, upon a finding by the Building Review Board, after holding a public hearing, that—

- a. The structure itself, or in relation to its environs, has no significant historical, architectural, aesthetic or cultural value in its present restored condition; or
- b. Realistic alternatives (including adaptive uses) are not likely because of the nature or cost of work necessary to preserve such structure or realize any appreciable part of such value; or
- c. The structure in its present or restored condition is unsuitable for residential, or a residentially compatible use; or
- d. The demolition is consistent with, or materially furthers, the criteria and purpose of this section and Section 46-27 of the Zoning Code.

In Newton, Massachusetts a demolition permit may be issued before the expiration of the city's 12-month delay period if the Newton Historical Commission is satisfied that the permit applicant:

- has made a “bona fide, reasonable and unsuccessful effort to locate a purchaser for the building or structure who is willing to preserve, rehabilitate or restore the building or structure; or
- has agreed to accept a demolition permit on specified conditions approved by the commission.

*See, also,* Boston's Demolition Delay Ordinance, which provides for the issuance of a finding of “no feasible alternative to demolition” at the public hearing or any time prior to the expiration of the delay period.

Also note that some jurisdictions insist that the property be secured during the demolition delay period. In Boston, for example, the applicant is required to secure the building during the review period. If the building is lost during this period due to fire or other causes, then the action is treated as an unlawful demolition.

### **How are Demolition Alternatives Explored?**

The historic preservation commission usually sits at the center of the preservation effort. The commission will work with the owner and other interested organizations, public agencies, developers, and individuals who may be instrumental in developing a workable solution. Boston's demolition review ordinance specifically identifies who must be asked to participate in the city's investigation of alternatives. In addition to the owner, the Landmarks Commission must invite the Commissioner of Inspectional Services, the Director of the Boston Redevelopment Authority, and the Chairperson of the Boston Civic Design Commission, and any other individual or entity approved by the applicant. In Boulder, the Landmarks Board may “take any action that it deems necessary and consistent with this chapter to preserve the structure, including, without limitation, consulting with civic groups, public agencies, and interested citizens.”

The range of alternatives that may be pursued may be specifically identified in the ordinance or left to the preservation commission's discretion. In addition to considering the possibility of landmark designation, the moving of a building to an alternative location, and the salvaging of building materials, the Boulder Landmarks Board is empowered to “take any action that it deems necessary . . . to preserve the structure.” In Wilton, Connecticut, the Wilton Historic District Commission or the Connecticut Historical Commission is charged

with “attempting to find a purchaser who will retain or remove such building or who will present some other reasonable alternative to demolition” during the 90-day delay period.

Alternatives that are often considered include the possibility of rehabilitating the building with the assistance of tax incentives or other financial assistance; adapting the building to a new use; removing the building to another site; finding a new owner who is willing and able to preserve the building; incorporating the building into the owner/applicant’s redevelopment plans; and using an alternative site for the owner/applicant’s project.

The submission of specific information pertaining to the property is generally required. An applicant, for example, may be required to submit a structural engineer’s report and information on the cost of stabilizing, repairing, rehabilitating, or re-using the building, plans for the property upon demolition, and the availability of other sites that would meet the applicant’s objectives.

### **What Exceptions May Apply to the Strict Application of Demolition Review Laws?**

Many demolition review laws recognize exceptions upon a showing of economic hardship or where the public safety is at stake. In Gainesville, Florida, for example, the demolition delay period may be waived by the historic preservation board if the applicant can demonstrate “economic hardship.” As is generally the case with the consideration of economic hardship claims under historic preservation ordinances, the burden of proof rests on the applicant to show that retention of the property is not economically viable and the applicant must set forth specific relevant information to make his or her case.

Virtually every demolition review law recognizes an exception on public safety grounds. Gainesville also provides that “any structure that has been substantially burned or damaged by an event not within the landowner’s control with more than 50 percent of the structure affected” may also be demolished, regardless of the building’s significance.

Weston, Massachusetts provides the following exception:

#### **Emergency Demolitions**

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

No provision of this by-law is intended to conflict with or abridge any obligations or rights conferred by G.L.c.143 regarding removal or demolition of dangerous or abandoned structures. In the event of a conflict, the applicable provisions of Chapter 143 shall control.

### **Once the Delay Period Expires, What Other Restrictions May Apply?**

Some jurisdictions also require the submission of documentation of the property and/or the salvage of significant architectural features prior to the issuance of the demolition permit. Boulder, Colorado, expressly authorizes the city manager to require the submission of documentation about the building prior to the issuance of a demolition permit, such as a de-



scription of significant events, information on its occupants, photographs, plans, and maps. In Keene, New Hampshire, the demolition review committee is required to “photographically document the building” prior to demolition. In addition, the salvage of significant architectural features is encouraged.

### **How are Demolition Review Ordinances Enforced?**

Experience has shown that historic buildings will be demolished, without regard to protections against demolition, if the ramifications for non-compliance are minor or insignificant. Accordingly, communities generally seek to establish penalties that will, in fact, discourage violations from occurring. Commonly used penalties, for example, include the imposition of significant fines for each day of the offense, and the preclusion of a permit to develop or occupy the property for specific period of time.

In New Castle County, Delaware, the county attorney is authorized by ordinance “to take immediate action prosecute those responsible” for the demolition of structures determined to have historic significance prior to the issuance of a demolition permit. In addition, building permits for the parcel affected may be withheld for a period of one to three years. Violators of the demolition ordinance in Monroe, Connecticut, may be subject to a fine amounting to the greater of one thousand dollars or the assessed value of the property for each violation. In Highland Park, Illinois, a person who violates the demolition review ordinance may be assessed a fine equal to “90 percent of the fair market value of the cost of the replacement of such regulated structure.”

Newton, Massachusetts, authorizes the imposition of a \$300 fine and two year ban on the issuance of a building permit against anyone who demolishes a historically significant building or structure without first obtaining and fully complying with the provisions of a demolition permit issued in accordance with its demolition review ordinance. However, a waiver on the building permit ban may be obtained in instances where reuse of the property would “substantially benefit the neighborhood and provide compensation for the loss of the historic elements of the property” either through reconstruction of the lost elements or significant enhancement of the remaining elements. As a condition to obtaining the waiver, however, the owner must execute a binding agreement to ensure that the terms agreed to are met.

### **Do Demolition Delay Ordinances Work?**

On December 15, 2003, a Chicago Tribune article written by architectural critics, Blair Kamin and Patrick T. Reardon, made headline news. Kamin and Reardon reported that, in a year’s time, only one of 17 buildings slated for demolition had been preserved under the city’s much acclaimed “demolition delay ordinance.” The critics asserted that the city’s much-touted effort to preserve the buildings coded red or orange on Chicago’s 1996 Historic Resources Survey through the imposition of a 90-day waiting period on demolition permits, wasn’t working. They attributed the loss of the buildings to the city’s failure to make preservation a priority and by not providing sufficient legal protections and financial incentives to get the job done.

In the same article, Kamin and Reardon also reported that the Chicago Landmarks Division had made a contrary assessment. Sixteen out of the 17 orange-rated buildings posed for demolition were not recommended for designation because they had failed to meet the criteria for landmark status and the one building that was saved would have been demolished but for the demolition delay ordinance.

It cannot be denied, as Kamin and Reardon noted, that demolition review laws seem to support an “ad hoc” approach to landmark designation. The buildings being designated are



those threatened by demolition rather than those most deserving. Also, the question of what is preserved often depends upon who cares about the matter, rather than the historical or architectural merit of the building at issue.

Keep in mind, however, that the need for such laws really stems from the fact that it is impossible to designate every building worthy of protection in advance, especially in cities like Chicago, where over 17,000 buildings have been listed on the city's historic survey. Historic preservation commissions are often understaffed, and often cities simply lack the resources or political will to protect all of their historic properties in advance.

Indeed, in Massachusetts, where over 100 demolition review laws have been adopted, demolition review laws are considered overwhelmingly successful. According to the Massachusetts Historical Society, demolition delay enabled the preservation of the Coolidge Corner Theater and a Lustron house in Brookline. Negotiations under Eastham's delay provision enabled a historic house to be moved rather than demolished. Demolition review requirements have also helped to stem the tide of teardowns in residential areas in Newton, and resulted in the rehabilitation of the circa-1710 Foster Emerson House in Reading. For more information, see Christopher Skelly, "Preservation through ByLaws and Ordinances" (Massachusetts Historical Commission 2003).

### **What Else do I Need to Know About Demolition Review Laws?**

By now you should be aware that demolition review laws can vary significantly. In developing your own program, it is important to understand not only how such laws work generally, but also to think about how such a law would work in your own community. Basic considerations include the types and number of buildings likely to require review, who should conduct that review, and how the law would relate to your city or town's historic preservation program. Communities should also seek to —

- **Establish an efficient process.** Provide a quick and efficient means for ensuring that permits on non-significant buildings are not held up unnecessarily. The number of demolition permit applications filed in a given year can sometimes be staggering. The San Antonio Historic Preservation Office, for example, reports that it reviews approximately 900 applications per year.
- **Have resources in place which help applicants and/or permitting officials determine the age and significance of their buildings.** In other words, take the guesswork out of the process.
- **Avoid making the safety net too small.** It is important to ensure that potential landmarks are, indeed, subject to the law's protections. In communities with resources from the recent past, for example, it may be necessary to establish a threshold date that is commensurate with those resources. Communities relying on specific dates rather than the age of the building may find the need to amend the ordinance over time. If demolition review is limited to a category of buildings or list of structures, comprehensive survey work must be done prior to the law's enactment to ensure that all buildings meriting protection are included.
- **Keep the community informed.** Effective notice provisions, such as the posting of a large sign, are critical. Members of the public cannot respond to a demolition threat unless they know about it.
- **Don't make the delay period too short.** Without a meaningful delay period, leverage is lacking. It takes time to find a new buyer or a new site, or to even make an assessment as to whether an adaptive reuse project would work.

- **Give the preservation commission the necessary tools to negotiate a solution.** Preservation solutions are more likely to be forthcoming with some level of financial assistance or tax savings. Enable the commission to draw on the expertise of other city officials when necessary and invite critical players to the table. Demolition review provides an invaluable opportunity to improve communication between a preservation commission and its staff, and other governmental officials and the development community.
- **Enable the property to be designated, if designation is warranted.** Negotiated preservation is no substitute for a strong preservation ordinance.
- **Enforce your ordinance.** Ensure that the penalties effectively deter non-compliance and be prepared to enforce your ordinance if violations occur.

## Where Can I Find Examples of Demolition Delay Ordinances?

Listed below are examples of demolition delay ordinances that have been adopted around the country.

### California

Alameda City Code § 13-21-7.

[http://www.ci.alameda.ca.us/code/Chapter\\_13/21/7.html](http://www.ci.alameda.ca.us/code/Chapter_13/21/7.html)

Davis Building Ordinance § 8.18.020

[http://www.city.davis.ca.us/pb/pdfs/planning/forms/Demolition\\_Permit\\_Requirements.pdf](http://www.city.davis.ca.us/pb/pdfs/planning/forms/Demolition_Permit_Requirements.pdf)

Santa Monica Municipal Code § 9.04.10.16.010 (as amended by Ordinance No. 2131 (July 27, 2004)).

<http://www.codemanage.com/santamonica/>

### Colorado

Boulder Revised Code § 10-13-23.

<http://www3.ci.boulder.co.us/cao/brc/10-13.html#Demolition>

### Connecticut

Monroe Demolition Delay Ordinance

<http://www.cttrust.org/index.cgi/1049>

Wilton Demolition Ordinance

<http://www.cttrust.org/index.cgi/1049>

### Delaware

New Castle County Code § 6.3.020(B).

[http://www.municode.com/resources/online\\_codes.asp](http://www.municode.com/resources/online_codes.asp)

### Florida

Gainesville Code of Ordinances § 6-19.

[http://www.municode.com/resources/online\\_codes.asp](http://www.municode.com/resources/online_codes.asp)

## **Illinois**

Chicago, Illinois. Municipal Code of Chicago § 13-320-230(a)-(c) and § 2-76-215.  
[http://egov.cityofchicago.org/webportal/COCWebPortal/COC\\_EDITORIAL/DemolitionPermits.txt](http://egov.cityofchicago.org/webportal/COCWebPortal/COC_EDITORIAL/DemolitionPermits.txt)

Highland Park Ordinances, Ch. 17 §§ 170.040.  
<http://www.cityhpil.com/govern/ordinances.html>

Lake Forest, Illinois, Building Scale and Environmental Ordinance § 9-87.  
<http://www.cityoflakeforest.com/pdf/cd/bsord.pdf>

## **Louisiana**

Baton Rouge and East Baton Rouge Parish Demolition and Relocation Ordinance  
[http://municode.com/resources/on-line\\_codes.asp](http://municode.com/resources/on-line_codes.asp)

## **Massachusetts**

Boston Zoning Code, Art. 85, §§ 1-8.  
<http://www.cityofboston.gov/bra/pdf/ZoningCode/Article85.pdf>

Cambridge Municipal Code Ch. 2.78, Art. II  
<http://bpc.iserver.net/codes/cbridge/index.htm>

Newton Revised Ordinances, Ch. 22, Art. III, § 22-44.  
[http://www.ci.newton.ma.us/legal/ordinance/chapter\\_22.htm#art1](http://www.ci.newton.ma.us/legal/ordinance/chapter_22.htm#art1)

Town of Weston Bylaws, Art. XXX.  
<http://www.lmstrategies.com/whc/by-law1.htm>

## **Maryland**

Montgomery County Code, Part II § 24A-10  
[http://www.amlegal.com/montgomery\\_county\\_md/](http://www.amlegal.com/montgomery_county_md/)

## **New Hampshire**

Concord Code of Ordinances, Art. 26-9 §§16-9-1 through 16-9-5.  
[http://municode.com/resources/on-line\\_codes.asp](http://municode.com/resources/on-line_codes.asp)

Keene Code of Ordinances, Art. IV, §§ 18-331 through 18-335.  
[http://municode.com/resources/on-line\\_codes.asp](http://municode.com/resources/on-line_codes.asp)

## **Texas**

San Antonio Unified Development Code. Art. 4, § 35-455(b)(2).  
[http://www.sanantonio.gov/dsd/pdf/udc\\_article4\\_04.pdf](http://www.sanantonio.gov/dsd/pdf/udc_article4_04.pdf)

# Landmark Preservation Documentation

## Application For Certificate Of Non-Historic Status

### 11.5.10

The Certificate of Non-Historic Status provides certainty in a demolition process. An owner of a building may apply to have a building officially declared to be non-historic at the local, but not national or state levels. Non-historic status means the building does not meet the criteria for local landmark designation and therefore does not have potential for designation. If the building is found to be non-historic then a Certificate of Non-historic Status is issued. The approved certificate will then allow a demolition application to be processed without further review by Landmark Preservation for a period of five years.

To apply for a Certificate of Non-historic Status, a building must not be pending designation and not be individually designated nor in a historic district.

#### Certificate of Non-Historic Status Application Process

Submit the completed Certificate of Non-historic Status application and application of \$250.00 to Landmark Preservation staff. Staff will review the application within 10 working days. If the property is determined to be non-historic, the Certificate of Non-historic Status will be issued.

If the property is determined to have potential for designation then the building will be posted for 21 calendar days. If the posting period elapses and an application for historic designation is not received by Landmark Preservation staff, the Certificate of Non-historic Status will be issued.

If an application for historic designation, along with the applicable fee, is received before the 21 days elapse, the normal process for designating a property as a landmark for preservation will be followed as described in Chapter 30 of the Denver Revised Municipal Code.

Property Address: \_\_\_\_\_

Legal Description: \_\_\_\_\_

#### Property Owner Information

Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State, Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

E-mail address: \_\_\_\_\_

#### Applicant Information

Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State, Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

E-mail address: \_\_\_\_\_

Signature of Owner: \_\_\_\_\_

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

*Continued*

[www.denvergov.org/preservation](http://www.denvergov.org/preservation)

**Supplemental Material Required**

- ☐ 4" x 6" color photographs showing all four sides of the structure (unclear photos will not be accepted)
- ☐ The Assessor's real property records

**Designation Criteria**

A building may be designated if it meets at least one criterion in two or more of the following three categories

Landmark Designation Criteria (Chapter 30, Section 30-3 - Criteria for designation of structures and districts for preservation.)

A structure or district may be designated for preservation if it meets at least one (1) criterion in two (2) or more of the following three (3) categories:

- 1. History.** To have historical importance, the structure or district shall be 30 or more years old or have extraordinary importance to the historical development of Denver, and shall:
  - a.** Have direct association with the historical development of the city, state, or nation; or,
  - b.** Be the site of a significant historic event, or,
  - c.** Have direct and substantial association with a person or group of persons who had influence on society.
- 2. Architecture.** To have architectural importance, the structure or district shall have design quality and integrity, and shall:
  - a.** Embody distinguishing characteristics of an architectural style or type; or,
  - b.** Be a significant example of the work of a recognized architect or master builder; or,
  - c.** Contain elements of architectural design, engineering, materials, craftsmanship, or artistic merit which represent a significant or influential innovation; or,
  - d.** Portray the environment of a group of people or physical development of an area in an era of history characterized by a distinctive architectural style.
- 3. Geography.** To have geographical importance, the structure or district shall:
  - a.** Have a prominent location or be an established, familiar, and orienting visual feature of the contemporary city, or,
  - b.** Promote understanding and appreciation of the urban environment by means of distinctive physical characteristics or rarity; or,
  - c.** Make a special contribution to Denver's distinctive character

## HISTORIC PRESERVATION DEMOLITION REVIEW PROCESS

