

City of Salem

In the year Two Thousand Twenty-one

An Ordinance to amend an ordinance relative to demolition delay.

Be it ordained by the City Council of the City of Salem, as follows:

Section I. The Salem Code of Ordinances is hereby amended by deleting in its entirety Section 2-1572 of Chapter 2 entitled *Review process for granting demolition permits for historic buildings or structures* and inserting the following new Division within Article II. *Maintenance of Structures and Property* of Chapter 12 Building, Electricity and Plumbing Regulations:

“Division 4. Demolition Review for Historically Significant Buildings

Sec. 12-76. INTENT AND PURPOSE

This Demolition Delay Ordinance is intended to establish a uniform process for preserving and protecting significant buildings and structures in the City that constitute or reflect distinctive features of the architectural, cultural, political, or social history of the City; to encourage owners of these buildings to actively seek out alternatives that preserve, rehabilitate, relocate or restore these buildings rather than demolish them; and to provide a reasonable time period for public discussion before a historic building is lost. The ordinance further seeks to document those buildings that cannot be saved through photographic, video and/or written materials and to preserve those materials as part of the public record.

The intent of this ordinance is not to permanently prevent demolition, but rather to provide an opportunity to develop preservation solutions for properties threatened with demolition.

Sec. 12-77. DEFINITIONS

“APPLICANT” - Any person or entity who files an application for a demolition permit. If the applicant is not the owner of the premises upon which the building is situated, the owner must indicate on or with the application his/her assent to the filing of the application.

“APPLICATION” - An application for the demolition of a building.

“BUILDING” – Any combination of materials forming a shelter for persons, animals, or property.

“BUILDING COMMISSIONER” - The person occupying the office of Director of Inspectional Services or otherwise authorized to issue demolition permits.

“BUSINESS DAY” – A day which is not a legal municipal holiday, Saturday or Sunday.

“COMMISSION” – The Salem Historical Commission or its designee.

“COMMISSION STAFF” – The person regularly providing staff services for the Commission whom the Commission has designated Commission Staff for the purposes of this ordinance.

“DEMOLITION” - Any act of pulling down, destroying, removing, dismantling or razing of an entire building or the removal of 50% or more of the existing structure of the building with the intent of completing the same.

“DEMOLITION PERMIT” - The building permit issued by the Building Commissioner for a demolition of a building, excluding a building permit issued solely for the demolition of the interior of a building.

“LOCAL HISTORIC DISTRICT” – Derby Street Local Historic District, Lafayette Street Local Historic District, McIntire Local Historic District, Washington Square Local Historic District or any other historic district which from time to time may be established under M.G.L. Ch. 40C.

“PREFERABLY PRESERVED” - Any significant building that the Commission determines, following a public hearing, that it is in the public interest to be preserved rather than demolished. A preferably preserved building is subject to the twelve month demolition delay period of this ordinance. The twelve month delay begins with the opening of the public hearing.

“SIGNIFICANT BUILDING” – Any building within the city that is in whole or in part fifty years or more old and which has been determined by the Commission or its designee to be in the public interest to be significant based on any of the following criteria:

- The Building is listed in, or is within an area listed in, the National Register of Historic Places; or
- The Building has been found eligible for the National Register of Historic Places; or
- The Building is importantly associated with one or more historic persons or events, or with the broad architectural, cultural, political, economic or social history of the City of the Commonwealth; or
- The Building is historically or architecturally important (in terms of period, style, method of building construction or association with a recognized architect or builder) either by itself or as one of a series of like buildings that document an historical period.

Sec. 12-78. PROCEDURE AND ADMINISTRATION

a) Applicability. No demolition permit for a building that is in whole or in part 50 years or more old shall be issued without following the provisions of this ordinance. If a building is of undetermined age, it shall be assumed that the building is over 50 years old for the purposes of this ordinance.

For a residential garage or storage shed, but excluding carriage houses as defined in the zoning ordinance, section II.B, the Building Commissioner shall forward an application for demolition of such a structure to the Commission. Within 21 days of the receipt of such a request, the Commission shall make a determination of the historical or architectural significance of the garage or shed. If the structure is deemed significant, the application shall be forwarded to the full Commission for review as outlined in

this section. If the structure is deemed to possess no historic or architectural significance or if no action is taken within the 21-day period, a demolition permit shall be issued.

b) Administration. The Commission may adopt such rules and regulations as are necessary to administer the terms of this ordinance; adopt a schedule of reasonable fees to cover the costs associated with the administration of this ordinance; and may delegate authority to make initial determinations of significance to one or more members of the Commission or to a municipal employee.

Sec. 12-79. APPLICATION

An applicant proposing to demolish a building subject to this ordinance shall file an application with the Historical Commission. The application shall be made or co-signed by the owner of record at the time of Application and shall contain or be accompanied by the following information:

- The address of the building to be demolished.
- The owner's name, address, and telephone number.
- Existing conditions photographs of all street façade elevations of the building.
- A description of the building to be demolished.
- The reason for requesting a demolition permit.
- If the application for demolition is based on a claim of structural deficiency, the applicant may be required by the Commission to submit a structural report on the structure's soundness that is prepared by a licensed professional structural engineer.
- A brief description of the proposed reuse, reconstruction, or replacement.
- Site plan and/or map of property.

Sec. 12-80. PUBLIC HEARING

Within thirty (30) days of the receipt of the Application by the Commission, the Commission shall hold a public hearing. Public notice of the time, place and purpose of the hearing shall be posted in a conspicuous place in City Hall for a period of not less than 14 days prior to the date of said hearing and the Applicant and the Building Commissioner shall be notified in writing of the meeting time and place. The notice shall also be placed on the City's online meeting calendar 14 days prior to the hearing. A copy of said notice shall be mailed to the Applicant and to all abutters and abutters to abutters, including those across the street of the lot on which the building is located.

During the public hearing, the Commission shall decide whether the building is historically significant. If agreed to in writing by the Applicant, the determination of the Commission may be postponed.

Upon determination by the Commission that the building is not significant, the Commission shall so notify the Building Commissioner and the applicant in writing. The Building Commissioner may then issue the demolition permit.

Upon determination by the Commission that the building is significant, the Commission shall determine whether the building should be preferably preserved.

If the Commission determines that the building is not preferably preserved, the Commission shall so notify the Building Commissioner and Applicant in writing. The Building Commissioner may then issue the demolition permit.

If the Commission determines that the building is preferably preserved, the Commission shall notify the Building Commissioner and Applicant in writing. No demolition permit may then be issued for a period of 12 months from the date of the public hearing unless otherwise agreed to by the Commission. If the Commission does not so notify the Building Commissioner in writing within 21 days of the public hearing, the Building Commissioner may issue the demolition permit.

Upon determination by the Commission that any building which is the subject of an application is a preferably preserved building, no building permit for new construction or alterations on the premises shall be issued for a period of twelve months from the date of the public hearing unless otherwise agreed to by the Commission.

The Building Commissioner may issue a demolition permit or a building permit for a preferably preserved building within the 12 months if the Commission notifies the Building Commissioner in writing that the Commission finds that the intent and purpose of this ordinance is served even with the issuance of the demolition permit or the building permit. This may include that the Commission is satisfied that the applicant for the demolition permit has made a bona fide, reasonable and unsuccessful effort to identify alternative plans for demolition, or the applicant has agreed to accept a demolition permit on specified conditions approved by the Commission. Such conditions may include the review and approval by the Commission of a revised set of submitted development plans.

The owner shall be responsible for properly securing the building, if vacant, to the satisfaction of the Building Commissioner. Should the owner fail to secure the building, and as a result, such building is lost through fire or other cause, this shall be considered voluntary demolition for the purposes of this ordinance.

Following the twelve month delay period, the Building Commissioner may issue the demolition permit.

Sec. 12-81. EXPIRATION TIMES FOR DEMOLITION AUTHORIZED BY COMMISSION

Where the Commission has determined that the demolition of a building *would not* be detrimental to the historical or architectural heritage or resources of Salem, or where 21 days have passed after the date of the Commission's public hearing on a demolition application without Commission notification of its determination to the Building Commissioner, thereby in either case permitting the Building Commission to issue a demolition permit in accordance with procedures set forth in these regulations, any request to extend such demolition permit or a renewed permit application shall be reviewed *de novo* if the demolition previously authorized is not substantially concluded within one year of the issuance of the demolition permit, or, if no permit has been issued, within one year of the Commission's initial determination

Where the Commission has determined that the demolition of a building *would* be detrimental to the historical or architectural heritage or resources of Salem, hereby preventing the Building Commissioner from issuing a demolition permit in accordance with the procedures set forth in these regulations, such determination shall be reviewed *de novo* if:

- a) A demolition permit application is not submitted to the Building Commissioner within six months of the expiration of the twelve month delay period, or

- b) Application for demolition is so made within six months of the expiration of the twelve month delay period, but actual demolition is not substantially concluded within six months of the issuance of the demolition permit.

Transfer of Ownership – The time limits set forth above apply only to the original owner requesting a demolition permit. Any subsequent owner of the property shall be required to apply *de novo* pursuant to the procedures set forth above and should demolition be delayed, be subject to the time periods set forth herein from the date such new demolition delay is imposed, unless otherwise determined by the Commission.

In implementation of the above, the Commission shall include the applicable expiration date for authorization of the demolition in any notification to the Building Commissioner with a copy to the demolition permit applicant, provided that the Commission Chair may, for cause, grant in writing one or more extensions of time of such authorization for periods not exceeding six months each.

Sec. 12-82. EMERGENCY DEMOLITION

If after an inspection, the Building Commissioner finds that a building subject to this ordinance is found to pose an immediate threat to public health or safety due to its deteriorated condition and that there is no reasonable alternative to the immediate demolition of the building or structure, nothing in this Ordinance shall prevent the Building Commissioner from issuing, pursuant to statutory authority, an emergency demolition permit to the owner of the building or structure. The Building Commissioner shall then prepare a report explaining the condition of the building and the basis for his decision which shall be immediately forwarded to the Commission.

Sec. 12-83. ENFORCEMENT AND REMEDIES

The Commission and/or the Building Commissioner are each specifically authorized to institute any and all actions and proceedings, in law or equity, as they may deem necessary and appropriate to obtain compliance with the requirements of this ordinance or to prevent a threatened violation thereof.

Any owner of a building subject to this ordinance that demolishes the building without first obtaining a demolition permit in accordance with the provisions of this ordinance shall be subject to a fine of not more than Three Hundred Dollars. Each day the violation exists shall constitute a separate offense until a faithful recreation of the demolished building is completed or unless otherwise agreed to by the Commission.

Sec. 12-84. HISTORIC DISTRICT ACT

Following a determination that the building is significant and preferably preserved, the Commission may recommend to the City Council that the building be protected through the provisions of Massachusetts General Law, Chapter 40C, the Historic Districts Act. The steps required under M.G.L. Chapter 40C shall be followed prior to the establishment of a local historic district. Nothing in this ordinance shall be deemed to conflict with the provisions of the Historic District Act, Massachusetts General Laws Chapter 40C. If any of the provisions of this ordinance do so conflict, that act shall prevail.

Sec. 12-85. SEVERABILITY

In case any section, paragraph or part of this ordinance be for any reason declared invalid or unconstitutional by any court, every other section, paragraph, and part shall continue in full force and effect.”