

Newburyport Local Historic District Ordinance Online Draft

The City of Newburyport, Massachusetts hereby establishes a Local Historic District to be called the Newburyport Historic District and to be administered by a Newburyport Historic District Commission as provided for under Massachusetts General Laws Chapter 40C, as amended.

1 – PURPOSE

The purpose of this ordinance is to promote the economic, educational, cultural and general welfare of the City of Newburyport's inhabitants through (1) preserving and protecting distinctive characteristics of buildings, streetscapes, heritage landscapes and archaeological assets significant in the history and development Newburyport. (2) maintaining and improving their settings, (3) encouraging new building and addition designs compatible with or complimentary to the existing architecture, (4) applying Guidelines for proposed changes to distinctive Exterior Architectural Features visible from the public way and (5) promoting the use of historic districts as an economic stimulus to local business and industry.

2 – DEFINITIONS

The terms defined in this section shall be capitalized beyond Section 2.0 of this Ordinance. Where a defined term has not been capitalized, it is intended that the meaning of the term be the same as the meaning ascribed to it in this section unless another meaning is clearly intended by its context. As used in this Ordinance, the following terms shall have the following meaning:

Addition: An extension or increase in floor area or height of a building or structure.

Alteration, to Alter: Any construction, reconstruction, rebuilding, restoration, replication, removal, demolition, and other similar activities other than normal repair and maintenance.

Architectural Feature: Building elements including but not limited to window and door trim, parapets, roof cresting, cornices.

Building, to Build: A combination of forming a shelter for persons, animals or property or the construction there of. Refer to Section II-B of Newburyport's Zoning Ordinance for further definition.

Certificate:

Certificate of Appropriateness - issued for those changes that are in conformance with Guidelines and/or are acceptable for the district.

Certificate of Non-Applicability - issued for those changes which affect features not controlled by the Commission.

Certificate of Hardship - issued for those changes that are not in conformance with Guidelines, but which may be necessary due to economic, physical, social, or other special conditions.

Commission: The Newburyport Historic District Commission as established in this ordinance.

Construction, to Construct: The act or the fact of building, erecting, installing, enlarging, moving and other similar activities.

District: The Newburyport Historic District as established by Appendix I in this ordinance consisting of one or more District areas.

Existing: An already completed building or structure.

Exterior Architectural Feature: Such portion of the exterior of the Building or Structure as open to view from a public way (such as public streets, public park, or public body of water), including but not limited to architectural style and general arrangement and setting thereof, the kind and texture of exterior building materials, and the type and style of windows, doors, lights, chimneys, signs and other appurtenant exterior fixtures.

Guidelines: District Guidelines that shall be adopted and issued by the commission.

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Party Aggrieved: The applicant; an owner of adjoining property; an owner of property within the same District; an owner of property within 150 feet of said District; and any charitable corporation in which one of its purposes is the preservation of historic places, structures, Buildings or Districts.

Public Way: Shall mean ways in which the public has a right of access and include public streets and sidewalks, public parks and public bodies of water

Structure: Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground. Structures include, but are not limited to, principal and accessory buildings, towers, decks, fences, privacy screens, walls, antenna, swimming pools, signs, gas or liquid storage facility and mobile homes. Essential public utility poles, regulatory signs and the like are not considered structures when located within required setback open spaces.

Temporary Structure or Building: A building or structure not to be in existence for a period of more than two years. The Commission may further limit the time periods set forth herein as it deems appropriate.

3 – DISTRICT

The district shall consist of one or more district areas as listed in Section “13” Appendix 1 of this Ordinance.

4 – EXCLUSION

The commission established by this ordinance shall exclude from its purview the following:

- 4.1.1 Buildings that are less than 75 years old are exempt from review.
- 4.1.2 Ordinary maintenance and repair of any Exterior Architectural Features if such repair and maintenance does not involve a fundamental change in design and materials.
- 4.1.3 Any Constructions, Demolitions or Alterations under a permit issued by a building inspector prior to the effective date of the establishment of the District.
- 4.1.4 Any Constructions, Demolitions or Alterations under orders issued by a building inspector or similar agent for the purposes of public safety.
- 4.1.5 Landscaping with plants, trees or shrubs.
- 4.1.6 Temporary Buildings, temporary Structures or temporary signs, subject, however, to conditions pertaining to the duration of existence and use, location, lighting, removal and similar matters as the Commission may reasonably specify.
- 4.1.7 Terraces, walks, driveways, sidewalks and similar structures, provided that any such structure is substantially at grade level.
- 4.1.8 Storm windows, storm doors, screen windows, screen doors, and wall air conditioners.
- 4.1.9 The color of exterior paint or the color of materials used on roofs.
- 4.1.10 Re-Roofing except in the case of Existing slate roofs.
- 4.1.11 Flagpoles, sculpture, mailboxes (freestanding or attached), window boxes, gutters, downspouts and leaders, house numbers, and garden furniture.

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4.1.12 Satellite antennae, heat and air vents or similar equipment, provided they are located to minimize visibility from a Public Way.

4.1.13 All public park and cemetery structures are exempt except buildings.

4.14 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 two years thereafter and carried forward with due diligence.

4.15 Upon request, the Commission or its delegate thereof shall issue a Certificate of Non-Applicability with respect to Construction or Alteration in any category not subject to review by the Commission in accordance with the above provisions.

5 – COMMISSION

5.1 Appointments and Terms: the Newburyport Historic District shall be overseen by a Commission consisting of seven (7) members and up to three (3) alternates appointed by the mayor and confirmed by the City Council. Initially, the Mayor shall appoint two (2) members for one year, two (2) for two years, and three (3) for three years, and each successive appointment shall be made for three years. Alternates shall be appointed, one (1) for a period of one year, one (1) for a period two years and one (1) for a period of three years: and three years terms thereafter.

5.2 Commission Composition: The Membership, where possible, should include (a) two (2) members and one (1) alternate from nominees of the recognized historical societies including the Newburyport Preservation Trust and Historic Society of Old Newbury. (b) one (1) member and one (1) alternate nominated by the American Institute of Architects covering Newburyport, (c) one (1) member and one (1) alternate nominated from the Greater Newburyport Board of Realtors, (d) one (1) member from the Newburyport Chamber of Commerce, and (e) two (2) members who are residents within the District. Initially, a minimum of two (2) members of the Local Historic District Study Committee shall be included to provide continuity.

5.3 Alternate Commission Members: In the case of the absence, inability to act or unwillingness to act because of self-interest on the part of a member of the Commission, his or her place shall be taken by an alternate member designated by the Chair.

5.4 Term Expiration: Each member and alternate shall continue to serve in the office after the expiration date of his or her term until a successor is duly appointed.

5.5 Meeting Schedule: Meetings of the Commission shall be held twice a month or at the call of the Chair and in such other manner as the Commission shall determine in its Rules and Regulations.

5.6 Quorum & Votes: Four (4) members of the Commission shall constitute a quorum. Decisions shall be made by a concurring majority of members present. A decision shall require a positive vote of no less than four (4) members of the Commission.

6 – COMMISSION POWERS AND DUTIES

6.1 The Commission shall exercise its powers in administering and regulating the Construction and Alteration of any Structures or Buildings within the District as set forth

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under the procedures and criteria established in this ordinance. In exercising its powers and duties hereunder, the Commission shall pay due regard to the distinctive characteristics of each Building, Structure and District area.

6.2 The Commission may adopt, and from time to time amend, reasonable Rules and Regulations not inconsistent with the provisions of this ordinance or Chapter 40C of the General Laws, setting forth such forms and procedures as it deems desirable and necessary for the regulation of its affairs and conduct of its business, including requirements for the contents and forms of applications for Certificates, fees, hearing procedures and other matters. The Commission shall file a copy of any rules and regulations with the office of the City Clerk.

6.3 The Commission, after a public hearing duly posted and advertised at least fourteen days in advance in a conspicuous place in City Hall and in a newspaper of general circulation in Newburyport, shall adopt and from time to time amend Guidelines which set forth the designs and descriptions for certain Exterior Architectural Features which are, in general, suitable for the issuance of a Certificate. No such design Guidelines shall limit the right of an applicant for a Certificate to present other designs to the Commission for approval.

6.4 The Commission shall at the beginning of each fiscal year hold an organizational meeting and elect a Chair, a Vice Chair and Secretary, and file notice of such election with the office of the City Clerk.

6.5 The Commission shall follow City operating procedures for keeping its resolutions, transactions, decisions and determinations.

6.6 The Commission shall undertake educational efforts to explain to the public and property owners the merits and functions of a District, to the extent that time and appropriations allow.

7- ALTERATIONS AND CONSTRUCTION PROHIBITED WITHOUT A CERTIFICATE

7.1 Except as the Ordinance provides, no Building or Structure or part thereof within a District shall be Constructed, Moved, or Altered in any way that affects the Building or Structure as visible from a Public Way, unless the Commission shall first have issued a Certificate of Appropriateness with respect to such Construction or Alteration.

7.2 No building permit for Construction, Alteration, or Moving of a Building or Structure or for construction, Alteration, or Moving of an Exterior Architectural Feature within a District shall be issued by the City or any department thereof until a Certificate as required under this Ordinance has been issued by the Commission.

7.3 No Demolition permit for Demolition or removal of a Building, Structure or Exterior Architectural Features within a District shall be issued by the City or any department thereof until a Certificate as required under this Ordinance has been issued by the Commission.

8 – PROCEDURES FOR REVIEW OF APPLICATIONS

8.1 Filing: Any person who desires to obtain a Certificate from the Commission shall file with the Commission an application for a Certificate of Appropriateness, or Non-Applicability or of Hardship, as the case may be. The application shall be accompanied

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by such plans, elevations, specifications, material and other information, including in the case of Demolition or removal, a statement of the proposed condition and appearance of the property thereafter, as may be reasonably deemed necessary by the Commission to enable it to make a determination on the application. The Commission shall determine whether said application involves any Exterior Architectural Features which are within the jurisdiction of the Commission.

8.2 Determination: The Commission shall determine within fourteen (14) days after the filing of an application for a Certificate, and shall issue its determination at the next scheduled Commission meeting, on whether said application is complete and involves any Exterior Architectural Features which are within the jurisdiction of the Commission. If the Commission fails to make and issue its determination within the (14) day period a Certificate of Non-Applicability shall be deemed to have been issued by default.

8.3 Certificate of Non-Applicability: If the Commission determines that an application for a Certificate does not involve any Exterior Architectural Features, or involves an Exterior Architectural Feature that is not subject to review by the Commission under the provisions of this ordinance, the Commission or its delegate thereof shall forthwith issue a Certificate of Non-Applicability.

8.4 Public Hearing: If the Commission determines that such application involves any Exterior Architectural Feature subject to review under this ordinance, it shall hold a public hearing on the application, except as may otherwise be provided in the ordinance. The Commission shall hold such a public hearing within forty-five (45) days from the date of receiving the application. And shall give public notice of the time, place and purposes thereof at least fourteen days (14) before said hearing in such manner as it may determine, by posting in a conspicuous place in City Hall and by mailing, postage prepaid, a copy of said notice to the applicant, to the owners of all adjoining property and other property deemed by the Commission to be materially affected thereby as they appear on the most recent real estate tax list of the board of assessors, to the Planning Board, to the Historical Commission, to any person filing written request for notice of hearings, such request to be renewed yearly in December, and to such other persons as the Commission shall deem entitled to notice.

8.5 Waved Public Hearing: A public hearing on an application for a Certificate may be waived if the Commission determines that the construction or Alteration to the Exterior Architectural Feature which is subject to review by the Commission under the provisions of this ordinance clearly conforms to the purposes of this ordinance and Guidelines and therefore, is insubstantial in its effect on the District it may be reviewed by the Commission without a public hearing. If the Commission dispenses with a public hearing on application for a Certificate notice of such 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 and after considering any responses.

8.6 Issuance of Certificate or disapproval: Within sixty (60) days after the filing of an application for a Certificate, or within such further time as the applicant may allow in writing, the Commission shall issue a Certificate or disapproval.

8.7 Certificate of Appropriateness: If the Commission determines that the construction or Alteration for which an application for a Certificate of Appropriateness has been filed will be appropriate for or compatible with the preservation or protection of the District, the Commission or its delegate thereof shall issue a Certificate of Appropriateness.

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8.8 Disapproval of Application: In the case of a disapproval of an application for a Certificate, the Commission shall set forth in writing the reasons for such disapproval. The Commission may include in its disapproval specific recommendations for changes in the applicant's proposal with respect to the appropriateness of design, arrangement, texture, material and similar features which, if made and filed with the Commission in a subsequent application would make the application acceptable to the Commission.

8.9 Commission Vote: The concurring vote of Four (4) members shall be required to issue a Certificate.

8.10 Conditions and Limitations: 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 ordinance and the Commission's Guidelines.

8.11 Certificate of Hardship is used for the same type of changes as a Certificate of Appropriateness. It can only be issued when a Certificate of Appropriateness would be denied as inappropriate and such denial will involve a substantial hardship, financial or otherwise, to the applicant. Approval of a Certificate of Hardship must not affect the Historic District in general, must be without substantial detriment to the public welfare and must not cause departure from the intent and purposes of the Historic Districts Act. The Commission not approve a Certificate of Hardship in instances where the hardship was self-created (i. e. financial burden to undo work performed that had not been approved by the Commission).

8.12 Distributions: The Commission shall send a copy of its disapprovals and Certificates, including any conditions or limitations, to the applicant and shall file a copy of its disapprovals and Certificates, including any conditions or limitations, with the office of the City Clerk and the Building Inspector. The date of issuance of a Certificate or disapproval shall be the date of the filing of a copy of such Certificate or disapproval with the office of the City Clerk.

8.13 Failure to act: If the Commission should fail to issue a Certificate or disapproval within sixty (60) days of the filing of the application for a Certificate, or within such further time as the applicant may allow in writing, the application shall be deemed to not involve any Exterior Architectural Features subject to review by the Commission under the provisions of this ordinance. COMMISSION or its delegate thereof shall there upon issue a Certificate of Hardship due to failure to act.

8.14 Signing: Each Certificate issued by the Commission shall be dated and signed by its Chair or such other person designated by the Commission to sign such Certificates on its behalf.

8.15 Party Aggrieved: Any Party Aggrieved by a determination of the Commission may, within twenty (20) days after the filing of the notice of such determination with the city clerk, (1) appeal to the Essex Superior Court; or (2) file a written request with the Commission for a review by a person or persons designated by the Merrimac Valley Regional Planning Commission. The review finding 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 by the applicant in the Essex Superior Court.

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9 – CRITERIA FOR DETERMINATIONS

9.1 In deliberating on applications for Certificates, the Commission shall consider, among other things, the historic and architectural value and significance of the Building or Structure; the general design, proportions, detailing, mass, arrangement, texture, and material of the Exterior Architectural Features involved; and the relation of such Exterior Architectural Features to similar features of Buildings and Structures in the surrounding area. The Commission may schedule site visits when applicable.

9.2 In the case of new construction or Additions to Existing Buildings or Structures, the Commission shall consider with respect to conformance with Guidelines the scale, shape, and proportions of the Building or Structure both in relation to the land area upon which the Building or Structure is situated and in relation to Buildings or Structures in the vicinity. The Commission may in appropriate cases impose dimensional and setback requirements in Addition to those required by applicable statute or ordinance. New construction or additions shall not substantially block views from public ways of existing structures.

9.3 The Commission shall not consider Architectural Feature not subject to view from a Public Way.

9.4 The Commission shall not consider uses for the Buildings or Structures.

9.5 When ruling on applications for Certificates on solar energy systems as defined in Section 1A of Chapter 40A of the General Laws, the Commission shall consider the policy of the Commonwealth of Massachusetts to encourage the use of solar energy systems and to protect solar access.

10 – CATEGORICAL APPROVAL

Additional Exclusions: Certain categories of Exterior Architectural Features may be Constructed or Altered without review by the Commission, provided such construction or Alteration do not substantially derogate the intent and purposes of the District and of Chapter 40C of the General Laws. The Commission may, upon conducting a public hearing, exclude from its purview Exterior Architectural Feature, in addition to those listed in Section 9, which it determines do not significantly impact the purpose of the District.

11 – ENFORCEMENT AND PENALTIES

11.1 The Commission shall determine whether a particular activity is in violation of this ordinance, and the Commission shall be charged with the non-criminal enforcement of this ordinance, and seeking civil enforcement under Chapter 40C, Section 13 of the General Laws, after obtaining the necessary authority to do so.

11.2 The Commission may designate the Building Inspector to pursue non-criminal disposition under M.G.L. c. 40, Section 21D, under direction of the Commission.

11.3 The Commission, upon a written complaint of any resident of Newburyport, or owner of property within Newburyport, or upon its own initiative, shall institute any appropriate action or proceedings in the name of the City of Newburyport to prevent, correct, restrain or abate a violation of this ordinance. In the case where the Commission is requested in writing to enforce this ordinance against any person allegedly in violation of same and the Commission declines to act, the Commission shall notify, in writing, the party requesting such enforcement of any action or refusal to act and the reasons therefore, within twenty one (21) days of receipt of such request.

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11.4 Whoever violated any of the provisions of this ordinance shall be punishable for each offense by a fine to be determined by the Commission in accordance with the range of fines determined by Chapter 40C of the General Laws.

11.5 Notice of violations may be recorded in the Registry of Deeds and the cost thereof shall be assessed to the violation.

12 – VALIDITY AND SEPARABILITY

The provisions of this ordinance shall be deemed to be separable. If any of its provisions, sections, subsections, sentences or clauses shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of this ordinance shall continue to be in full force and effect.

13 - APPENDICES

Appendix 1 - Map of District

The Newburyport Local Historic District encompasses those properties bounded and described as follows: Beginning at the intersection of High Street and Marlboro Street, the District heads in a westerly direction along High Street encompassing the Structures and land with frontage on said street up to the rear lot lines, and continues to the end of High Street, including Atkinson Common, at the Intersection of Storey Avenue and High Street. In addition, the District heads in a northerly direction along Federal Street beginning at the intersection of High Street and Federal Street encompassing the Structures and land with frontage on said street, and continues to the intersection of Federal Street and Water Street, then the District turns west and heads westerly along Water Street which becomes Merrimac Street to the intersection of Winter Street and Merrimac Street encompassing the Structures and land with frontage on said streets. The District then turns south and heads southerly along Winter Street to the intersection of Winter Street and High Street encompassing the Structures on the west side of Winter Street from Washington Street to High Street. All Structures and land bounded within Winter Street, High Street, Federal Street and Water / Merrimac Street are contained within the District.