

# **A ZONING ORDINANCE ESTABLISHING A DEMOLITION CONTROL OVERLAY DISTRICT**

Be it ordained by the City Council of the City of Newburyport as follows:

## ***Zoning Ordinance Amendment:***

### **APPENDIX A: ZONING ORDINANCE OF THE CITY OF NEWBURYPORT**

#### **SECTION XXVIII: DEMOLITION CONTROL OVERLAY DISTRICT**

Appendix A to the Code of Ordinances, City of Newburyport, Massachusetts, is hereby amended by adding a new section, to be numbered Section XXVIII, which reads as follows:

#### **SECTION XXVIII: DEMOLITION CONTROL OVERLAY DISTRICT**

- XXVIII-A Determinations.**
- XXVIII-B Purposes.**
- XXVIII-C Establishment.**
- XXVIII-D Definitions.**
- XXVIII-E Procedure and criteria.**
- XXVIII-F Protection of unoccupied historic buildings and structures.**
- XXVIII-G Severability.**

##### **XXVIII-A Determinations.**

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The city hereby determines all of the following:

1. The architectural, cultural, economic, political and social history of the City of Newburyport is one of its most valued and important assets.
2. The city's history is partly embodied in the federal and state Newburyport Historic District, which was listed on the National Register of Historic Places and the State Register of Historic Places on August 2, 1984.
3. Newburyport set a national precedent by using urban renewal funds for historic rehabilitation and preservation. The consequent revitalization of downtown catalyzed a renaissance for the entire city, including its neighborhoods.
4. The preservation, rehabilitation and enhancement of the city's historic character is critical to the preservation of the city's heritage and land values, its recently state-approved Cultural District, and otherwise to benefit the general welfare of its citizens and property owners.
5. Outside of the single block of the Fruit Street Local Historic District, established under Chapter 16 of the Newburyport Code, no city ordinance currently prevents even the complete demolition of an historic building or structure located in Newburyport.

6. On the 250<sup>th</sup> anniversary of the setting off from the Town of Newbury of the “waterside” as the new Town of Newburyport, Mayor Donna D. Holaday has directed the office of planning and development to undertake a comprehensive review and update of the city’s master plan and zoning ordinance.

7. Until such comprehensive review and update is completed, there will continue to be inadequate regulatory protections for historic buildings and structures in the city’s neighborhoods. Meanwhile, land prices are sufficiently strong in Newburyport to make it economically rational to demolish and replace historic buildings and structures.

8. Therefore, the city adopts these land use controls for an area coterminous with that portion of the state and federal Newburyport Historic District outside of downtown. As part of the comprehensive review and update of the city’s master plan and zoning ordinance, it is anticipated that this section shall be reviewed, and may be amended and/or replaced by different controls.

### **XXVIII-B Purposes.**

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Pursuant to Chapter 40A of the Massachusetts General Laws, as well as under the home-rule powers of the city pursuant to Sections 1 and 6 of Article II of the Articles of Amendment of the Constitution of the Commonwealth of Massachusetts, as amended by Article LXXXIX of said Articles of Amendment, a Demolition Control Overlay District (DCOD) and a discretionary DCOD special permit (DCOD-SP) are hereby established due to the unique land use pattern, and architectural, economic and cultural character of the buildings, structures and lots, both individually and as a group, that are located in historic residential neighborhoods of the city. This section is intended to further implementation of the recommendations of the city’s 1991 Historic Preservation Plan, 2001 Master Plan and 2003 Waterfront Strategic Plan, all as amended and supplemented from time to time, and otherwise to promote the health, safety, convenience and general welfare of the inhabitants of the City of Newburyport, by, among other things, protecting the land use pattern, and architectural, cultural, economic, political and social heritage of the city through the regulation of proposed demolition of historic buildings and structures located in residential neighborhoods of the city, which will help to maintain and perpetuate the established skills of local architects, craftspeople and tradespeople, promote energy efficiency, smart growth and affordable housing through adaptive reuse, and enhance opportunities for cultural tourism.

### **XXVIII-C Establishment.**

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The DCOD is hereby established as an overlay zoning district consisting of all such parcels of land depicted on a map entitled “Demolition Control Overlay District (DCOD),” prepared by the office of planning and development, and dated March 13, 2014.

1. **Underlying zoning:** Within the DCOD, all the other provisions of the zoning ordinance, including, but not limited to, those specific to any underlying districts, shall remain in full force and effect except to the extent that the provisions of this section apply, in which case all such provisions shall apply together. To the extent that there is a conflict between other provisions of the zoning ordinance and the provisions of this section, then the provisions of this section shall control.

2. **SPGA:** Consistent with Subsection XXVIII-E, the zoning board of appeals shall serve as the special permit granting authority (SPGA) in administering this section.

3. **No Demolition Delay:** The provisions of Article X of Section 5 of the Newburyport Code (Building Demolition) shall not apply to any demolition subject to this section.

4. **Vested Rights:** The provisions of this section shall not apply to any new construction, demolition or alteration undertaken pursuant to a valid building permit issued by the building commissioner prior to the effective date of this section, nor to any construction, demolition or alteration that is the subject of a determination or decision of the historical commission and that was issued and/or filed with the building commissioner prior to the effective date of this section.

#### **XXVIII-D Definitions.**

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1. **Demolition, to Demolish:** The act, whether partial or complete, of: (a) pulling or tearing down, razing, or otherwise destroying; or (b) moving from one portion of a lot to another, or from one lot to another, regardless of where the receiving lot is located.

2. **Demolition of a Building or Structure:** Demolition of greater than twenty-five percent (25%) of all external walls of a building or structure, measured based upon their total surface area, regardless of the visibility of such walls from a street, way, or public body of water. The mere replacement of siding shall not constitute demolition of an external wall. In accordance with Subsection XXVIII-E.1, demolition of a building or structure shall not include the demolition of a single external wall in order to build an addition.

3. **Historic Building or Structure:** A building or structure that: (a) is listed individually on the State and National Registers of Historic Places, as they may be amended from time to time; (b) was listed as “Contributory” to the Newburyport Historic District as of August 2, 1984; or (c) subsequent to the adoption of this section is added automatically to the list of historic buildings or structures subject to this section pursuant to Subsection XXVIII-E.7. In consultation with the historical commission, the office of planning development shall compile and maintain a list of all historic buildings or structures subject to this section, of copy of which list shall be kept also by the city clerk, and posted on the city’s website.

4. **Historical Commission:** The Newburyport Historical Commission established pursuant to Massachusetts General Laws Chapter 40, Section 8D.

5. **Newburyport Historic District:** The historic district known as the “Newburyport Historic District,” originally listed on the State and National Registers of Historic Places on August 2, 1984, as amended.

6. **Substantial Evidence:** Such evidence as a reasonable mind might accept as adequate to support a conclusion.

7. **Zoning Ordinance:** The Zoning Ordinance of the City of Newburyport, Massachusetts.

## **XXVIII-E Procedure and criteria.**

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Demolition of an historic building or structure within the DCOD shall require the owner of the relevant property to submit an application for a DCOD-SP for the SPGA to review and approve such demolition. Said approval shall be granted by the SPGA prior to the issuance of a building or demolition permit for any such work within the DCOD. The zoning board of appeal shall act as the SPGA for purposes of this section, and it shall review and may deny, approve, or approve with conditions all applications hereunder in accordance with the procedures listed in Subsection X-H.8. The SPGA shall approve a DCOD-SP if the SPGA determines that the proposed demolition as described in the application meets all the requirements of this section and, in addition, the special permit criteria of Subsection X-H.7.

**1. Demolition Generally Prohibited:** The intent of this section is to prevent the demolition of historic buildings and structures located within the DCOD unless the SPGA determines that the application meets all the requirements of this section and, in addition, the special permit criteria of Subsection X-H.7. The section is not intended to regulate the mere alteration of an historic building or structure, even if such alteration involves: (a) the demolition of character-defining exterior architectural features; and/or (b) the demolition of a single external wall in order to build an addition. Historic buildings and structures shall be preserved and repaired, rather than demolished, whenever reasonably feasible, except as otherwise allowed under this subsection.

**2. Documentation Required to Support an Application:** To support a DCOD-SP application, the owner shall provide as part of the application to the SPGA documentation regarding: (i) the historic building or structure proposed to be demolished, including, but not limited to, any data sheets or survey forms for such historic building or structure that have been prepared in connection with the Newburyport Historic District; (ii) historic, if any, and current photographs of the elevations, exterior architectural features, and structural members; (iii) architectural plans, elevations and/or renderings depicting the proposed demolition; and (iv) photographs of the adjacent buildings or structures, or setting. The owner (applicant) shall also be responsible for submitting a copy of the above materials to the Historical Commission no less than twenty-one (21) calendar days prior to the submission of an application to the SPGA. Such submission shall be a prerequisite for the submission of an application to the SPGA under this section. The office of planning and development shall develop a standardized application form for use by the SPGA and applicants, and for the purposes of determining the completeness of all applications in accordance with this section.

**3. Required Findings:** The SPGA may approve a DCOD-SP application only if it makes written findings based upon substantial evidence in the record that such historic building or structure retains no substantial remaining market value or reasonable use, taking into account the cost of rehabilitation to meet the requirements of the State Building Code as it applies to historic buildings or structures, or of other applicable laws. Costs necessitated by any new construction, alteration or demolition conducted in violation of this section shall not be included in the calculation of rehabilitation costs.

**4. Advisory Reports:** To aid the SPGA in its review, the owner shall pay all costs for the SPGA to engage a properly licensed architect or engineer experienced in the restoration of historic structures, or a recognized building preservation specialist, in the discretion of the SPGA, deemed necessary in the opinion of the SPGA to investigate and prepare a written report upon the

existing condition and feasibility of preservation of the historic building or structure proposed for demolition (Conditions Report). The SPGA shall engage such specialist no later than seven (7) calendar days after its having received a complete application. Said Conditions Report shall include an estimate of the reasonable cost to rehabilitate the relevant building or structure to meet the requirements of the State Building Code as it applies to historic buildings or structures. No later than twenty (20) calendar days after the SPGA has received a complete application, the Historical Commission may submit a written report (Historical Report) regarding: (a) the significance of the historic building or structure proposed for demolition; and (b) the relative importance of such historic building or structure in the context of the block where such building or structure is located. Before acting on a DCOD-SP application, the SPGA shall consider both the Conditions Report and any Historical Report submitted by the Historical Commission. In addition, the owner shall pay all costs for the SPGA to engage a properly licensed real estate appraiser deemed necessary in the opinion of the SPGA to investigate and prepare a written report upon the existing market value of the relevant historic building or structure (Appraisal Report), for the purposes of comparing this value against the cost estimate contained within the Conditions Report. The portions of this section (and its regulations, if any) requiring the payment of consultant fees are promulgated under the concurrent authority of Massachusetts General Laws Chapter 44, Section 53G.

**5. Documentation Before Demolition:** When the SPGA approves or approves with conditions a DCOD-SP, the SPGA may require documentation of the historic building or structure to be demolished, including, but not limited to, photographs of elevations and details of specific exterior architectural features. If so required, such documentation shall be completed and submitted to the Historical Commission before demolition may commence.

**6. Replacement Must Be Approved:** The SPGA shall not approve a DCOD-SP application without the SPGA's having earlier granted, or concurrently granting, all relief required, if any, for the replacement building or structure under the otherwise applicable sections of this zoning ordinance. In addition to the owner's submitting plans, specifications, and such other materials as are normally required by the SPGA to enable its review of new construction within the IDOD, the owner shall also submit a timetable and such guarantees and assurances for the completion of the replacement building or structure as the SPGA may reasonably require.

**7. Change in Historic Status:**

**a. Removal of Historic Status:** The owner of any historic building or structure that was listed as "Contributory" to the Newburyport Historic District as of August 2, 1984, may petition the Historical Commission for removal of such building or structure from the list of historic buildings or structures subject to this section. The Historical Commission may approve any such petition if it determines that: (i) the qualities that caused the building or structure to be originally listed have been lost or destroyed, and such loss or destruction has not occurred in violation of this section; (ii) additional information shows that the building or structure does not meet the National Register criteria for evaluation; or (iii) there was an error in professional judgment as to whether the building or structure originally met the criteria for evaluation.

**b. Addition of Historic Status:** Subsequent to the adoption of this section, a building or structure located within the DCOD shall be added automatically to the list of historic buildings or structures subject to this section upon such property's being added to

the National Register in accordance with the National Historic Preservation Act of 1966, as amended, either individually or as “Contributory” to an historic district.

**c. Notice of Change in Historic Status:** No later than seven (7) calendar days after the office of planning and development or the historical commission receives written notice of the removal or addition of any building or structure from the list of historic buildings or structures subject to this section, the office of planning and development shall provide written notice of such change to all of the following: (i) the owner of the relevant building or structure; (ii) the historical commission, (iii) the building commissioner, (iv) the zoning board of appeal, and (v) the planning board. The office of planning and development shall keep on file a copy of the relevant documentation, which shall remain available for public inspection.

**8. Additional Penalties for Unauthorized Demolition:** In addition to any other penalties under applicable law, without prior written approval by the SPGA, no building permit shall be issued for a period of three (3) years with respect to any premises at which an historic building or structure has been intentionally demolished without a DCOD-SP having been first obtained in compliance with this section. Such three- (3-) year period shall commence after the date upon which such demolition has been completed or suspended, whether voluntarily or by legal compulsion. For purposes of this subsection, “premises” shall mean both (a) the lot upon which the demolished historic building, structure or architectural feature was located, and (b) all abutting lots under common ownership or control of such lot at the time of demolition.

#### **XXVIII-F Protection of unoccupied historic buildings and structures.**

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For the limited purpose of preventing the acceleration of decay of unoccupied historic buildings and structures within the DCOD, the owner of any such building or structure shall ensure that it is reasonably secure from significant damage due to weather, fire, trespass, or vandalism, including by: securing all doors, windows and other exterior openings; employing effective waterproofing of exterior walls, roofs (including chimneys), and foundations; and protecting against fire or water damage. The building commissioner, upon his or her own initiative, in response to a filed written request for enforcement of this section, or at the request of the SPGA, shall enforce this subsection consistent with Section X.

#### **XXVIII-G Severability.**

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The provisions of this section are severable. If any of its provisions, sections, subsections, paragraphs, sentences, or clauses, or the application thereof to any person, entity, establishment, or circumstances shall be held to be invalid or unconstitutional by any court of competent jurisdiction, then the remainder of this section shall continue to be in full force and effect.