Chapter 22

PLANNING AND DEVELOPMENT*

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ARTICLE I. IN GENERAL

Sec. 22-1. Department established; duties.

(a) A department of planning and development is hereby established in the city to:

(1) plan zoning, urban renewal, land use and related municipal functions in the field of city planning;

(2) coordinate efforts directed toward the future development of the city;

(3) plan its continued improvement consistent with its physical, social and economic conditions and resources; and

(4) exercise the powers, duties and functions of housing and redevelopment authorities under General Laws, chapter 121B as provided in chapter 705 of the Acts of 1975.

(b) The department shall include the director, the planning and development board established by section 22-3, the historical commission, the conservation commission, the urban design and beautification commission and such other boards, committees, commissions, agencies or departments as may from time to time be authorized under state or federal law or by ordinance to undertake community development activities. (Rev. Ords. 1973, § 15-2; Ord. No. 102, 12-15-75)

Sec. 22-2. Director; powers and duties.

(a) There shall be a director of planning and development who shall be an executive officer of the city and all provisions of law for the appointment and removal of department heads shall be applicable to the position.

(b) The director shall:

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*__Cross references__—Administration, Ch. 2; buildings, Ch. 5; fire protection and prevention, Ch. 10; health and human services, Ch. 12; parks and recreation commission, Ch. 21; public works department, Ch. 25; streets and sidewalks, Ch. 26; zoning, Ch. 30

State law reference—Planning generally, G.L. c. 41, § 81A et seq.

(1) exercise supervision over and direct the personnel and activities of the department;

(2) act as technical advisor to the mayor, board of aldermen, and committees thereof, and other city agencies or officials on municipal planning and development matters;

(3) advise and assist the commissioner of inspectional services on zoning and permitting matters;

(4) participate in the preparation and revision of the capital improvement program provided for in section 5-3 of the city charter;

(5) assist each board, commission or other entity encompassed by the department in the exercise of its responsibilities and in connection therewith provide necessary staff assistance.

(6) operate and direct the building and land development service counter established under section 22-5;

(7) perform such other duties in the field of municipal planning and development as the board of aldermen or the mayor may direct.

(c) In addition, the director shall exercise the following powers and duties subject to the review and approval of the planning and development board, acting as a planning and development board:

(1) initiate and conduct studies of the resources and needs of the city and its relationship to the metropolitan area;

(2) formulate and recommend to the mayor a comprehensive plan and modifications thereof;

(3) publish and distribute plans or reports as the mayor or board of alderman may authorize in connection with planning and development activities and policies;

(4) prepare and submit as part of the department budget such budgetary requests as may be necessary to support each board, commission or other entity encompassed by the department;

(5) ex officio, act as the single member community development authority established under chapter 705 of the Acts of 1975, as amended. (Rev. Ords. 1973, §§ 15-3 and 15-5; Ord. No. 102, 12-15-75; Ord. No. X-62, 11-17-03)

State law references—Acts of 1975, chapter 705; Acts of 1982, chapter 479; Acts of 1989, chapter 499; and Acts of 2007, chapter 73.

Sec. 22-3. Planning and development board; establishment, powers and duties.

(a) There is hereby established in accordance with chapter 705 of the Acts of 1975, as amended, a planning and development board of five (5) members appointed for five (5) year overlapping terms such that the term of one member expires on February first of each year. In addition to these five members, another member shall be appointed by the state Secretary of Housing and Economic Development for a three (3) year term; and another member shall be the director of planning and development, ex officio. The planning and development board shall be consulted by the mayor and board of aldermen for its recommendations on the comprehensive plan, modification or implementation thereof. Its recommendations to the board of aldermen shall be in writing within a time specified by the board of aldermen. There shall also be appointed not more than five (5) alternate members. In the event that any member, except the state appointee or the director, is absent or unable to act for any reason, the chair shall designate an alternate member to act.

(b) The director shall submit to the planning and development board, for its review, plans, proposals or agreements for the acquisition of real property and/or the selection of developers thereof.

(c) The planning and development board shall exercise responsibility for the formulation and submission of recommendations for the annual community development plan authorized by federal law, including the conduct of public hearings thereon.

(d) The planning and development board shall exercise authority of review and approval over acts of the director as provided in section 22-2(c).

(e) All boards, commissions, committees and other agencies incorporated in the department and assigned advisory responsibility to the planning and development board, shall be granted a right to appear three (3) times per year before the planning and development board to discuss matters within their purview. (Rev. Ords. 1973, § 15-1; Ord. No. 102, 12-15-75)

Cross reference—Rules governing appointments to and service on commissions and boards, § 2-8

State law references—Acts of 1975, chapter 705; Acts of 1982, chapter 479; Acts of 1989, chapter 499; and Acts of 2007, chapter 73.

Sec. 22-4. **Employment of outside consultants.**

(a) The board of aldermen, sitting as the local special permit granting authority, the planning and development board and the zoning board of appeals are authorized to establish reasonable fees to provide said boards with funds to pay for the hiring of outside consultants as needed to carry out the boards' duties and responsibilities in reviewing applications before them, as authorized by G.L. c. 44, s. 53G. The fees to be paid by applicants for particular permits and approvals before said boards shall be set out in each board's rules and regulations, pursuant to G.L. c. 40A, ss. 9 and 12, G.L. c. 40B, s. 21 and G.L. c. 41, s. 81Q. Such fees shall be reasonable and reflect the actual cost for the services of consultants and in the case of the board of aldermen, sitting as the local special permit granting authority, shall be set by the Director of the department of planning and development, as the designee of the aforesaid board of aldermen.

(b) Such fees shall be deposited in a special account established by the city treasurer in the city treasury and shall be kept separate and apart from the general funds of the city. A separate bank account need not be established for the fees paid by an applicant for each project. All fees collected may be deposited in a common bank account, provided that a separate accounting of activities and interest is made for each project.

(c) The special account, including accrued interest, if any, shall be expended at the direction of the authorized board or authority without further appropriation; provided, however, that such funds are to be expended by it solely for the purpose of hiring outside consultants to assist the boards in carrying out their responsibilities with respect to that particular project under the law. The fees may not be used to pay for the services of city employees. Any excess amount in the account attributable to a specific project, including any accrued interest, shall be repaid to the applicant or to the applicant's successor in interest upon satisfactory proof of the filing of the final action and decision of the board or authority with the city clerk, and a final report of said account shall be made to the applicant or to the applicant's successor in interest.

(d) Each board or its designee which has established fees for hiring consultants must choose consultants subject to the board's own rules and regulations, the city charter, ordinances and the general laws. The board's rules and regulations shall provide for minimum qualifications of any consultant to be hired, including either an educational degree in or related to the field at issue, or three (3) or more years of practice in the field at issue or a related field.

(e) The board's rules and regulations must also provide for an administrative appeal of the selected consultant by the applicant paying the fee. In the case of the planning and development board and the zoning board of appeals, said appeal shall be to the board of aldermen, sitting as the city legislative body. In the case of the board of aldermen, the rules and regulations shall provide for either reconsideration before the board of aldermen, or direct judicial review, if otherwise permitted by law. Any such appeal is limited by law to claims that the selected consultant has a conflict of interest or does not possess the minimum required qualifications.

(f) The required time limits for action upon an application by any of the aforesaid municipal boards or authorities shall be extended by the duration of the administrative appeal. A decision upon said appeal shall be made by the board of aldermen or its designee within thirty (30) days of the filing of the appeal or as soon as practicable. Such an administrative appeal shall not preclude further judicial review, if otherwise permitted by law, on the grounds provided for in subsection (e).

(g) The provisions of this section shall be deemed to be severable. If any of its provisions shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
(Rev. Ords. 1995, Ord. No.W-13, 10-2-00)

Sec. 22-5. Building and land development service counter.

There shall be a building and land development service counter, which shall provide assistance to members of the public concerning the various permits and approvals issued by the inspectional services department, zoning board of appeals, conservation commission, historical commission, and historic district commissions. The land development service counter shall receive applications submitted for such permits and approvals, and promptly forward each such application to the appropriate department, board or commission. (Ord. No. X-62, 11-17-03)

Secs. 22-6—22-18. Reserved.

ARTICLE II. CONSERVATION COMMISSION

Sec. 22-19. Purpose, powers and duties.

There shall be a conservation commission of seven (7) regular members for the protection, promotion and development of the natural resources of the city. The conservation commission may exercise, but not be limited to, any of the following powers and duties:

(1) conduct researches into the city's natural resources and seek to coordinate the activities of unofficial bodies organized for similar purposes and may, to the extent of funds appropriated there for, advertise, prepare, print and distribute material which it deems necessary for its work;

(2) prepare and amend a conservation and passive outdoor recreation plan which shall be, as far as possible, consistent with the comprehensive plan and with any regional plans relating to the area. Such plan shall show the nature and ownership of any open area and whether and how its use is restricted;

(3) acquire in the name of the city, subject to the approval of the mayor and board of aldermen, by gift, purchase, grant, bequest, devise, lease or otherwise the fee or lesser interest in real property, as may be necessary to properly maintain, improve, protect or limit the future use of open spaces within the city, and may manage and control the same;

(4) adopt rules and regulations governing the use of land and waters under its control and prescribe penalties for any violation thereof. (Ord. No. 102, 12-15-75; Ord. Z-42, 02-17-09)

Section 22-20. Composition, appointment of members, alternate members, terms

(a) The seven (7) regular members shall be appointed by the mayor with the approval of the board of aldermen for terms of three years.

(b) There shall also be four (4) alternate members appointed by the mayor with approval by the board of aldermen. In order to stagger the expiration of their terms, the initial terms of the alternate members shall be as follows: one member shall be appointed for one (1) year; two members shall be appointed for two (2) years; one member shall be appointed for three (3) years. All alternate member appointments subsequent to the initial appointments shall be for a term of three (3) years.

(c) Both regular and alternate members shall continue to serve after expiration of their terms until their successors shall be duly appointed and qualified. Vacancies in the offices of either regular or alternate members shall be filled in the same manner as the original appointment for any unexpired term.

(d) The regular members shall elect one member as chair. In the event that a regular member is absent or unable to act for any reason, the chair shall designate an alternate member to act. (Ord. Z-42, 02-17-09)

Sec. 22-21. Relationship with planning and development board.

The conservation commission shall function as an advisory body to the planning and development board on all matters affecting the natural resources of the city for the purpose of coordinating a conservation and passive outdoor recreation plan with the comprehensive plan. Nothing contained herein shall be construed to limit the powers of a conservation commission granted under Chapter 40 of the General Laws. (Ord. No. 102, 12-15-75)

Sec. 22-22. Floodplain/watershed protection provisions.

(a) There is hereby established a Floodplain/Watershed Protection District, the purpose of which is to:

(1) assure the continuation of the natural flow patterns of watercourses within the city;

(2) provide adequate and safe floodwater storage capacity in order to protect persons and property against increase in the hazards of flood inundation;

(3) protect and preserve the water table and groundwater recharge areas within the city; and

(4) allow the city to maintain compliance with the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, and the regulations promulgated pursuant thereto.

The Floodplain District is established as an overlay district to all other districts. All development in the district, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the following:

Section of the Massachusetts State Building Code which addresses floodplain and coastal high hazard areas (currently 780 CMR 120.g, “Flood Resistant Construction and Construction in Coastal Dunes”);

Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);

Inland Wetland Restriction, DEP (currently 310 CMR 13.00);

Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP currently 310 CMR 15, Title 5);

Any variances from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

The areas of the city included in this district are set forth in subsection (g) of this section.

(b) The provisions of this section shall take precedence over any conflicting city ordinance. Any uses in the Floodplain/Watershed Protection District, whether permitted by right or by special permit or variance, shall be subject to the following:

(1) Except as provided in subsections (b)(2) and (e) of this section, no building or other structure shall be erected, constructed, altered, enlarged or otherwise created for any residence or other purpose; no dumping of trash, rubbish, garbage or junk or other waste materials shall be permitted; no filling, dumping, excavation, removal or transfer of gravel, sand, loam or other materials which will restrict floodwater flow or reduce floodwater storage capacity shall be permitted.

(2) Subsection (b)(1) notwithstanding, after a public hearing the conservation commission may issue an order of conditions for the following uses in the Floodplain/Watershed Protection District:

a) Any building or structure for which compensatory storage is provided and for which certification is submitted by a registered professional engineer demonstrating that such building or structure shall not result in any increase in flood levels during the 100-year flood.

Compensatory storage shall mean a volume not previous used for flood storage, and shall be incrementally equal to the theoretical volume of flood water at each elevation which would be displaced by the proposed project. Such compensatory volume shall have an unrestricted hydraulic connection to the same waterway or wetland being affected by the proposed project. Further, with respect to waterways, such compensatory volume shall be provided within the same reach of the waterway.

b) Construction, operation, and maintenance of dams and other water-control devices including temporary alteration of the water level for emergency purposes.

c) Bridges and like structures permitting passage between lands of the same owner, except that such bridges and structures shall be constructed, maintained, and used at the expense and risk of such owner, and shall be designed and constructed so as to minimize the effect of such structures on water storage and water flow.

d) Parking lots, driveways, and walkways ancillary to permitted or existing uses within the district.

e) Recreation, including golf courses, municipal, county or state parks (but not an amusement park), boating, fishing, and any other noncommercial open-air recreation uses and structures ancillary to these uses.

f) Ancillary structures for farms, stock farms, truck gardens, nurseries, orchards, and tree farms.

(3) No order of conditions shall be issued under paragraphs (2)(b)-(2)(f) of this subsection unless it is demonstrated to the satisfaction of the conservation commission that the cumulative effect of the proposed project, when combined with all other existing and anticipated development, will not increase the water surface elevation of the 100-year flood at any point within the city.

(c) The construction, reconstruction or enlargement of any building or structure in the Floodplain/Watershed Protection District shall also be subject to the following provisions:

(1) All construction of residential structures shall have the lowest floor (including the basement) at or above the pertinent flood elevation established within subsection (g) hereof, and all construction of non-residential structures shall have either the lowest floor (including the basement) at or above the pertinent flood elevation of said subsection (g), or along the attendant utility and sanitary facilities shall be floodproofed, i.e. designed so that below the established flood elevation the structure is watertight with walls substantially

impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(2) Where watertight floodproofing of a structure is permitted, a registered professional engineer or architect shall certify that the methods used are adequate to withstand the flood depths, pressures and velocities, impact and uplift forces and other factors associated with the pertinent flood levels.

(d) In its discretion, the conservation commission may accept a single notice of intent, conduct a single hearing, and issue a single order of conditions pursuant to its jurisdiction under this section and its jurisdiction under the Wetlands Protection Act, G.L. c. 131, sec. 40; provided, however, that in the event that the provisions of this section are more restrictive than those of the said Wetlands Protection Act and the regulations promulgated pursuant thereto, the provisions of this section shall control.

(e) Nothing in this section shall be deemed to prohibit the reconstruction (but not enlargement) of any building or structure destroyed by fire or natural disaster; provided, however, that such a reconstruction shall be pursuant to an order of conditions issued by the conservation commission.

(f) The boundaries of the Floodplain/Watershed Protection District are intended to correspond with the maximum lateral extent of floodwater which will result from the one-percent chance flood (100-year flood). The district includes all special flood hazard areas within the City of Newton designated as Zone A and AE on the Middlesex County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Middlesex County FIRM that are wholly or partially within the City of Newton are panel numbers 25017C0532E, 25017C0534E, 25017C0551E, 25017C0552E, 25017C0553E, 25017C0554E, 25017C0556E, 25017C0558E, 25017C0561E, 25017C0562E. 25017C0566E dated June 4, 2010. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Middlesex County Flood Insurance Study (FIS) report dated September 28, 2007. The FIRM and FIS report are incorporated herein by reference and are on file with the city clerk, planning board, inspectional services, conservation commission and engineering. Said boundaries have been determined by reference to data prepared for the city pursuant to the National Flood Insurance Program, as currently administered by the Federal Emergency Management Agency. Said boundaries, so determined, shall be presumed accurate.

(g) The following areas are hereby designated as included in the Floodplain/Watershed Protection District and are subject to the provisions of this section and regulations promulgated by the conservation commission pursuant thereto:

1. Floodplain/Watershed Areas*

Floodplain ..... Elevation (feet)*[2]

Along Charles River from:

(1) Newton/West Roxbury line to Kendrick Street bridge.....96.7—96.5

(2) Nahanton Street bridge to Silk Mill Dam.....95.6—95.5

(3) Silk Mill Dam (foot) to Metropolitan Circular Dam (crest).....80.5—80.5

(4) Metropolitan Circular Dam (foot) to Route 9 bridge .....72.5—72.5

(5) Route 9 bridge to Route 128 bridge .....72.5—71.7

(6) Route 128 bridge to Walnut Street bridge.....71.7—70.5

(7) Wales Street bridge to Cordingly Dam and Falls (crest).....70.5—69.2

(8) Cordingly Dam and Falls (foot of falls) to Newton Lower Falls Dam (crest) .....55.5—52.5

(9) Newton Lower Falls Dam (foot) to Washington Street Route 16 bridge.....49.0—49.0

(10) Washington Street Route 16 bridge to M.D.C. RR bridge.....49.0—47.5

(11) M.D.C. bridge to Concord St bridge .....47.5—45.5

(12) Concord St bridge to Norumbega bridge-Route 30.....45.5—44.5

(13) Norumbega bridge-Route 30 to Newton/Waltham boundary (west).....44.5—44.5

(14) Newton/Waltham boundary (east) to Bridge Street bridge (west) .....27.5—24.5

(15) Bridge Street bridge (east) to Watertown Dam (crest).....23.5—17.5

(16) Watertown Dam (foot) to Newton/Boston boundary. .....10.5—10.5

Along Paul Brook from:

(17) 150 feet south of Route 9 to Hagen Road .....127.5—125.9

(18) Hagen Road to Haynes Road (north side of culvert).....125.9—125.5

(19) Haynes Road (south side of culvert) to Olde Field Road.....124.5—122.6

(20) Olde Field Road to Great Meadow Road .....122.6—122.0

(21) Great Meadow Road to Parker Street (east side of culvert) .....122.0—121.3

(22) Parker Street (west side of culvert) to Mildred Road.....121.0—120.5

(23) Mildred Road to the confluence of South Meadow Brook.....120.5—120.3

Along South Meadow Brook from:

(24) The confluence of Paul Brook to Dedham Street (east side of culvert) .....120.3—119.5

(25) Dedham Street (west side of culvert) to Upland Ave.....119.3—118.8

(26) Upland Ave to Winchester Street .....118.8—118.5

(27) Winchester Street to Needham Street (east side of culvert to trash tack).....118.5—117.5

(28) Needham Street (west side of culvert) to Tower Road Culvert .....116.5—115.5

Along Cheese Cake Brook from:

(29) Watertown Street culvert to Dunstan Street (west side of culvert) .....46.7—45.5

(30) Dunstan Street (east side of culvert) to Cross Street (west side of culvert) .....45.0—44.5

(31) Cross Street (east side of culvert) to Parsons Street (west side of culvert) .....44.0—43.8

(32) Parsons Street (east side of culvert) to Eddy Street.....43.5—42.5

*The data in this table are to be used in determining the location of the floodplain and represent information obtained from FEMA's Flood Insurance Study, Preliminary Release dated September 28, 2007 volumes 1, 2, 3, and 4 and the corresponding Flood Insurance Rate Maps (FIRMs), which were then converted to City of Newton base. No changes to the Preliminary Release are expected for Newton and thus the FIRMs will become effective on June 4, 2010; if any discrepancies arise, the more conservative of the two shall apply. Plans showing the general location of the floodplain, to be used only as a guide, are available for viewing at the Engineering Division of the Department of Public Works or Inspectional Services Department.

*[2]Includes all lands below the listed elevation in feet, City of Newton Base. The higher elevation applies to the upstream end of the designated area while the lower elevation applies to the downstream end. The floodplain elevation for any land is determined by interpolation between the floodplain elevation figure shown in the above table on the basis of its relative distance in feet from the upstream and downstream ends.

2. Floodways*[3]

South Meadow Brook

Cross Section	Distance*[4]	Width (Feet)
A	1,922	50
B	2,865	50
C	4,148	80
D	4,691	40
E	6,060	50

Paul Brook

Cross Section	Distance*[4]	Width (Feet)
F	6,942	40
G	7,892	60
H	8,655	40
I	9,560	40
J	10,310	40

Cheese Cake Brook

Cross Section	Distance*[4]	Width (Feet)
A	5,742	30
B	5,892	30
C	6,202	30
D	6,578	30
E	7,158	30

*[3] The South Meadow Brook, Paul Brook and Cheese Cake Brook Floodways as shown on the Federal Emergency Management Agency Floodway Data Table 8 of the F.E.M.A. "Flood Insurance Study, No. 255226CV001A, Middlesex County, MA, June 4,2 010.

*[4] Feet above confluence with the Charles River.

3. Open brooks and streams and their tributaries:

Watershed
Brook or Stream ..... Distance (feet)*[5]

(1) Brunnen Brook 30

(2) Cheese Cake Brook from Brae Burn Golf Course to end of Oldham Road and from Eddy Street to Charles River 30

(3) Cold Spring Brook 30

(4) College Brook 30

(5) Country Club Brook 30

(6) Cranberry Brook.....30

(7) Dolan Brook 30

(8) Edmands Brook 30

(9) Hahn Brook 30

(10) Hammond Brook 30

(11) Hyde Brook 30

(12) King Brook.....30

(13) Lacey Brook 30

(14) Laundry Brook 30

(15) Paul Brook from Route 9 to 150 feet south of Route 9 30

(16) Runaway Brook.....30

(17) Saw Mill Brook 30

(18) Saw Mill Brook, south branch.....30

(19) South Meadow Brook from Newton/Brookline boundary to Brandeis Road; from Tower Road (south side of culvert) to trash rack; from Oak Street to Charles River 30

(20) Stearns Brook 30

(21) Strong's Brook 30

(22) Thompsonville Brook.....30

*[5] Measured as horizontal distance on both sides of brook or stream from centerline.

4. Wetlands:

Watershed..... Elevation (feet)*[6]

(1) Bird Swamp off Hammond Pond Parkway at Chestnut Hill Mall/Towers Entrance 214.0

(2) Webster Conservation Area - East of Hammond Pond Parkway, south of MBTA tracks, Chestnut Hill 173.0

(3) Webster Conservation Area - East of Hammond Pond Parkway, north of MBTA tracks, Chestnut Hill 173.0

(4) Skunk Hollow Swamp.....151.6

(5) Kennard Conservation Area Wetland, Chestnut Hill 146.0

(6) Bald Pate Meadow 142.0

(7) Vine Street West Swamp.....138.0

(8) Wayne Pond Swamp 130.0

(9) Old Woodlot Swamp.....125.0

(10) Waban Kettle Wetland Off Waban Avenue, Carlton Road, Nehoiden Road, Crofton Road, Waban 122.0

(11) Longfellow Pond Wetland 122.0

(12) Great Meadow Swamp.....119.0

(13) Winchester Street Swamp 112.0

(14) Cold Spring Swamp 110.0

(15) Goddard Street, Christina Street, Roland Street, Charlemont Street, Newton Highlands.....105.0

(16) Nahanton Street Swamp.....102.2

(17) Oak Hill Swamp Off Saw Mill Brook Parkway.....96.0

(18) Cabot Street Meadow.....84.0

(19) Dolan Pond Wetland Off Webster Park, Auburndale 52.0

(20) Flowed Meadow, Auburndale.....46.0

(21) Cranberry Wetland.....29.0

*[6]Includes all lands below the listed elevation in feet, City of Newton Base.

5. Ponds

Watershed..... Elevation (feet)* [6]

(1) Bare Pond 234.0

(2) Cat Pond 228.0

(3) Charles River Country Club Pond 182.0

(4) Houghton Pond.....173.0

(5) Hammond Pond.....172.0

(6) Crystal Lake.....149.0

(7) Longfellow Pond.....122.0

(8) Brae Burn Pond 98.0

(9) City Hall Pond.....95.0

(10) Bullough's Pond 92.4

(11) Dresser Pond.....82.0

(12) Lasell Pond.....76.0

(13) Strong's Pond.....65.0

(14) Silver Lake.....45.0

*[6] Includes all lands below the listed elevation in feet, City of Newton Base.

(Ord. No. S-83, 1-21-85; Ord. No. T-167, 8-12-91; Ord. No. V-289, 3-20-00; Ord. No. Z-66, 06-07-10)

In Zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available federal, state, local or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

In a riverine situation, the planning department shall notify the following of any alteration or relocation of a watercourse:

- Adjacent communities
- NFIP State Coordinator, MA Department of Conservation and Recreation, 251 Causeway Street, Suite 600-700
- NFIP Program Specialist, Federal Emergency Management Agency, Region I, 99 High Street, 6th Floor, Boston, MA 0210

Other Use Regulations

1) In Zones AE, along watercourses that have a regulatory floodway designated on the Middlesex County FIRMs, encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
2) All subdivision proposals must be designed to assure that:
   a) such proposals minimize flood damage;
   b) all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
   c) adequate drainage is provided to reduce exposure to flood hazards.

Secs. 22-23—22-37. Reserved.

ARTICLE III. HISTORICAL PROVISIONS

DIVISION 1. COMMISSIONS AND DISTRICTS

Sec. 22-38. Historical commission— establishment, purpose, appointment, officers.

(a) There is hereby established under General Laws chapter 40, section 8D a Newton Historical Commission for the preservation, promotion and development of the historical or archeological assets of the city, to be governed by and operated in accordance with the provisions relative thereto of the General Laws or any special act or amendment thereto.

(b) Said commission shall consist of seven members, including one member from two nominees submitted by the Jackson Homestead; one member who is a registered architect from two nominees submitted by the Boston Society of Architects; one member from two nominees submitted by the Newton Board of Realtors; and four members who shall be appointed at large. If within thirty (30) days after submission of a written request for nominees to any of the organizations herein named no such nominations have been made, the mayor may proceed to appoint the commission without nomination by such organization. There also shall be appointed no more than seven alternate members, who shall be selected at large.

(c) The permanent members shall elect one member as chair and one member as secretary. In the event a member is absent or unable to act for any reason, the chair shall designate an alternate member to act.

(d) Members and alternate members of the historical commission shall by their appointment to the historical commission also be appointed as members and alternate members respectively of the historic district commission(s) established under section 22-40. (Ord. No. 102, 12-15-75; Ord. No. X-17, 4-16-02)

Cross references—Division of city into zoning districts, §1-4; regulations governing appointment to and service on commissions and committees, §2-8

Sec. 22-39. Same—Powers and duties.

(a) The historical commission shall be possessed of powers and subject to duties in accordance with the provisions of the General Laws relative thereto, as they may be amended, to the extent of monies given, granted, contributed, bequeathed and appropriated.

(b) The historical commission shall have in addition to the powers and duties of an historical commission under the General Laws the following further powers and duties, subject to appropriation or other receipt of monies, and may, in exercise of any of its powers or duties accept and expend such monies and employ clerical and technical assistants and consultants:

(1) to cooperate with, consult, and serve as an advisory body on matters affecting the historical assets of the city to officers, departments, boards, commissions, committees and other agencies of the city, and to assure that

the comprehensive plan embodies appropriate preservation of those assets;

(2) to conduct a survey of Newton buildings and sites for the purpose of determining those of historic significance architecturally or otherwise;

(3) to propose as it deems appropriate the establishment of additional historic districts and changes in existing historic districts;

(4) upon recommendation of the historic district commission(s) established under section 22-40, and in accordance with the Historic Districts Act, to act as the historic district study committee for the establishment of additional historic districts;

(5) to offer assistance to and advise owners and occupants of historic buildings and structures on problems of preservation;

(6) acquire in the name of the city by gift, purchase, grant, bequest, devise, lease or otherwise the fee or lesser interest in real or personal property of significant historical value and may manage the same; and may administer on behalf of the city any properties or easements, restrictions or other interests in real property which the city may have or may accept as gifts or otherwise and which the city may designate the commission as the administrator thereof. (Ord. No. 102, 12-15-75)

Sec. 22-40. Historic district; purpose, governance, appointments, officers.

(a) *Purpose.* The purpose of this section is to promote the preservation and protection of the distinctive characteristics of buildings and places significant in the history of the City of Newton, the maintenance and improvement of settings of such buildings and settings, and the encouragement of design compatible with the existing architecture.

(b) *Definitions.* As used in this section, the following terms shall be defined as set forth herein unless otherwise stated:

To alter, alteration: To rebuild, reconstruct, restore, remove, demolish or other similar activities, including a change in exterior color.

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

Certificate of Appropriateness: The certificate issued by a commission if it determines that the construction or alteration for which an application for a certificate of appropriateness has been filed will be appropriate for or compatible with the preservation or protection of the district.

Certificate of Non-applicability: The certificate issued by a commission if it determines that the construction or alteration for which a certificate of appropriateness or a certificate of non-applicability has been filed does not involve any exterior architectural feature or involves an exterior architectural feature which is not subject to review by the commission.

Certificate of Hardship: The certificate issued by a commission if it determines that owing to conditions especially affecting the building or structure involved, but not affecting the historic district generally, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant and such application may be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of this section. A certificate of hardship shall also be issued by the commission in the event that it failures to make a determination on an application within forty-five (45) days of filing.

Commission: An historic district commission as established hereunder.

To construct, construction: To build, erect, install, enlarge, move and other similar activities.

District: An historic district established pursuant to chapter 40C and these ordinances consisting of one or more district areas.

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

Person aggrieved: The applicant, an owner of adjoining property, an owner of property within the same historic district as property within one hundred (100) feet of said property lines and any charitable corporation which has as one of its purposes the preservation of historic structures or districts.

Sign: Any symbol, design, or device used to identify or advertise any place of business, product, activity or person.

Structure: A combination of materials other than a building, including a sign, fence, wall, terrace, walk or driveway, and all supporting assemblies, supporting structures, equipment and facilities ancillary or accessory to antennae and wireless communication equipment as described in Sec. 30-18A of the Newton Revised Ordinances, entitled Wireless Communications Devices.

(c) *Districts.*

(1) A district shall consist of one or more district areas as delineated in the map or maps identified in subsection (c)(4) hereof.

(2) Prior to the establishment of additional districts, an investigation and report on the historical and architectural significance of the buildings, structures or sites to be included in the proposed district shall be made by the existing district commission(s) or by the historical commission acting as an historic district study commission pursuant to the provisions of G.L. C. 40C, sections 3 and 4, as set forth in subsections (c)(2) - (4) of this section. The buildings, structures or sites to be included in the proposed district may consist of one or more parcels or lots of land, or one or more buildings or structures on one or more parcels or lots of land. Copies of the report shall be transmitted to the planning board and to the Massachusetts Historical Commission for their respective consideration and recommendations. Not less than sixty (60) days after such transmittal, the study committee shall hold a public hearing on the report after due notice given at least fourteen days prior to the date thereof, which shall include a written notice mailed postage prepaid, to the owners as they appear on the most recent real estate tax list of the board of assessors of all properties to be included in such district or districts. The committee shall submit a final report with its recommendations, a map of the proposed district or districts and a draft of the proposed ordinance to the board of aldermen for its consideration. Adoption of such ordinance shall require a two-thirds (2/3) vote of the board of aldermen.

(3) In the case of the enlargement or reduction of an existing district, the investigation, report and hearing shall be conducted by the historic district commission having jurisdiction over such district. In the case of a creation of an additional historic district, the investigation, report and hearing shall be conducted by the existing historic district commission or commissions acting jointly if there is more than one historic district commission, provided, however, that the existing historic district commission(s) may relinquish all power relative to the establishment of an additional district(s) as permitted by G.L. C. 40C, section 3, in which event the historical commission shall serve as an historic district study committee to perform all acts

required of historic district commission(s) for the establishment of additional districts.

(4) A district created pursuant to this ordinance or any amendment to the boundaries of an existing district shall not become effective until a map or maps setting forth the boundaries of the new district, or the change in the boundaries of an existing district has been filed with the city clerk and recorded in the Middlesex South Registry of Deeds.

(d) *District Commissions.*

(1) Each district shall be administered by a commission consisting of seven (7) members, appointed by the mayor subject to confirmation by the board of aldermen. Initial terms shall be as follows: two (2) members shall be appointed for one (1) year; two (2) members shall be appointed for two (2) years and three (3) members shall be appointed for three (3) years. The mayor shall fill the vacancies in membership arising from expired terms by appointments for a term of three (3) years. Appointments to membership shall be so arranged that the term of at least one member will expire each year, and their successors shall be appointed in the same manner as the original appointment. Any vacancy in the membership of the commission shall be filled for the unexpired portion of any member's term by the mayor.

(2) A commission shall include one member from two nominees submitted by the local chapter of the American Institute of Architects; one attorney; one realtor from two nominated by the local Board of Realtors; one member or alternate member of the historical commission; one additional member or alternate member of the historical commission or one member nominated by the Newton Historical Society; and two residents or property owners from the district administered by the commission. If within thirty (30) days after submission of a written request for nominees to any of the organizations herein named no such nominations have been made, the mayor may proceed to appoint members without nomination by such organization.

(3) The mayor shall appoint at least two and no more than seven alternate members to each commission. Alternate members need not be from nominees of organizations entitled to nominate members. In the event that a permanent member is absent or unable to act for any reason, the chairman of the commission shall designate an alternate member to act in place of a permanent member. The initial appointments of alternate members shall be for terms of two or three years, with appointments thereafter being for three year terms.

(4) Each member and alternate member to a commission shall continue to serve in office after the expiration date of his or her term until a successor is duly appointed, except as provided in subsection (d)(5) hereof.

(5) The term of the historical commission member shall be coterminous with his or her membership on the historical commission. Any member of a commission appointed by virtue of his or her residence or ownership of property within the district who removes his/her residence or property ownership from such district shall be considered to have resigned from his membership on such commission.

(6) A commission shall at the beginning of each fiscal year hold an organizational meeting and elect a chairman, a vice chairman, and secretary from among the permanent members, and file notice of such election with the city clerk.

(7) Meetings of a commission shall be held at the call of the chairman, at the request of two permanent members and in such other manner as a commission shall determine.

(8) Four (4) members of a commission shall constitute a quorum.

(e) *District Commission Powers and Duties.*

(1) A commission shall regulate the construction and/or alteration of any building(s) or structure(s) within the district over which it has jurisdiction in accordance with the provisions of G.L. c. 40C and the procedures and criteria established by this ordinance. Except as otherwise provided in subsection (h) hereof or in the ordinance provision establishing a specific district, no building or structure within a district shall be constructed or altered in any way that affects exterior architectural features unless the commission having jurisdiction over that district shall first have issued a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship with respect to such construction or alteration.

(2) A commission may adopt and/or amend reasonable rules and regulations which are consistent with the provisions of this section and with G.L. c. 40C, and which set forth such procedures as it deems desirable and necessary for the regulation of and conduct of its business, including requirements for the contents and form of applications for certificates, fees, hearing procedures, and other matters. The commission shall file a copy of any such rules and regulations with the city clerk. All fees imposed by the commission shall be approved in advance by the board of aldermen.

(3) A commission shall keep a permanent record of its decisions, transactions, resolutions, and of the vote of each member participating therein.

(4) A commission shall cooperate with, consult and advise officers, departments, boards, commissions, committees and other agencies of the city on matters affecting the administration of the district under its jurisdiction.

(5) A commission shall offer assistance to and advise owners and occupants of historic buildings and structures within the district of its jurisdiction on problems of preservation.

(6) A commission may propose as it deems appropriate enlargements and reductions to the district under its jurisdiction; and in accordance with the provisions of this section and G.L. c. 40C, conduct investigations, prepare reports and conduct public hearings concerning enlargements or reductions to the district.

(7) A commission may act relative to the establishment of additional historic district(s) as permitted by G.L. c. 40C, or may relinquish all its powers relative to the establishment of additional historic districts and recommend that the historical commission act as an historic district study committee to perform all acts required of an historic district commission(s) for the establishment of additional historic districts.

(8) A commission may, subject to appropriation or receipt of other monies, employ clerical and technical assistants and consultants and incur other expenses appropriate to the carrying on of its work and may accept money gifts and expend the same for such purposes.

(f) *Procedures for Review of Applications for Certificates of Appropriateness, Non-Applicability and Hardship.*

(1) Any person who desires to obtain a certificate from a commission shall file an application with a commission. The application shall be accompanied by such plans, elevations, specifications, photographs, and other information, including in the case of demolition or removal a statement of the proposed condition and appearance of the property thereafter, as may be reasonably deemed necessary by the commission to enable it to make a determination on the application. The date of the filing of an application shall be the date on which a copy of such application is received at the city's department of planning and development. A commission shall determine within fourteen (14) days after the filing of an application for a certificate whether the application involves any exterior architectural features which are subject to approval by the commission.

(2) If the application involves any features which are subject to approval, a commission shall hold a public hearing within twenty (20) days after the filing of a completed application for a certificate of appropriateness or a certificate of hardship unless additional time is agreed to by both the applicant and the commission or unless such hearing is dispensed with as provided in subsection (f)(3) hereof. Copies of the public notice of the time, place and purposes of the public hearing shall be mailed to the applicant, to the owners of all other adjoining property and to other property owners deemed by the commission to be materially affected thereby, to the planning and development board, to any person filing written request for notice of hearings and to such other persons as the commission shall deem entitled to notice.

(3) A public hearing on an application need not be held if such hearing is waived in writing by all persons entitled to notice thereof. In addition, a public hearing on an application may be waived by a commission if the commission determines that the exterior architectural feature involved or its category, as the case may be, is so insubstantial in its effect on the district that it may be reviewed by the commission without public hearing on the application, provided, however, that if the commission dispenses with a public hearing on an application, notice of the application shall be given to the owners of all adjoining property and other property deemed by the commission to be materially affected thereby as above provided and ten (10) days shall elapse after the mailing of such notice before the commission may act upon such application.

(4) A commission shall render a decision within forty-five (45) days after the filing of a completed application for a certificate of appropriateness unless further time for a decision is allowed, in writing, by the applicant. If the commission shall fail to make a determination within forty-five (45) days, the commission shall thereupon issue a certificate of hardship.

(5) In the case of a disapproval of an application for a certificate of appropriateness, a commission shall place upon its records the reasons for such determination and shall forthwith cause a notice of its determination, accompanied by a copy of the reasons therefore as set forth in the records of the commission, to be issued to the applicant, and the commission may make recommendations to the applicant with respect to appropriateness of design, arrangement, texture, materials, and similar features. Prior to the issuance of any disapproval, the commission may notify the applicant of its proposed action accompanied by recommendations of changes in the applicant's proposal which, if made, would make the application acceptable to the commission. If within fourteen (14) days of the receipt of such notice the applicant files a written modification of his application in conformity with the recommended changes of the commission, the commission shall cause a certificate of appropriateness to be issued to the applicant.

(6) The concurring vote of a majority of the members, i.e. four members, of a commission shall be required to issue a certificate.

(7) In issuing certificates, a commission may, as it deems appropriate, impose certain conditions and limitations, and may require architectural or plan modifications consistent with the intent and purpose of this section.

(8) If a commission determines that the construction or alteration for which an application for a certificate of appropriateness has been filed will be appropriate for or compatible with the preservation or protection of the district, the commission shall issue a certificate of appropriateness.

(9) If a commission determines that an application for a certificate of appropriateness or for a certificate of non-applicability does not involve any exterior architectural feature, or involves an exterior architectural feature which is not subject to review by the commission, the commission shall cause a certificate of non-applicability to be issued to the applicant.

(10) If the construction or alteration for which an application for a certificate of appropriateness has been filed shall be determined to be inappropriate and therefore disapproved, or in the event of an application for a certificate of hardship, a commission shall determine whether, owing to conditions especially affecting the

building or structure involved, but not affecting the district generally, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant and whether such application may be approved without substantial detriment to public welfare and without substantial derogation from the intent and purposes of this section. If the commission determines that owing to such conditions failure to approve the application will involve substantial hardship to the applicant and approval thereof may be made without such substantial detriment or derogation, the commission shall issue a certificate of hardship.

(11) Each certificate issued by the commission shall be dated and signed by the chairman or such other person designated by the commission to sign such certificates on its behalf.

(12) The commission shall send a copy of certificates and disapprovals issued to the applicant and shall file a copy with the city clerk and the commissioner of inspectional services.

(13) Any person aggrieved by a determination of a commission, may, within twenty (20) days of the filing of the notice of such determination with the city clerk, file a written request with the commission for a review by a person or persons, not exceeding three, of competence and experience in such matters, designated by the Metropolitan Area Planning Council. The finding of the reviewers shall be filed with the City Clerk within forty-five (45) days after the request, and shall be binding on the applicant and the commission, unless further appeal is sought in superior court as provided in G.L. c. 40C, section 12A. The filing of such further appeal shall occur within twenty (20) days after the finding of the reviewers has been filed with the city clerk.

(g) *Criteria for Determinations.*

(1) In deliberating on applications for certificates, a commission shall consider, among other things, the historic and architectural value and significance of the site, building or structure, the general design, arrangement, texture, material and color of the features involved, and the relation of such features to similar features of buildings and structures in the surrounding area.

(2) In the case of new construction or additions to existing buildings or structures, a commission shall consider the appropriateness of size and shape of the building or structure both in relation to the land area upon which the building or structure is situated and to buildings and structures in the vicinity, and a Commission may in appropriate cases impose dimensional and set-back requirements in addition to those required by applicable zoning ordinances.

(3) A commission shall not consider interior arrangements or architectural features not subject to public view.

(4) A commission shall not make any recommendation or requirement except for the purpose of preventing developments incongruous to the historic aspects or the architectural characteristics of the surroundings and of the district.

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

(6) A commission shall not review and shall issue a certificate of non-applicability for the reconstruction, substantially similar in exterior design, of a building, structure or exterior architectural feature damaged or destroyed by fire, storm or other disaster, provided such reconstruction is begun within one (1) year

thereafter and carried forward with due diligence.

(7) With the exception of applications submitted pursuant to subsection (f), nothing in the design controls authorized by this section shall be construed as giving a commission the power to require restoration of any building or structure or portion of any building or structure to any particular historic appearance or style of said building or structure or said portion of building or structure had already been substantially removed or lost or changed prior to the adoption of the initial ordinance provision establishing historic commissions, to-wit, December 15, 1975.

(8) A commission is authorized to deny any application for a certificate of appropriateness, non-applicability or hardship for the proposed construction or alteration of any building or structure within the district over which it has jurisdiction upon a determination that there is an unremediated violation of this ordinance in existence at the subject building or structure, regardless of whether said violation is attributable to the present owner or a predecessor in title to the subject premises. Upon proper remediation of any such violation, as verified by said commission with the assistance of and review by the commissioner of inspectional services, or building official, if necessary, any such application shall proceed through the established procedure for commission review, subject to the established administrative criteria for determinations, as set out in subsections 22-40(f) and 22-40(g).

(h) *Exclusions.*

(1) A commission shall have no jurisdiction to review the following categories of exterior architectural features, and shall issue a certificate of non-applicability for:

a) temporary structures and signs erected for a period of ninety (90) days or less;

b) residential identification signs which are not more than one foot square in area; provided that a second set of residential building numbers affixed or inscribed on buildings in order to comply with Section 26-7, Numbering of buildings, shall not be subject to review by nor shall they require a certificate of non-applicability from said commission; provided further that:

i) the sign consists of letters and/or street identification numbers painted or otherwise suitably inscribed on wood, brass or stone without a symbol or trademark; and

ii) if illuminated, such signs are illuminated only indirectly (indirectly meaning by a light source directed at the sign surface and not contained within the sign or its structure).

iii) if illuminated, it is illuminated only indirectly (indirectly meaning by a light source directed at the sign surface and not contained within the sign or its structure).

c) signs for professional or security purposes which are not more than one foot square in area; provided that:

i) only one sign is displayed for each building or structure;

ii) the sign consists of letters painted on wood or brass without a symbol or trademark;

iii) if illuminated, it is illuminated only indirectly.

d) terraces, walks, and sidewalks so long as such structure is substantially at grade level;

e) storm doors, storm windows, screens, lightning protection, window boxes, window air conditioners and lighting fixtures, except for freestanding lighting fixtures;

f) paint colors;

g) colors of roof materials.

h) antennae designed to receive television broadcast signals; antennae designed to receive direct broadcast satellite services, including direct-to-home satellite services, but only if one meter or less in diameter; antennae designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, but only if one meter or less in diameter or diagonal measurement, as set out in Section 207 of the Federal Telecommunications Act of 1996 and rules and regulations promulgated thereunder, 47 C.F.R. Ch.1, Subpart S, §1.4000, and any successor laws, rules or regulations; satellite earth station antennae, as detailed in FCC rules and regulations, 47 C.F.R. 25.104 and any successor laws, rules and regulations; and any antennae in a non-residential building or structure which are not visible because they are concealed within the building, structure or its physical appurtenances, including, but not limited to a steeple, belfry, or the like. Supporting assemblies, supporting structures, equipment and facilities ancillary or accessory to such antennae as described in Sec. 30-18A of the Newton Revised Ordinances are not exempt nor excluded from historic district commission and historic commission jurisdiction and review pursuant to M.G.L. c. 40C and Sec. 22-40 through 22-44 of the Newton Revised Ordinances.

(i) *Enforcement.*

The commission, as defined herein, is authorized to institute any and all actions and proceedings, in law or in equity, in any court of competent jurisdiction, consistent with the provisions of G.L. c. 40C, s. 13, as amended, or its successor, as it deems necessary and appropriate to obtain compliance with the requirements of this ordinance and the determinations, rulings and regulations issued pursuant thereto. Whoever violates any of the provisions of this ordinance shall be punished by a fine not exceeding three hundred dollars ($300.00) for each offense. Each day any violation of this ordinance shall continue shall constitute a separate offense.

(j) *Building Permits.*

The commission shall notify the commissioner of inspectional services or building official in writing of any violation of the requirements of this ordinance or its determinations, rulings and regulations with regard to a specific building or structure, and shall instruct said commissioner or building official to make a permanent record of such violation in the corresponding property file maintained in the department of inspectional services as required by law. Prior to the issuance of any building permit for the construction, reconstruction, alteration, renovation, repair, removal, demolition, or change of use or occupancy of any building or structure, said commissioner or building official shall review the property file and ascertain whether a notice of unremediated violation of this ordinance is on record. To the extent allowed by law, including but not limited to the provisions of the state building code, 780 CMR 111.1 (6th ed.) or its successor, unless the commissioner or building official is satisfied there is no outstanding unremediated violation of this ordinance, he or she shall reject such application for a building permit for such building or structure in writing, stating the reasons therefor.

(k) *Severability.*

The provisions of this section shall be deemed to be severable. If any of its provisions shall be held to be invalid or unconstitutional by any court of competent jurisdiction the remaining provisions shall continue in full force and effect. (Ord. No. 102, 12-15-75; Ord. No. V-157, 12-15-97; Ord. No. V-214, 12-21-98; Ord. No. V-300, 5-15-00; Ord. No. X-197, 03-20-06; Ord. No. X-209, 05-01-06)

Sec. 22-41. Newton Upper Falls Historic District; established, boundaries.

There is hereby established an historic district to be known as the Newton Upper Falls Historic District, bounded and described as shown on the map entitled "Newton Upper Falls Historic District Expansion, July 11, 1985." (Ord. No. 102, 12-15-75; Ord. No. 274, 6-5-78; Ord. No. R-190, 11-16-81; Ord. No. S-133, 10-21-85; Ord. No.T-155, 6-17-91)

Editor's Note – The referenced map is on file in the office of the City Clerk. A copy of the map appears in the Appendix at the end of this chapter.

Sec. 22-42. Chestnut Hill Historic District; established, boundaries.

(a) There is hereby established an historic district to be known as the Chestnut Hill Historic District, bounded and described as shown on the map entitled, "Chestnut Hill Historic District, March 19, 1991."

(b) As authorized by the General Court in chapter 49 of the Acts of 1996, the following definition of "exterior architectural features" shall control in the Chestnut Hill Historic District only:

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

(c) Notwithstanding the provisions of this section and section 22-40 in general and section 22-40(e)(i) in particular, the Chestnut Hill Historic District Commission may make only non-binding recommendations regarding changes to the exterior architectural features open to view from a private way of properties located on Essex Road and from Nos. 147 through 256 Chestnut Hill Road, with the following exceptions where such decisions of the commission shall be fully binding in the ordinary course:

(1) demolition of a building or structure so long as such demolition occurs after such property ceases to be legally or beneficially owned by the owner of record as of the effective date of the 1996 amendment to Sec. 22-42;

(2) any lot created by subdivision of such properties where its required frontage lies on a way whose properties are not then subject to such limited commission review;

(3) any property where the legal or beneficial owner of record files with the city clerk a certificate indicating irrevocable consent on behalf of such owner and of successor owners to submit to the jurisdiction of the historic district commission and to be bound by its decisions, subject to any statutory rights of appeal;

(4) all of such properties on Essex Road or on the portion of Chestnut Hill Road identified above, if at any time not less than seventy-two and one-half percent of the total number of owner-occupied properties on the specific road under consideration have been made the subject of a filing described in subsection (c), at which time the limits on commission review established by the above provisions shall lapse and shall not be reestablished for such specific road. It shall also be sufficient for such lapse to occur if the owner-occupants of all but four of the owner-occupied properties on the specific road under consideration have made the filing described in subsection (c).

(d) No owner of any property claiming the benefit of this exemption shall have standing as an aggrieved person for the purpose of appealing any decision of the district commission concerning property other than his own, other than a decision relating to changes to architectural features visible from a public way.

(e) The limited commission review herein established shall not affect the district commission's authority to regulate exterior architectural features open to view from a public street, way, park or body of water, even if such

features are located on property containing exterior architectural features subject to such limited review, nor shall it affect the commission's authority under sections 22-60 et seq., and 22-50 of the Newton Revised Ordinances relating to landmark preservation and the demolition of structures, respectively. (Ord. No. T-155, 6-17-91; Ord. No. V-100, 12-16-96)

Editor's Note – The referenced map is on file in the office of the City Clerk. A copy of the map appears in the Appendix at the end of this chapter.

Sec. 22-43. Newtonville Historic District; established, boundaries.

(a) There is hereby established an historic district to be known as the Newtonville Historic District, bounded and described as shown on the map entitled "Proposed Newtonville Local Historic District," prepared by Newton Geographic Information System (GIS), with a date of 12-Aug-2002. (Ord. No. X-29, 9-3-02)

Editor's Note – The referenced map is on file in the office of the City Clerk. A copy of the map appears in the Appendix at the end of this chapter.

Sec. 22-44. Auburndale Historic District; established, boundaries.

(a) There is hereby established an historic district to be known as the Auburndale Historic District, bounded and described as shown on the map entitled "Auburndale Proposed Local Historic District," prepared by Newton Geographic Information System (GIS), with a date of January 05, 2005. (Ord. No. X-135, 03-21-05)

Editor's Note – The referenced map is on file in the office of the City Clerk. A copy of the map appears in the Appendix at the end of this chapter.

Secs. Reserved 22-45—22-49. Reserved.

DIVISION 2. DEMOLITION DELAY

Sec. 22-50. Demolition of historically significant buildings or structures.

(a) *Intent and Purposes.* This section is adopted in furtherance of the policy set forth in the Newton Comprehensive Plan to assure the preservation and enhancement of the City of Newton's historical and cultural heritage by preserving, rehabilitating or restoring whenever possible, buildings or structures which have distinctive architectural features or historical associations that contribute to the historic fabric of the City.

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

Commission: The Newton Historical Commission, or if the regulated building or structure is in a local historic district established pursuant to G.L. c. 40C, the local historic district commission.

Commission staff: The person(s) regularly providing staff services for the commission whom the commission has designated commission staff for the purposes of this ordinance.

Commissioner: The commissioner of inspectional services.

Application: An application to the commissioner for a demolition permit as defined by this ordinance.

Demolition permit: Any permit issued by the commissioner which is required by the State Building Code and which authorizes the total or partial demolition of a building or structure (excluding interior demolition) regardless of whether such permit is called a demolition permit, alteration permit, building permit, etc.

Total demolition: The pulling down, razing or destruction of the entire portion of a building or structure which is above ground regardless of whether another building or structure is constructed within the original footprint of the destroyed building or structure.

Partial demolition: The pulling down, destruction or removal of a substantial portion of the exterior of a building or structure or the removal of architectural elements which define or contribute to the historic character of the structure.

(1) *Items requiring review by the commission at a hearing*. Partial demolition of any architecturally significant features which would alter the massing of the existing structure including, but not limited to the following items.

a) Additions or ells determined to be architecturally significant by commission or commission staff.

b) Roofs, including flat roofs, determined to be architecturally significant by commission or commission staff.

c) Porches determined to be architecturally significant by commission or commission staff, except open decks, staircases, and entryways, which are excluded from review.

d) Removal or envelopment by subsequent additions of 50% or more of any single exterior wall surface. Each wall is calculated by square footage individually.

e) Demolition of any architectural detail determined to be architecturally significant by commission or commission staff.

i) Brackets

ii) Crown molding

iii) Porch columns and railings

iv) Bay windows

v) Dormers

vi) Chimneys

(2) *Items requiring review by the commission that may be reviewed and approved by commission staff without a hearing if plans indicate*

a) Removal or alteration of the roof structure.

b) Repair or replacement of existing and original porches with similar materials to match existing.

c) Demolition or construction of additions or alterations not visible from a public way.

d) Removal or envelopment by subsequent additions of 50% to 100% of any single exterior wall surface. Each wall is calculated by square footage.

(3) *Items considered to be de minimis and requiring no commission or commission staff review:*

a) Open porches and entryways consisting of only a set of stairs, an entrance platform and a roof which are utilitarian in design or do not contribute to the architectural significance or character of the

building.

b) Demolition or construction of new additions which remove, alter, or envelop 50% or less of a single exterior wall.

c) Removal or alteration of less than 50% of the roof structure

d) Normal maintenance of a building's exterior, including, but not limited to repair or replacement of roof surfaces, repair or replacement of gutters, and repair or replacement of existing doors and windows, including casings and frames, repair or replacement of existing exterior cladding (clapboards, shingles, masonry, etc.).

Historically significant building or structure: Any building or structure which is in whole or in part fifty or more years 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.

Preferably preserved: An historically significant building or structure which the commission has determined should be preserved, rather than totally or partially demolished, in accordance with the standards set forth in subsection (c)(5) below.

(c) *Procedure.*

(1) No demolition permit for a building or structure which is in whole or in part fifty or more years old shall be issued by the commissioner except in conformity with the provisions of this section, as well as any other applicable law, statute, ordinance or regulation.

(2) If any applicant and the owner of the building or structure, if different from the applicant seeks to demolish, in whole or in part, a building or structure which is in whole or in part fifty or more years old, the owner of the building or structure shall file a demolition review application with the commission for a determination as to whether the building or structure is historically significant and shall provide the commission with the following information:

a) a site plan or a copy of that portion of the tax assessor's map which shows the building or structure to be demolished and the property on which it is located;
b) photographs of all existing façade elevations of the building or structure to be totally or partially demolished;

c) a description of the proposed plans for demolition and the reason(s) therefore.

(3) Within fifteen (15) days after the commission's receipt of a demolition review application, the commission shall make a determination as to whether the building is or is not historically significant and shall notify, in writing, the commissioner and the applicant of this determination. The commission may delegate the determination that a building or structure is historically significant to commission staff or to a designated commission member. In the event that the commission delegates the determination to the commission staff or to a designated commission member, the commission shall adopt criteria to be followed by the staff or the member in making this determination.

A determination that a building or structure is or is not historically significant made by the commission staff or a designated commission member may be appealed to the full commission by filing a notice of appeal with the commission not later than fifteen (15) days after the written notice that the building or structure is or is not historically significant has been filed with the commissioner. Filing the appeal of the determination shall not stay the effect of such determination. Following a hearing before the commission, which may, but is not required to be conducted in conjunction with the hearing on whether the building or structure is preferably preserved, the commission shall affirm or reverse the determination and file notice of such determination with the commissioner. If the appeal of the determination is made independent of the preferably preserved hearing, the commission shall follow the same procedure for such hearing as that set forth in subsection (c)(5) below. If the commission fails to conduct a hearing on the appeal of said determination or fails to rule on the appeal within forty-five (45) days from the filing of the appeal, the determination that a building or structure is or is not historically significant shall remain unchanged, and the commissioner shall not issue a demolition permit until the procedural requirements of subsection (c)(5) below have been satisfied.

(4) No demolition permit shall be issued by the commissioner for a building or structure determined to be historically significant until the procedural requirements of subsection (c)(5) of this ordinance have been satisfied. The commissioner may grant the demolition permit if the commissioner:

a) does not receive written notice within forty-five (45) days after the commission's receipt of a demolition permit application that the building or structure is historically significant; or

b) receives written notice from the commission that the building either is not historically significant, or is historically significant, but clearly would not be deemed preferably preserved by the commission.

(5) When a building or structure is determined to be historically significant, the commission shall hold a public hearing to determine whether the building or structure, or the portion of the building or structure to be demolished, is preferably preserved. The applicant shall provide the commission with the following information for this determination:

a) in the case of partial demolition involving alteration(s) or addition(s) to a building or structure, (i) proposed plans and elevation drawings for the affected portion of the building or structure; and (ii) a plot plan of the property, if the same is required to obtain a permit under the State Building Code for the proposed alteration(s) or addition(s); and

b) if the site of the building or structure to be demolished is to be redeveloped, plans showing the use or

development of the site after demolition together with a statement identifying all zoning variances and/or special permits which may be required in order to implement the proposed use or development.

The date the commission receives all the above information shall be stamped on the information received and shall be considered the submission date. Following public notice as set forth in subsection (c)(8) of this ordinance, the commission shall hold a public hearing within forty-five (45) days of the submission date to determine whether the building or structure should be preferably preserved, based on the criteria set forth in this paragraph. If the commission finds that the demolition proposed in the application 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, then the commission shall find that the building or structure should be preferably preserved.

(6) Upon a determination that the building or structure which is the subject of an application for a demolition permit is preferably preserved, the commission shall give written notice of the determination to the commissioner. A copy of the commission's determination shall also be sent to the applicant for the demolition permit and to the owner of the building or structure if different from the applicant.

a) For a building or structure listed in the National Register of Historic Places or determined eligible for listing in the National Register of Historic Places by the Massachusetts Historical Commission no demolition permit shall be issued for a total demolition or a partial demolition of a building or structure until eighteen (18) months after the date of such determination by the commission, unless the commission informs the commissioner prior to the expiration of such eighteen (18) month period that the commission is satisfied that the applicant for the demolition permit and the owner of the building or structure, if different from the applicant, has:

i) 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,

ii) has agreed to accept a demolition permit on specified conditions approved by the commission.

iii) If the specified conditions involve approved plans and elevations, then no demolition permit shall be issued by the commissioner unless the applicant provides, as part of his application for a demolition permit, a complete set of plans and elevation drawings which have been signed and stamped by the commission or commission staff. The applicant shall have two (2) years from the date of the expiration of the eighteen (18) month period in which to apply for and obtain a demolition permit. No demolition permit shall be issued for such building or structure after the expiration of this two (2) year period, unless the procedural requirements of subsection (c)(5) hereof have been satisfied.

iv) In order to encourage applications that preserve, restore, reuse, or rehabilitate historic buildings and structures, no application for a total demolition of a building or structure which has been unfavorably and finally acted upon by the commission shall be acted favorably upon within four months after the date of final unfavorable action unless the said commission finds

(a) by a vote of two-thirds (2/3) of those members present, substantial and material changes in said resubmitted application; or,

(b) by a majority vote of those members present, that the resubmitted application proposes to preserve the building or structure.

v) Due notice shall be given to parties in interest of the time and place of the proceedings when the resubmitted application will be considered.

The applicant shall have two (2) years from the date of the expiration of the one (1) year period in which to apply for and obtain a demolition permit. No demolition permit shall be issued for such building or structure after the expiration of this two (2) year period, unless the procedural requirements of subsection (c)(5) hereof have been satisfied.

b) For all other buildings and structures not covered under section (6)a) above, no demolition permit shall be issued for a total demolition or a partial demolition of a building or structure found preferably preserved until one (1) year after the date of such determination by the commission, unless the commission informs the commissioner prior to the expiration of such one (1) year period that the commission is satisfied that the applicant for the demolition permit and the owner of the building or structure, if different from the applicant, has:

i) 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,

ii) agreed to accept a demolition permit on specified conditions approved by the commission.

iii) If the specified conditions involve approved plans and elevations, then no demolition permit shall be issued by the commissioner unless the applicant provides, as part of his application for a demolition permit, a complete set of plans and elevation drawings which have been signed and stamped by the commission or commission staff. The applicant shall have two (2) years from the date of the expiration of the one (1) year period in which to apply for and obtain a demolition permit. No demolition permit shall be issued for such building or structure after the expiration of this two (2) year period, unless the procedural requirements of subsection (c)(5) hereof have been satisfied.

iv) In order to encourage applications that preserve, restore, reuse, or rehabilitate historic buildings and structures, no application for a total demolition of a building or structure which has been unfavorably and finally acted upon by the commission shall be acted favorably upon within four months after the date of final unfavorable action unless the said commission finds

(a) by a vote of two-thirds (2/3) of those members present, substantial and material changes in said resubmitted application; or,

(b) by a majority vote of those members present, that the resubmitted application proposes to preserve the building or structure.

v) Due notice shall be given to parties in interest of the time and place of the proceedings when the resubmitted application will be considered.

(7) Upon a determination by the commission that a building or structure is not preferably preserved or upon the

commission's failure to make any determination within forty-five (45) days of the submission date, the commissioner may grant a demolition permit for the building or structure.

(8) Public notice of commission hearings shall provide the date, place and time of the hearing and the addresses of the properties to be considered at the hearing. Public notice shall include, at a minimum, posting with the city clerk and notification to the director of planning and development, to the applicant, to the owners of all abutting property and to other property owners deemed by the commission to be materially affected.

(9) If the applicant is someone other than the owner or his designated agent a demolition review application cannot be filed until the commission receives written authorization from the owner that the applicant may apply for changes to their property.

(d) *Emergency Demolition.* If a building or structure poses an immediate threat to public health or safety due to its deteriorated condition, the owner of such building or structure may request issuance of an emergency demolition permit from the commissioner. As soon as practicable after the receipt of such request, the commissioner shall arrange to have the property inspected by a board consisting of himself or his designee; the city engineer or his designee; the fire chief or his designee; the chairman of the commission or his designee; and one (1) disinterested person chosen by the commissioner. After inspection of the building or structure and consultation with the other members of the board, the commissioner shall determine whether the condition of the building or structure represents a serious and imminent threat to public health and safety and whether there is any reasonable alternative to the immediate demolition of the building or structure which would protect public health and safety. If the commissioner finds that the condition of the building or structure poses a serious and imminent threat to public health and safety and that there is no reasonable alternative to the immediate demolition of the building or structure, then the commissioner may issue an emergency demolition permit to the owner of the building or structure. Whenever the commissioner issues an emergency demolition permit under the provisions of this section of the ordinance, he shall prepare a written report describing the demolition of the building or structure and the basis of his decision to issue an emergency permit with the commission. Nothing in this section shall be inconsistent with the procedures for the demolition and/or securing of buildings and structures established by M.G.L. c. 143, sections 6-10.

In the event that a board of survey is convened under the provisions of M.G.L. c. 143, section 8 with regard to any historically significant building or structure, the commissioner shall request the chairman of the commission or his designee to accompany the board during its inspection. A copy of the written report prepared as a result of such inspection shall be filed with the commission.

(e) *Non-Compliance.* Anyone who demolishes a historically significant building or structure without first obtaining and complying fully with the provisions of a demolition permit issued in accordance with this section shall be subject to a fine of not more than three hundred dollars ($300.00) for each day of violation of this ordinance.

In addition, unless a demolition permit issued in accordance with this section was obtained and unless such permit was fully complied with, including full compliance with plans and elevation drawings signed and stamped by the commission, the commissioner may elect to (1) issue a stop work order halting all work on the building or structure until the commission notifies the commissioner in writing that the applicant has appeared before the commission to address such non compliance, and the commission has accepted the applicant’s plans to remediate such noncompliance; (2) refuse to issue any certificates of occupancy, temporary or final, until any noncompliance has been remediated; and/or (3) refuse to issue a permit required by the State Building Code pertaining to any property on which an historically significant building or structure has been demolished for a period of two (2) years from the date of demolition, provided that this provision shall not prevent the commissioner from issuing any permit required to insure the safety of persons and property.”

The commission may, upon application to and determination by the commission that reuse of the property in accordance with building plans prepared by the owner and submitted to the commission and all relevant agencies

will substantially benefit the neighborhood and provide compensation for the loss of the historic elements of the property either through reconstruction of the lost historic elements or significant enhancement of the remaining historic elements of the site or the surrounding neighborhood, waive the fine, in whole or in part, and/or the ban on issuance of a building permit in order to allow the issuance of a building permit for construction or reconstruction of a building or structure approved by the commission. An owner receiving a waiver of the fine and/or ban on issuance of a building permit under this provision shall execute a binding agreement enforceable against all heirs, assigns and successors in interest with the commission to insure that any reuse of the site undertaken during the two-year ban shall be implemented in accordance with the plans, terms, and conditions approved by the commission. Any reuse of the site undertaken during the two-year ban which fails to comply with the terms of the commission's approval granted under this provision shall also permit reinstitution of the fine for non-compliance with this ordinance.

(f) *Securing Historically Significant Buildings and Structures*. If, following an application for a demolition permit, a building or structure has been determined to be historically significant, and the building or structure is subsequently destroyed by fire or other cause before any determination is made by the commission as to whether the building or structure is preferably preserved, a rebuttable presumption shall arise that the owner voluntarily demolished the building or structure without obtaining a demolition permit in accordance with the provisions of this ordinance. In such cases, the commissioner shall not issue any permit required under the State Building Code pertaining to the property on which the historically significant building or structure was located (except as necessary to secure public safety or health) for a period of two (2) years from the date of destruction of the building or structure, unless the owner can provide evidence satisfactory to the commissioner that he took reasonable steps to secure the building or structure against fire or other loss or that the cause of the destruction was not otherwise due to the owner's negligence.

(g) *Securing Preferably Preserved Buildings and Structures.* If during the period of demolition delay for a building or structure determined to be preferably preserved, such building or structure is destroyed through fire or other cause, the commissioner shall not issue any permit required under the State Building Code pertaining to the property on which the preferably preserved building or structure was located (except as necessary to secure public safety or health) until the end of the period of demolition delay, unless the owner can provide evidence to the commission that he took reasonable steps to secure the building or structure against fire or other loss or that the cause of the destruction was not otherwise due to the owner's negligence.

(h) *Buildings and Structures located in Local Historic Districts.* The provisions of this ordinance shall not apply to any building or structure located in a local historic district established pursuant to M.G.L. c. 40C and subject to regulation by the local historic district commission under the provisions of Sec. 22-40 of the Revised Ordinances.

(i) *Severability.* In case any section, paragraph, or part of this section is declared invalid or unconstitutional by any court of competent jurisdiction, every other section, paragraph, or part of this ordinance shall continue in full force and effect.

(j) *Enforcement.* The commission is authorized to institute any and all actions and proceedings, in law or in equity, in any court of competent jurisdiction, as it deems necessary and appropriate to obtain compliance with the requirements of this section.

(k) Applicability.

(1) Notwithstanding the foregoing, this section shall not apply and a demolition permit shall be issued for the reconstruction substantially similar in exterior design of a building structure or exterior architectural feature damaged or destroyed by fire, storm, or other disaster, provided such reconstruction is begun within six (6) months thereafter and is carried forward with due diligence. This exception shall be limited to reconstruction of only that portion of the building or structure damaged by such catastrophic event.

(2) This subsection shall not apply to buildings or structures which have been designated as landmarks pursuant to Sec. 22-60 of the revised ordinances.

(Ord. No. S-230, 12-1-86; Ord. No. S-315, 6-20-88; Ord. No. T-252, 12-7-92; Ord. No. U-19, 6-20-94; Ord. No. V-98, 12-16-96; Ord. No. V-99, 12-16-96; Ord. No. X-205, 5-1-06; Ord. No. Z-22, 04-22-08; Ord. No. Z-76, 02-07-11)

Sec. 22-51. Demolition by Neglect.

(a) Purpose and Intent

It is the intent of this section to preserve from deliberate or inadvertent neglect the exterior features of landmarked buildings and structures, or the interior portions thereof when such maintenance is necessary to prevent deterioration and decay of the exterior of the building or structure.

(b) Definition

"Demolition by neglect" shall mean neglect in maintaining, repairing, or securing a landmark that results in (i) loss of the character of a documented exterior architectural feature of the building or structure that contributes to its status as a landmark; (ii) deterioration of an exterior feature of the building or structure; or (iii) the loss of the structural integrity of the building or structure.

(c) Owner's Obligations

The owner of a landmark shall preserve such landmark against decay and deterioration through prompt correction of any of the following defects:

(1) Deteriorated or inadequate foundation, defective or deteriorated flooring or floor supports, deteriorated walls or other vertical structural supports;

(2) Structural components of ceilings, roofs, floors, ceiling, roof and floor supports or other horizontal structural components which sag, split or buckle due to defective material or deterioration;

(3) Deteriorated or ineffective waterproofing or weatherproofing of exterior walls, roofs, foundations, or floors, including broken or missing windows or doors, siding, trim, shingles or cladding, or windows left open when weather conditions do not warrant it;

(4) Defective or insufficient weather protection for exterior wall covering, including lack of paint or weathering due to lack of paint or other protective covering;

(5) Any fault or defect in the building which renders it structurally unsafe, whether interior or exterior;

(6) Deterioration of exterior chimney or chimney support system;

(7) Deterioration of external plaster, stucco, masonry or mortar;

(8) Deterioration of rainwater drainage systems whether interior or exterior;

(9) Deterioration of any documented exterior architectural feature which in the judgment of the commission produces a detrimental effect upon the character of the building;

(10) Failure to adequately heat the premises to avoid freezing of heating and/or plumbing fixtures, or failure to properly drain heating and/or plumbing systems before the advent of freezing temperatures;

(11) Failure to adhere to any preservation plan or guideline regarding maintenance provided by the commission pursuant to section 22-64(a); or

(12) Deterioration of any other elements which, if not adequately maintained, would eventually cause the building or structure to crack, bulge, buckle, sag, rot, crumble or collapse, in whole or in part.

(d) Any owner who fails to maintain such building or structure in compliance with this section shall be subject to the remedial procedures of subsection (e)(1) as well as the penalties under section 22-71.

(e) (1) Upon receipt of a complaint that an historic landmark is threatened by demolition by neglect, or on the commission's own initiative, the commission shall request the commissioner of inspectional services or his designee to inspect such landmark. If the commissioner of inspectional services concludes that the landmark is threatened by demolition by neglect, he shall make a written report of his findings to the commission.

(2) Upon the receipt of such written finding of the commissioner of inspectional services, the commission shall hold a public hearing after giving such notice as provided under section 22-63(d). If the Commission finds that the landmark is threatened by demolition by neglect, and the owner has not requested and received a hardship exemption under section (f) herein, the Commission may vote to:

a) require the owner to repair all conditions contributing to demolition by neglect by a date certain;

b) secure the building or structure against further deterioration or other loss;

c) provide the owner with a preservation plan and maintenance guidelines as authorized under Sec. 22-64, and require the owner to undertake such plan according to a timeline set by the commission;

d) assess penalties as set forth in section 22-71; and

e) seek such injunctive relief as it deems necessary and appropriate to preserve such landmark in cases where there is imminent danger of the loss of a landmark.

These remedies shall be cumulative and not exclusive.

(3) For purposes of this ordinance, if a landmark threatened by demolition by neglect is located within a local historic district, then reference to "commission" hereunder shall refer to the local historic district commission of the local historic district in which such landmark is located.

(f) Building Permits

The commission shall notify the commissioner of inspectional services or building official in writing of any landmark found to be threatened by demolition by neglect, and shall instruct said commissioner or building official to make a permanent record of such determination in the corresponding property file maintained in the department of inspectional services as required by law. Prior to the issuance of any building permit for the construction, reconstruction, alteration, renovation, repair, removal, demolition, or change of use or occupancy of any landmark, said commissioner or building official shall review the property file and ascertain whether a notice of unremediated violation of this ordinance is on record. To the extent allowed by law, including but not limited to the provisions of the state building code, 780 CMR 111.1 (6th ed.) or its successor, unless the commissioner or building official is satisfied there is no outstanding unremediated violation of this ordinance, he or she shall reject

such application for a building permit for such landmark in writing, stating the reasons therefor; provided, however, that he or she shall not reject such application if the work intended to be performed is required by the commission to remediate such violation.

(g) Exemptions

(1) The owner may request exemption from this ordinance if the owner can prove to the commission that maintenance of the landmark will cause substantial hardship according to the standards set forth in Section 22-40(f)(10); provided, however, that the owner's self-created hardship shall not qualify as a basis for a hardship exemption.

(2) In situations where, in the commission's view, it is impracticable to immediately repair an architectural feature, or prohibitively expensive to replace it, then the owner shall remove and store such architectural feature safely, until such time as it becomes financially possible to recreate the feature from the original pieces. The owner shall make temporary repairs in its place to protect the structure and/or provide for the safe use of the landmarked premises. (Ord. No. X-179, 12-19-2006)

Secs. 22-52—22-59. Reserved.

DIVISION 3. LANDMARKS

Sec. 22-60. Landmark Preservation—enactment and purpose.

This division is enacted pursuant to the authority derived from section 6 of the Home Rule Amendment to the Constitution of the Commonwealth of Massachusetts, and Charter of the City of Newton.

The purpose of this enactment is to promote the educational, cultural, economic and general welfare of the public through the preservation and protection of the distinctive architecture and other characteristics of buildings, structures, landscapes, and places significant in the history and prehistory of the Commonwealth of Massachusetts and the City of Newton and through the maintenance and improvement of settings for such buildings, structures, landscapes, and places and through the encouragement of compatible development and the discouragement of destruction of or damage to such resources. (Ord. T-288, 9-9-93)

Sec. 22-61. Definitions.

For purposes of this section, the following words shall be defined as follows:

Altered: changed in exterior color, otherwise changed, rebuilt, reconstructed, restored, removed, or remodeled.

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

Commission: the Newton Historical Commission or particular Historic District Commission acting under the provisions hereof.

Constructed: built, erected, installed, enlarged, or moved.

Demolished: destroyed or altered in such a substantial manner as to constitute destruction.

Exterior architectural feature: such portion of the exterior of a building or structure as is open to view from a public or private street, way, park, or body of water which is identified for preservation by its designation by the commission as a landmark, including but not limited to the architectural style and general arrangement and setting thereof, the kind, color, and texture of exterior building materials, the color of paint or other materials applied to

exterior surfaces and the type and style of windows, doors, lights, signs, and other appurtenant exterior fixtures.

Historic district: any area containing distinctive buildings, structures, landscapes, and places as established in accordance with G.L. c. 40, s. 8D and chapter 22 of the Revised Ordinances.

Landmark: any building, structure, landscape or place which has been designated for preservation for reasons of its historic significance.

Landscape: a streetscape or an arrangement of land for human use and enjoyment, including placement of structures, vehicular and pedestrian ways and plantings.

Person aggrieved: the applicant, an owner of adjoining property, an owner of property within the same historic district or of property within one hundred feet of the property lines of the property subject to the application, and any charitable corporation having as one of its purposes the preservation of historic buildings or places.

Structure: a combination of materials other than a building, including, but not limited to, a bridge, tower or other engineering work, sign, fence, wall, terrace, walk or driveway. (Ord. No. T-288, 9-9-93)

Sec. 22-62. Eligibility for designation.

All buildings, structures, landscapes and places currently listed on the National Register of Historic Sites as individual sites or otherwise listed as eligible for said National Register as individual sites shall be eligible for landmark designation and preservation. No additional investigation and report on the historical and architectural significance of the buildings, structures, landscapes or places to be designated as a landmark shall be required for such sites.

Buildings, structures, landscapes, and places listed on the National Register of Historic Sites as part of an historic district, but not individually, or which are eligible for said National Register as part of an historic district, but not individually, may be eligible for landmark designation and preservation if the commission determines that such building, structure, landscape or place is a contributing element of such National Register historic district and possesses one or more of the National Register criteria. The commission may reject the nomination of any such building, structure, landscape or place if it determines that such property lacks sufficient historical or architectural significance for landmark designation. Buildings which are eligible for the National Register either individually or as part of a district may be nominated for landmark designation if they possess historic characteristics sufficient to qualify for listing on the National Register as certified by the Massachusetts Historic Commission.

Any land which, as of August 9, 1993, is contained in the same lot upon which a building or structure eligible for landmark designation is located regardless of whether such lot is later divided, subdivided or redrawn, or any land which, as of August 9, 1993, is contained in an adjoining or surrounding lot(s) held in common ownership or control or used in connection with the lot upon which the building or structure eligible for landmark designation is located, shall be subject to inclusion in the landmark designation as a Newton Landmark Preservation Site, where the preservation and maintenance of such land is necessarily and reasonably related to the stated legislative goal of landmark preservation. Any such designation of land shall include a statement of the reason(s) for the inclusion of the land in the landmark designation pursuant to the legislative standards established herein.

Should any owner, subsequent owner, lessee, heir or assign seek to place a new building or structure on a lot which has been included in a designation as a landmark, the design, size, shape and location of said new building or structure shall be subject to the full review authority of the commission as set out in sections 22-65 and 22-66 as a condition to any building permit to insure that such new building or structure is not detrimental to the landmark status of any pre-existing building or structure, and does not undermine the purpose and intent of this division of the preservation of any building, structure, landscape or place of historic significance. (Ord. No. T-288, 9-9-93; Ord.

No. U-25, 9-7-94; Ord. No. X-159, 07-11-05: Ord. No. X-240, 11-6-06)

Sec. 22-63. Designation.

(a) Members of the board of aldermen, the mayor, the director of planning and development or the commissioner of inspectional services may, in addition to the commission, nominate properties for designation by the commission as Newton Landmark Preservation Sites, through a written nomination to the commission. The commission shall notify the owner of the property upon receipt of the written nomination.

(b) The commission by three-quarters (3/4) vote may, after public hearing, designate as a landmark any property within the city being or containing a structure or landscape which it determines to be either (1) importantly associated with one or more historic persons or events, or with the broad architectural, aesthetic, cultural, political, economic, or social history of the city or the commonwealth or (2) historically or architecturally significant (in terms of period, style, method of construction, or association with a famous architect or builder) either by itself or in the context of a group of structures and may order amendments to any designation of landmark theretofore made. Designation of a landmark or amendment or rescission of previous designation shall include a statement of the reasons for such designation pursuant to the legislative standards established herein.

(c) The commission shall consider the following conditions:

(1) that the location and setting is compatible with future preservation and use;

(2) that the distinguishing characteristics of significance are for the most part original and intact or capable of restoration;

(3) that the existing or proposed use is compatible with the preservation and maintenance of the site.

(d) The commission shall hold a public hearing prior to any designation of landmarks. The commission shall give not less than fourteen days notice of such public hearing by publication in a newspaper of general circulation in Newton and by mailing notice thereof to the owner of the proposed landmark and to every property owner abutting the proposed landmark (each such owner to be determined from the then current records of the assessing department), and to the mayor, the planning board, and the city clerk.

Prior to the public hearing, the commission shall transmit copies of the agenda to the planning board for its consideration and recommendation.

(e) The Newton Landmark Preservation Sites shall be recorded as follows:

(1) The office of the city clerk shall record with the Middlesex County recorder the legal description of all buildings, lands, sites or areas designated as Newton Landmark Preservation Sites by the board, and shall send a copy to the commissioner of inspectional services. In addition, the same may be made available to the public in form and fashion as the commission or board deems appropriate.

(2) Newton Landmark Preservation records.

a) The commission shall keep current and public a list of all properties designated as Newton Landmark Preservation Sites, or included in the State or National Register of Historic Places and make the same available to the public in form and fashion as the commission or board of aldermen deems appropriate.

b) The commission will provide the commissioner of inspectional services and the director of planning and development with current lists and maps showing Newton Landmark Preservation Sites and Districts for their use in referring applications to the commission. (Ord. No. T-288, 9-9-93; Ord. No. X-228, 9-18-

06).

Sec. 22-64. Additional powers and duties of the commission.

The commission shall have the following powers and duties in addition to those otherwise specified herein:

(a) The commission shall have the authority to provide general preservation plans and guidelines to owners of Newton Landmark Preservation Sites regarding maintenance, restoration, and rehabilitation.

(b) The commission shall have the authority to promote public recognition and appreciation for Newton Landmark Preservation Sites. It shall periodically publish a register of designated and potential Newton Landmark Preservation Sites, along with guidelines and preservation programs available at that time.

(c) The commission shall have the authority to initiate solicitation of gifts and contributions to be made to the city to support the activities and purposes of the commission. The commission shall assist the city staff in the preparation of applications for grant funds made by the city to outside funding sources for the purpose of city landmark preservation. (Ord. No. T-288, 9-9-93)

Sec. 22-65. Review authority.

(a) Except as this division may otherwise provide, unless the commission shall first have issued a certificate of appropriateness, a certificate of non-applicability, or a certificate of hardship, no building, structure, exterior architectural feature or landscape of a landmark shall be altered or demolished nor any building or demolition permit issued therefor by the city or any department thereof.

(b) Any person who desires to obtain a certificate from the commission shall file with the commission an application for a certificate of appropriateness, a certificate of non-applicability, or a certificate of hardship, as the case may be, in such form as the commission may reasonably determine, together with such plans, elevations, specifications, materials, or other information the commission deems necessary to enable it to make a determination on the application. When such an application involves the proposed alteration to or demolition of a Newton Landmark Preservation Site that is located within a local Historic District, the commission shall have the option of delegating its review authority to the local Historic District Commission which has the review authority over that local historic district.

(c) The commission shall issue a certificate of appropriateness to the applicant:

(1) if the commission determines that the construction, alteration or demolition for which an application of appropriateness has been filed will be appropriate for or compatible with the preservation or protection of the landmark, or

(2) if prior to the issuance of any disapproval, the commission, as it may, notifies the applicant of the commission's proposed action and includes, as it may, recommendations for changes in the applicant's proposal, which may include recommendations as to appropriateness of design, arrangement, texture, material and similar features, that, if made, would make the application acceptable to the commission and within fourteen days of the receipt of such notice, the applicant files a written modification of his application in conformity with the recommended changes of the commission.

(d) The commission shall issue a certificate of non-applicability to the applicant if the commission determines that an application for a certificate of appropriateness or for a certificate of non-applicability:

(1) does not involve any exterior architectural feature or landscape of a landmark, or (2) involves an exterior architectural feature or landscape of a landmark that is not then subject to review by the commission in

accordance with the provisions hereof.

(e) If a certificate of hardship has been applied for, or if the commission determines that the construction or alteration for which a certificate of appropriateness has been applied for is inappropriate, the commission shall issue a certificate of hardship to the applicant if the commission determines that:

(1) owing to conditions especially affecting the building, structure, landscape, or place involved, but not affecting the landmark's general historic qualities, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant;

(2) such application may be approved without substantial derogation from the intent and purpose of this ordinance; and

(3) the application may be approved without substantial detriment to the public welfare.

(f) The commission shall issue a certificate of appropriateness to the applicant if the commission fails to make a determination on an application within the time specified in paragraph three of section 22-67. (Ord. No. T-288, 9-9-93; Ord. No. X-240, 11-6-06)

Sec. 22-66. Factors to be considered by the commission.

In passing upon matters before it, the commission shall consider, among other things:

(a) *In general*:

(1) the historical and architectural value, and significance of the building, structure, landscape, or place;

(2) the general design, arrangement, texture, material, and color of the features involved; and

(3) the relation of such features to similar features of buildings and structures in the surrounding area.

(b) *In the case of new construction or additions to existing buildings or structures:* the appropriateness of the size, shape, and location of the building or structure, both in relation to the land area upon which the building or structure is situated and to buildings and structures in the vicinity.

(c) *In the case of demolition or removal:*

(1) whether the demolition or removal of a building or structure of such architectural or historic significance would impair the public interest and the general welfare of the people of the city, town, or state;

(2) whether the demolition or removal of the building or structure would undermine the purpose and intent of this division and the objectives of local preservation plans;

(3) whether the building or structure has so deteriorated that preservation or restoration is not structurally or economically feasible, provided that the owner's self-created hardship or failure to maintain the property in good repair shall not qualify as a basis for the issuance of a certificate of hardship.

The commission shall not make any recommendations or requirements except for the purpose of preventing developments incongruous to the historical or architectural characteristics of a building, structure, landscape or site, or their surroundings.

The commission may impose dimensional and set-back requirements in addition to those required by the

applicable ordinance or by-law. (Ord. No. T-288, 9-9-93)

Sec. 22-67. Determination.

The commission shall determine promptly, and in all events within forty-five (45) days after the filing of an application for a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship, as the case may be, whether the application involves any exterior architectural features, or landscapes that are subject to approval by the commission. If the commission determines that such application involves any such features or landscapes, the commission shall hold a public hearing on such application, unless such hearing is dispensed with as hereinafter provided in paragraph four of this section.

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

As soon as convenient after such public hearing but in any event within sixty days after the filing of the application, or within such further time as the applicant may allow in writing, the commission shall make a determination on the application. If the commission fails to make a determination within such period of time, the commission shall thereupon issue a certificate of appropriateness.

A public hearing on an application need not be held if such a hearing is waived in writing by all persons entitled to notice thereof. In addition, a public hearing on an application may be waived by the commission if the commission determines that the exterior architectural feature, landscape or archeological feature of the landmark is so insubstantial in its effect on the landmark that it may be reviewed by the commission without a public hearing on the application, provided, however, that if the commission dispenses with a public hearing on an application, notice of the application shall be given to the owners of all adjoining property and other property deemed by the commission to be materially affected thereby as above provided, and ten days shall elapse after the mailing of such notice before the commission may act upon such application.

A certificate of appropriateness, a certificate of non-applicability or a certificate of hardship shall be issued upon majority vote of the members of the commission, except in the case of inaction by the commission within the time specified in this section, in which case a certificate of appropriateness shall be automatically issued.

Each certificate of appropriateness, non-applicability or hardship issued by the commission shall be dated and signed by its chairman, vice chairman, secretary, or such other person designated by the commission to sign such certificates on its behalf.

The commission shall file with the city clerk, and with any department of the city having authority to issue building or demolition permits, a copy of notice of all certificates and determinations of disapproval issued by the commission. (Ord. No. T-288, 9-9-93)

Sec. 22-68. Ordinary maintenance.

Nothing in this division shall be construed to prevent: (a) the ordinary maintenance or repair of any building, structure or landscape; (b) the ordinary maintenance, repair or replacement of any exterior architectural feature of a landmark that, with respect to either (a) or (b), does not involve a change in design or material, or the appearance thereof; if such features have been included in the findings of the Landmark Commission at the time of designation; (c) landscaping with plants, trees or shrubs, provided that such landscaping does not affect any significant landscape

feature; (d) meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition; (e) any construction or alteration under a permit duly issued prior to the effective date of the landmark ordinances, except as provided herein. (Ord. No. T-288, 9-9-93)

Sec. 22-69. Administrative review.

There shall be a review procedure whereby any person aggrieved by a determination of the commission may, within twenty days after the filing of the notice of such determination with the city clerk, file a written request with the commission for a review by a person or persons of competence and experience in such matters, designated by the Metropolitan Area Planning Council (MAPC).

The finding of the person or persons making such review shall be filed with the city clerk within forty-five days after the request, and shall be binding on the applicant and the commission, unless a further appeal is sought in the superior court as provided herein. (Ord. No. T-288, 9-9-93)

Sec. 22-70. Judicial review.

Any person aggrieved by a determination of the commission, or by the finding of a person or persons making an administrative review as provided herein, may, within twenty days after the filing of the notice of the aforesaid determination or finding with the city clerk, appeal to the superior court sitting in equity for Middlesex County. The court shall hear all pertinent evidence and shall uphold the determination of the commission if the court finds the decision of the commission to be supported by substantial evidence and within the authority of the commission, or may remand the case for further action by the commission, or make such other decree as justice and equity may require. The burden of proof shall be on the aggrieved person. The remedy provided by this section shall be exclusive, but the parties shall have all other rights of appeal and exception as in other equity cases. Costs shall not be allowed against the party appealing such determination of the commission unless it shall appear to the court that the appellant acted in bad faith or with malice in making the appeal to the court. (Ord. No. T-288, 9-9-93)

Sec. 22-71. Enforcement.

Middlesex Superior Court sitting in equity shall have jurisdiction to enforce the provisions of this division and any regulations enacted hereunder and the determinations, rulings, and regulations issued pursuant thereto and may, upon the petition of the mayor or of the board of aldermen or of the commission, restrain by injunction violations thereof; and, without limitation, such court may order the removal of any building, structure, or exterior architectural feature constructed in violation thereof, or the substantial restoration of any building, structure, exterior architectural feature or landscape of a landmark altered or demolished in violation thereof, and may issue such other orders for relief as may be equitable.

Whoever violates any of the provisions of this division shall be punished by a fine of three hundred dollars ($300.00). Each day during any portion of which a violation continues to exist shall constitute a separate offense. (Ord. No. T-288, 9-9-93)

Sec. 22-72. Advisory review.

The review process set out in section 22-65 shall be advisory only for properties containing from one through four family dwellings which continue to be owned and occupied by the legal owner-occupants of record as of August 9, 1993, unless full review as set out in section 22-65 is voluntarily agreed to by said owner-occupants. Such advisory review shall cease, and the commission shall have authority to impose the full review set out in section 22-65 when and if such occupancy ceases or when legal or equitable ownership is transferred, whether by sale, an agreement to sell, or a transfer in trust, but excluding the grant of a mortgage. (Ord. No. T-288, 9-9-93; Ord. No. U-1, 2-7-94)

Sec. 22-73. Severability.

The provisions of this division shall be severable. If any of its provisions shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remaining provisions shall continue in full force and effect. (Ord. No. T-288, 9-9-93; Ord. No. T-288, 8-9-93)

Secs. 22-74—22-75. Reserved.

DIVISION 4. CITY-OWNED BUILDINGS

Sec. 22-76. Preservation of city-owned properties subject to funding under the Community Preservation Act.

(a) Purpose and Intent:

The purpose of this section is to encourage (1) the preservation and protection of city-owned buildings, structures and properties (2) the maintenance and improvement of landscapes, grounds and settings of such buildings and structures and (3) compatible development to preclude destruction or damage of such resources

(b) Definitions:

For the purpose of this division, the following words and phrases shall be defined as follows:

Alter/alteration: Rebuilding, reconstructing, restoring, removing, demolishing or similar actions relating to regulated buildings, structures and properties including a change to the exterior paint color or colors.

Building: A combination of materials including a roof forming a shelter for persons, animals or property.

Certificate of Appropriateness: The certificate issued by the commission if it determines that the construction or alteration for which an application for a certificate of appropriateness has been filed will be appropriate for or compatible with the preservation or protection of the city-owned building or structure.

Certificate of hardship: The certificate issued by the commission if it determines that owing to the conditions especially affecting the building or structure involve failure to approve an application will involve a substantial hardship to a city department or agency and that such application may be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purpose of this section.

Certificate of non- applicability: The certificate issued by the commission or its designee if it determines that the construction or alteration for which a certificate of appropriateness or a certificate of non-applicability has been filed does not involve any exterior architectural feature, any interior primary space, or involves an exterior architectural feature which is not subject to review by the commission.

City: The City of Newton.

Commission: The Newton Historical Commission.

Commissioner: The Commissioner of the Newton Inspectional Services Department.

Demolish/Demolition: To destroy or to alter in such a substantial manner as to constitute destruction.

Structure: Any construction, erection, assemblage or other combination of materials other than a building at a fixed location upon the land including but not limited to, a bridge, tower or other engineering work, sign, fence,

wall, terrace, walk, or driveway.

(c) Application of this section to city-owned properties of Newton:

This section shall apply to the exterior and the interior of those historically significant city-owned buildings or structures including such structures and buildings owned by the city but leased to third parties for which community preservation funds are expended as necessary for the rehabilitation or restoration of historic resources pursuant to the provisions of the Community Preservation Act, G. L. c. 44B. However, such interior spaces shall be classified as either primary or secondary spaces, as follows*:*

(1) Primary spaces:

Spaces designated not only based on function, but also on their architectural features, details, surface finishes and design proportions that together serve to define the historic character of the building. These spaces are generally open to public access with formal areas designed to contribute to the historic character created by the structure as a whole. Primary spaces within city hall include but are not limited to the following:

a) rotunda/lobby;

b) first and second floor hallways;

c) staircases;

d) aldermanic chambers;

e) conference rooms 202, 203, 222 and 209;

f) mayor's office, hallway and reception area; and

g) War Memorial and hallway museum displays.

h) Such other primary spaces as shall be determined by the commission or may be delegated to the commission staff.

(2) Secondary spaces:

Spaces defined chiefly by their function with little or no architectural detail or decoration. These spaces are usually designed to be easily adaptable and can be extensively altered without affecting the historic nature of the structure.

Public access is generally limited. Secondary spaces within city hall include, but are not limited to the following:

a) departmental offices;

b) cafeteria;

c) basement hallways; and

d) storage and building maintenance areas.

e) Such other secondary spaces as shall be determined by the commission or commission staff.

(3) Landscapes, grounds and setting:

Outdoor spaces, such as landscapes, grounds and settings by themselves, such as burying grounds, cemeteries, and playground fields, or by their relation and historical context to one or more buildings or structures erected thereon or adjoining. Outdoor spaces are designated not only based on function, but also on their features, details, decoration and design including their being created by or associated with a particular landscape architect, architect, designer or historic person 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.

(d) Mandated review and approval:

Any proposed alteration or demolition of the exterior or the interior primary spaces of any city-owned building or structure shall require an application for prior review and commission approval except for temporary alterations which do not permanently change the exterior of the city-owned building or structure, such as the seasonal installation of door or window screens, seasonal window air conditioning units, and temporary signs.

The commission shall review and approve in advance all proposed plans for alteration or demolition of city-owned properties in accordance with the procedural standards set forth in subsection (d)(1) below.

(1) Procedure:

a) No building permit or demolition permit for a historically significant city-owned building, structure or property shall be issued by the commissioner except in conformity with the provisions of this section.

b) The public buildings department is encouraged to submit plans and proposed materials directly to the commission while still in the planning and development stage. Before receiving a building or demolition permit for a proposed alteration or demolition of the exterior or the interior primary spaces of a city-owned building or structure or the alteration of city-owned property such as landscapes, grounds or settings, the city, or the applicant for such permit if other than the city, shall file an application with all plans as required by the commissioner to the commission for a certificate of appropriateness for the proposed plans of alteration or demolition.

c) The commission shall hold a public hearing with due public notice within forty-five (45) days after the filing of the completed application for a certificate of appropriateness or a certificate of hardship unless both the applicant and the commission agree to additional time.

d) The commission shall use its best efforts to render a decision within forty-five (45) days after the filing of a completed application for a certificate of appropriateness unless additional information is deemed necessary by the commission.

e) Provided there is a quorum present, the concurring vote of a majority of the members in attendance shall be required to issue a certificate.

f) In issuing certificates, the commission may as it deems appropriate impose certain conditions and limitations and may require architectural or plan modifications consistent with the intent and purpose of this section.

g) If the construction or alteration for which an application for a certificate of appropriateness has been filed shall be determined to be inappropriate and therefore disapproved, or in the event of an

application for a certificate of hardship, the commission shall determine whether, owing to conditions especially affecting the building or structure involved, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant. If the commission determines that owing to such conditions, failure to approve the application will involve substantial hardship to the applicant and approval thereof may be made without detriment or derogation to the purpose of this section, the commission shall issue a certificate of hardship.

h) If the commission or its designee determines that an application for a certificate of appropriateness or for a certificate of non-applicability does not involve any exterior architectural feature, any interior primary space, or involves an exterior architectural feature which is not subject to review by the commission, the commission shall cause a certificate of non-applicability to be issued to the applicant.

i) Reconstruction, construction or alteration of secondary interior spaces may be performed by the public buildings department or its authorized agent without review by and approval of the commission upon satisfaction of all requirements for receipt of a building or demolition permit from the inspectional services department. The public buildings department shall consult with the commission staff, if necessary, on a determination whether the interior space in question is deemed a primary or secondary space as defined herein.

j) The commission shall send a copy of the certificates and disapprovals issued to the applicant and shall file a copy with the city clerk and the commissioner of inspectional services. The decision of the commission shall be final.

(e) Factors to be considered by the commission:

The commission shall consider among other things the following factors when determining whether the proposed demolition or alteration plans are appropriate for or compatible with the preservation of the city-owned building or structure:

(1) In general: (1) the historical and architectural value, and significance of the area to be altered on the building, structure or property; (2) the general design, arrangement, texture, materials, color finishes, and condition of the features involved; and (3) the relation of such features to similar features of buildings, structures and property in the surrounding area.

(2) Specifically, the commission, in considering architectural features and finishes may examine (1) all materials utilized in flooring, walls and ceilings, (2) furniture which has been built into the room (3) light fixtures or other decorative elements which were designed specifically for the space, and (4) paint color, stains, varnishes and other finishes which could alter or affect the visual impact of the space. The commission may also consider structural systems including but not limited to framing elements, exposed load-bearing walls or columns and stone foundations, and mechanical systems which directly relate to the historic nature of the building or decorative elements which contribute to the historic nature of the building and which are part of a mechanical system including but not limited to grills, radiators, light fixtures and switch plates.

(3) In the case of new construction or additions to existing buildings or structures, the commission may consider the appropriateness of the size, shape, and location of the building or structure, both in relation to the land area upon which the building or structure is situated and to buildings and structures in the vicinity.

(f) Non-compliance

Any agency of the city or any entity that alters or demolishes a city-owned historically significant building, structure or property without first obtaining and complying fully with a certificate of appropriateness issued in accordance with this section shall not be permitted to obtain any further building or demolition permits for the same building, structure, or site. This ban on the issuance of any further building or demolition permits can only be waived by a majority vote of the commission if the commission determines that new plans submitted to the commission will substantially benefit the neighborhood and provide compensation for the loss of the historic elements of the property.

(g) Legal Effect

This section shall not be construed to abrogate, diminish nor replace the protective measures already adopted in the City of Newton, but is designed to provide further protection and to assure preservation of city-owned buildings, structures and properties

(h) Severability

If any section, paragraph or part of this section is declared invalid or unconstitutional by any court of competent jurisdiction, every other section, paragraph, or part of this section shall continue in full force and effect. (Ord. No. X-188, 12-19-05; rd. No. X-204, 04-03-06)

Secs. 22-77—22-79. Reserved

ARTICLE IV. URBAN DESIGN COMMISSION

Sec. 22-80. Purpose, composition.

There shall be an urban design commission of eight (8) members for the preservation, improvement and development of the physical environment of the city. The members of the commission shall, so far as practicable, be selected to provide representation from the fields of city planning, landscape architecture, horticulture, arboriculture, architecture, landscaping and related fields of specialization, and so far as practicable, be selected to provide representation from as many wards of the city as possible. (Ord. Z-43, 02-17-09)

Sec. 22-81. Powers and duties.

The commission established by this article shall conduct studies of urban design or beautification programs, techniques and methods currently used in Newton and elsewhere and make recommendations to responsible city agencies on the implementation of such programs; conduct periodic meetings and seminars for interested private and public groups; give advice, upon request of the mayor, director of planning and development, the board of aldermen, the planning and development board, or the school committee, upon specific matters affecting urban design and beautification, including but not limited to: landscaping of streets, parks, playgrounds and public areas, public and private parking lots; air rights construction; municipal buildings; private buildings; gasoline station design and landscaping; requests for zoning changes and special permits; signs; setback, height and bulk of new public and private construction, as may be required to assure that the aforementioned are aesthetically designed, located and landscaped; advise the parks and recreation commissioner and the public works commissioner in the carrying out of their responsibilities; study the availability of public and private sources of funding for urban design and beautification programs and projects; and perform other such functions as may be delegated to it by ordinance. (Ord. Z-43, 02-17-09)

Secs. 22-82—22-94 Reserved.

ARTICLE V. ECONOMIC DEVELOPMENT COMMISSION

Sec. 22-95. Economic Development Commission: establishment, purpose, membership, officers.

(a) There is hereby established under General Laws chapter 40, section 8A, a development and industrial commission to be known as the Newton Economic Development Commission for the promotion and development of business and industry within the City of Newton, for the purpose of strengthening the local economy, thereby providing additional jobs and expanding the city's tax base, so as to enable the city to maintain existing service levels and if possible, enhance them; said commission to be governed and operated in accordance with the provisions relative thereto of the General Laws or any special act or amendment thereto.

(b) Said commission shall consist of fifteen (15) members who shall be residents of the city and who shall be appointed by the mayor subject to section 3-3 of the Charter. Initial terms shall be as follows: three (3) for a term of one year, three (3) for a term of two years, three (3) for a term of three years, three (3) for a term of four years, and three (3) for a term of five years. The mayor shall fill the vacancies in membership, arising from expired terms, by appointments for a term of three (3) years. Any vacancy in the membership of the commission shall be filled for the unexpired portion of any member's term by the mayor. Each member shall serve until his or her successor is appointed and duly qualified.

(c) The members of the commission shall elect annually one (1) member of said commission to be chairman, another to be vice-chairman, and a third to be secretary.

(d) The members of the commission shall receive no compensation for their services.

(e) Said commission shall be staffed by the city's department of planning and development, such staff to be provided for in the city's budget. The economic development director shall serve as executive director to the commission. Said commission may hire consultants and purchase materials and supplies necessary for the discharge of its duties, within the limits of any sum appropriated for such purpose.

(f) Said commission may apply for and receive funds through gifts, grants, and donations for the purposes of carrying out its activities, subject to the approval of the board of aldermen.

(g) Said commission shall have the power and duty:

(1) to study, investigate, and appraise economic conditions and trends affecting Newton industry, business and commerce;

(2) to promote, assist, and encourage the preservation and development of existing Newton industry, business and commerce;

(3) to promote, assist, and encourage the location and development of new industry, business and commerce in the city;

(4) to investigate and assist in the establishment of commercial projects, including projects involving private enterprises, for the purpose of strengthening the local economy; to identify appropriate commercial areas and zones for the establishment of said commercial projects; to consider and evaluate the environmental and traffic impacts of commercial developments;

(5) to prepare, collect, compile, advertise and distribute books, maps, charts, pamphlets and graphic material for the purpose of furthering the objectives for which the commission was established;

(6) to cooperate with, and seek to coordinate the activities of, all official and unofficial civic, neighborhood, research and promotional agencies, commissions, groups, associations and organizations having like or kindred economic development functions and concerns;

(7) to confer and cooperate with agencies of the state and federal government in the exercise of the aforesaid powers and duties;

(8) to confer and cooperate with other municipal departments and official and unofficial groups, associations and organizations in Newton, including but not limited to neighborhood associations and organizations, in order that industrial, business, and commercial development shall be appropriately related to residential, recreational, and municipal land uses in the city;

(9) to advise and make recommendations to appropriate officials, agencies, boards, departments and commissions of the City of Newton, including the mayor, the board of aldermen and the department of planning and development, regarding actions which, in said commission's judgment, would affect or improve the economic conditions and development of the city;

(10) to prepare and transmit to the board of aldermen, annually during the month of February, a report of said commission's activities and of its recommendations for improving the economic condition and development of the city. (Ord. No. S-71, 5-21-84; Ord. No. V-52, 12-4-95)

Secs. 22-96—22-99. Reserved.

ARTICLE VI. COMMISSION ON DISABILITIES

Sec. 22-100. Created, membership, terms, removal, chairperson, officers.

There is hereby established within the city a commission on disabilities, consisting of not less than five (5) not more than nine (9) members to be appointed by the mayor with the approval of the board of aldermen. Such members shall be residents of the city and shall serve without compensation. A majority of said commission members shall consist of people with disabilities, one member shall be a member of the immediate family of a person with a disability and one member of said commission shall be either an elected or appointed official of the city. The terms of the first members of said commission shall be for one, two or three years, and so arranged that the term of one-third of the members expires each year, and their successor shall be appointed for terms of three years each. Any member of said commission may, after a public hearing, if so requested, be removed for cause by the appointing authority. A vacancy occurring otherwise than by expiration of a term shall be filled for the unexpired term in the same manner as an original appointment. The chairperson and other officers shall be chosen by a majority vote of said commission members.

Sec. 22-101. Purposes.

It shall be the purpose of this commission to cause the full integration and participation of people with disabilities in the city consonant with the enabling legislation contained in chapter 40, section 8J of the Massachusetts General Laws. In accordance with this legislation, the commission shall:

(a) research local problems of people with disabilities;

(b) advise and assist municipal officials and employees in ensuring compliance with state and federal laws and regulations that affect people with disabilities;

(c) coordinate or carry out programs designed to meet the problems of people with disabilities in coordination with programs of the Massachusetts office on disability;

(d) review and make recommendations about policies, procedures, services, activities and facilities of departments, boards and agencies of the city as they affect people with disabilities;

(e) provide information, referrals, guidance and technical assistance to individuals, public agencies, businesses and organizations in all matters pertaining to disabilities;

(f) coordinate activities of other local groups organized for similar purposes.

Sec. 22-102. Authority to establish rules and regulations.

The commission may, with the approval of the mayor and the knowledge of the director of planning and development establish its own rules and regulations to assure the greatest effectiveness in its organization and functions consistent with the purpose of this article and the provisions of the enabling legislation.

Sec. 22-103. Meetings; reports.

The commission shall meet as such not less often than once in every month, excepting July or August. The director of planning and development shall be given notice of said meetings and he or his designee shall have the right to be present. The commission shall keep accurate records of its meetings and actions, and shall file a report of its plans and actions to the mayor with such frequency and at such times as the mayor may request, but not less often than annually. The commission shall file an annual report with the board of aldermen which shall be printed in the city's annual report.

Sec. 22-104. Gifts, grants.

The commission is legally empowered to receive gifts of property, both real and personal, in the name of the city, subject to the approval of the board of aldermen. Such gifts shall be managed and controlled by the commission for the purposes of this section. Any federal or state grants and private gifts or donations received for these purposes shall be reflected by the commission in its annual budget to be approved by the mayor and board of aldermen. The commission may expend, with the approval of the mayor, such funds as may be appropriated for the purposes of this article. The commission shall annually prepare an operating budget, in a timely manner to permit formulation of the overall department of planning and development budget. (Ord. No. Z-74, 01-18-11)

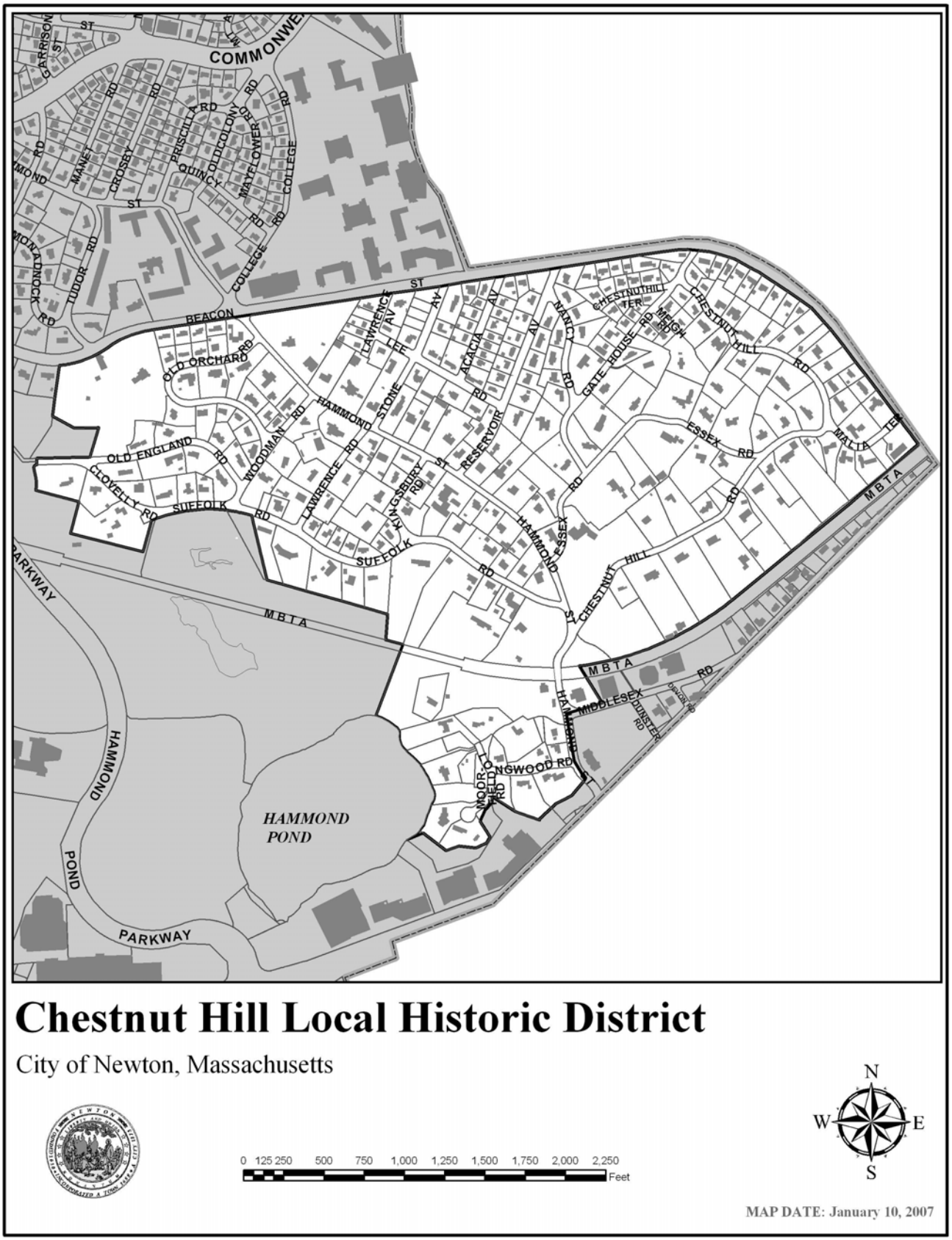
Auburndale Local Historic District

City of Newton, Massachusetts

0 125 250 500 750 1,000 1,250 1,500 1,750 Feet

N W E S

MAP DATE: January 10, 2007



Chestnut Hill Local Historic District

City of Newton, Massachusetts

0 125 250 500 750 1,000 1,250 1,500 1,750 2,000 2,250 Feet

N W E S

MAP DATE: January 10, 2007

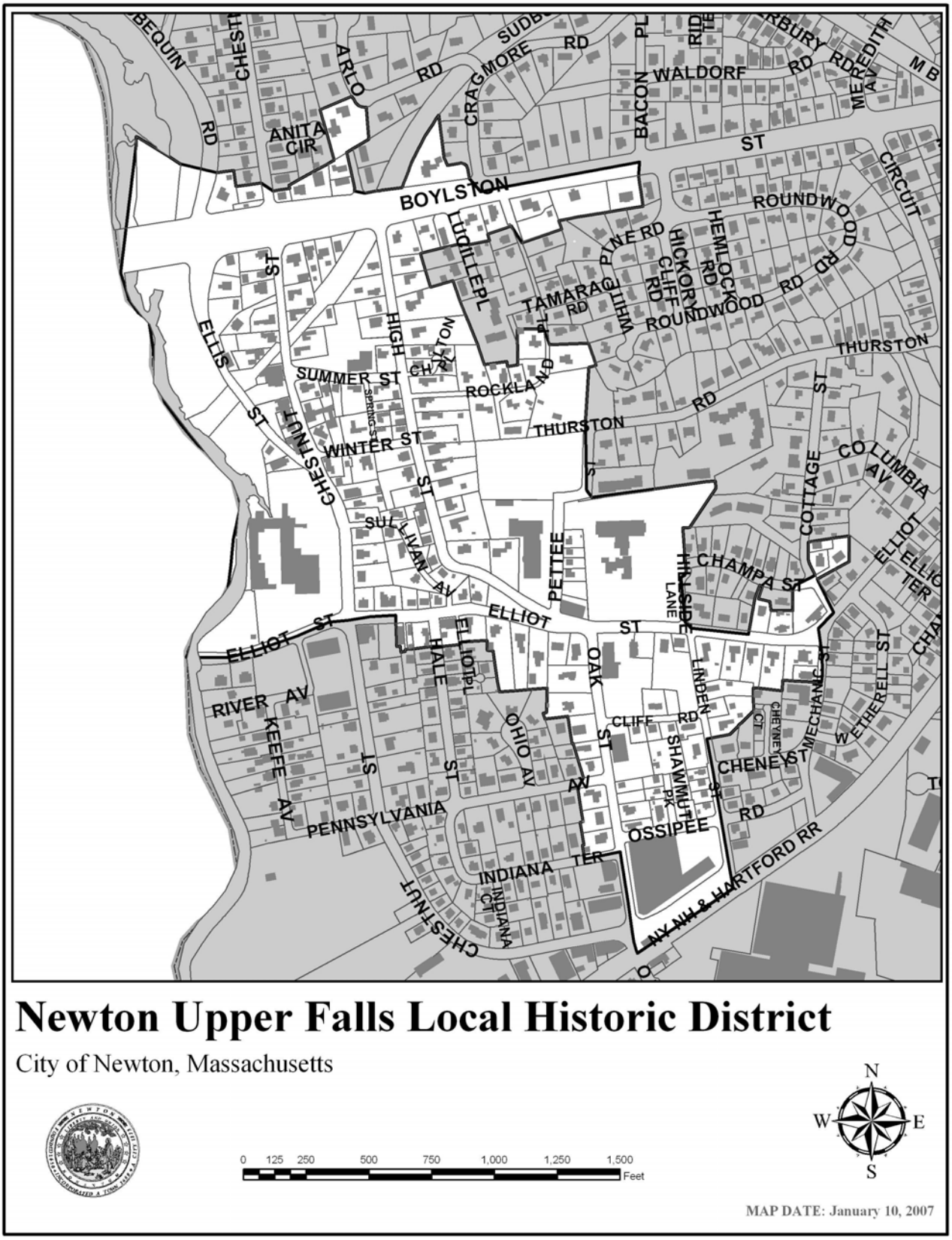
Newtonville Local Historic District

City of Newton, Massachusetts

0 125 250 500 750 1,000 Feet

N W E S

MAP DATE: January 10, 2007



Newton Upper Falls Local Historic District

City of Newton, Massachusetts

0 125 250 500 750 1,000 1,250 1,500 Feet

N W E S

MAP DATE: January 10, 2007