

[Proposed Text of Demolition By Neglect Bylaw]

**PROCEDURE FOR THE PROTECTION OF
BUILDINGS AND STRUCTURES OF HISTORICAL OR
ARCHITECTURAL SIGNIFICANCE FROM
DEMOLITION BY NEGLIGENCE**

1. Intent and Purpose

This bylaw is adopted for the purpose of preserving and protecting from deliberate or inadvertent neglect the exterior features of historically or architecturally significant Buildings or Structures within the Town that constitute or reflect distinctive features of the architectural, cultural, political, economic or social history of the Town, or the interior portions of such Significant Buildings or Structures when such maintenance is necessary to prevent deterioration and decay of the exterior. To achieve these purposes, the Acton Historical Commission and the Acton Historic District Commission, as applicable, and without derogation from their jurisdiction as set forth elsewhere in the Town of Acton General Bylaws, are empowered to advise the Building Commissioner with respect to the issuance of permits for demolition, construction, renovation or other alteration of significant buildings or structures, and to assess penalties and seek other relief as may be necessary for the protection of significant buildings and structures from decay or deterioration.

2. Definitions

2.1 *Except as otherwise set forth herein, a capitalized term that is used but not defined in this bylaw shall have the meaning ascribed thereto in Chapter N of the Town Bylaws or in Chapter P of the Town Bylaws.*

2.2 "Demolition by Neglect" - *neglect in maintaining, repairing, or securing a Significant Building or Structure that results in (i) loss of the character of a documented exterior architectural feature of the Building that contributes to its status as a Significant Building; (ii) deterioration of an exterior feature of the Significant Building; or (iii) the loss of the structural integrity of the Significant Building.*

2.3 "Significant Building or Structure" - *any Building, Structure, or portion of a Building or Structure situated within an Historic District Area as described in Chapter P of the Town Bylaws or, if not within an Historic District Area, which satisfies the criteria for "Significant Building" as set forth in Chapter N of the Town Bylaws.*

2.4 "Commission" – *with respect to any Significant Building or Structure situated within an Acton Historic District Area, the Acton Historic District Commission, or with respect to any Significant Building or Structure situated outside an Historic District Area, the Acton Historical Commission.*

2.5 "Owner" – shall mean every person, alone or severally with others, who: (i) has legal title to any Building, Structure, or parcel of land, vacant or otherwise; (ii) has care, charge or control of any Building, Structure, or parcel of land, vacant or otherwise, in any capacity including but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title; (iii) is a mortgagee in possession of any such property; or (iv) is an agent, trustee or other person appointed by the courts and vested with possession or control of any such property.

3. Maintenance Obligations of Owners of Significant Buildings

3.1 Minimum Maintenance. The Owner of a Significant Building or Structure shall provide sufficient minimum maintenance so as to preserve such Significant Building or Structure against decay and deterioration through prompt correction of any of the following significant defects:

- (a) Deteriorated or inadequate foundation, defective or deteriorated flooring or floor supports, deteriorated walls or other vertical structural supports;
- (b) 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;
- (c) 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;
- (d) Defective or insufficient weather protection for exterior wall covering, including lack of paint or weathering due to lack of paint or other protective covering;
- (e) Any fault or defect in the Building or Structure which renders it structurally unsafe, whether interior or exterior;
- (f) Deterioration of exterior chimney or chimney support system;
- (g) Deterioration of external plaster, stucco, masonry or mortar;
- (h) Deterioration of rainwater drainage systems whether interior or exterior;
- (i) Deterioration of any documented exterior architectural feature which in the judgment of the Commission produces a detrimental effect upon the character of the Building;
- (j) 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; or
- (k) 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 significant part.

3.2 Failure to Maintain. Any Owner who fails to maintain a Significant Building or Structure in compliance with this Section 3 shall be subject to the remedial procedures of Section 4 below, unless the Owner receives an exemption pursuant Section 5 below.

4. Enforcement and Remedies

4.1 Upon receipt of a complaint that a Significant Building or Structure is threatened by Demolition by Neglect, or on the Commission's own initiative if it suspects that a Significant Building or Structure may be threatened by Demolition by Neglect, the Commission may request in writing that the Building Commissioner or his/her designee inspect such Building or Structure. Within [thirty (30)] days of receiving such request, the Building Commissioner shall inspect the Significant Building or Structure in question and determine whether or not it is threatened by Demolition by Neglect. Within [fifteen (15)] days of the date of inspection, the Building Commissioner or his/her designee shall make a written report of his/her findings to the Commission, including whether he/she concludes that the Significant Building or Structure is threatened by Demolition by Neglect.

4.2 Within [forty-five (45)] days after receipt of the written findings of the Building Commissioner, the Commission shall conduct a public hearing and shall give public notice thereof by publishing notice of the time, place and purpose of the hearing in a local newspaper at least fourteen (14) days before said hearing and also, within seven (7) days of said hearing, mail a copy of said notice to the Owner of the Significant Building or Structure in question. If the Commission finds that the Significant Building or Structure is threatened by Demolition by Neglect, and the Owner has not requested and received an exemption under Section 5 of this bylaw, then the Commission may vote to impose any or all of the following remedies, which shall be cumulative and not exclusive:

- (a) require the Owner to repair all conditions contributing to Demolition by Neglect by a date certain;
- (b) secure the Significant Building or Structure against further deterioration or other loss;
- (c) provide the Owner with a preservation plan and maintenance guidelines, and require the Owner to undertake such plan according to a timeline set by the Commission;
- (d) assess a fine or penalty up to the amount of [\$100] for each violation of this bylaw, with each day after the date that the Commission concludes that the Owner's Significant Building or Structure is threatened by Demolition by Neglect pursuant to Section 4.3 hereof being considered as a separate violation; and
- (e) (with the approval of the Board of Selectmen) seek such injunctive relief as it deems necessary and appropriate to preserve a Significant Building or Structure in cases where there is imminent danger of the loss of such Significant Building or Structure.

4.3 The Commission shall determine, in its discretion, whether the Significant Building or Structure in question is threatened by Demolition by Neglect and/or whether the Owner shall be given an exemption, and the Commission may issue such decision at the time of conclusion of the public hearing conducted pursuant to Section 4.2 above or within [ten (10) days] thereafter, but in either case, the Commission shall send written confirmation of its decision to the Owner within [ten (10) days] after conclusion of such hearing.

4.4 *The Commission shall notify the Building Commissioner or other appropriate building official in writing of any Significant Building or Structure that it has concluded, is threatened by Demolition by Neglect but has not received an exemption, pursuant to Sections 4.2 and 4.3 above, and the Commission shall instruct the Building Commissioner or other appropriate building official to make a permanent record of such determination in the corresponding property file for such Significant Building or Structure maintained in the Building Department. 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 Building Commissioner or building official is satisfied there is no outstanding unremediated violation of this bylaw, he or she shall reject such application for a building permit for such Significant Building or Structure in writing, stating the reasons therefor, and a copy of such written rejection notice shall be provided to the Commission; 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.*

5. Exemptions

5.1 *At any time, the Owner of a Significant Building or Structure that is suspected or determined to be threatened by Demolition by Neglect can apply in writing to the Commission for an exemption to the provisions of this bylaw, such application to state with particularity the facts and circumstances to prove to the Commission that an exemption on one or more of the following bases is warranted:*

- (a) the repair of all conditions contributing to deterioration or decay of the Owner's Significant Building or Structure is impossible, impractical or infeasible at the present time (including as a result of significant financial hardship to the Owner);*
- (b) the deterioration, damage or decay of the Owner's Significant Building or Structure is due to acts of government, acts of nature (including, earthquakes, fires or floods) or other such circumstances or disasters beyond Owner's control; or*
- (c) such other exigent circumstances as the Commission may determine in its discretion are sufficient grounds for exemption from the provisions of this bylaw.*

5.2 *Notwithstanding Section 5.1, the Owner of a Significant Building or Structure that is determined by the Commission to be threatened by Demolition by Neglect shall not be eligible for an exemption from the provisions of this bylaw if the Owner's self-created hardship forms the basis for such Owner's requested exemption.*

5.3 *If an Owner is granted an exemption under Section 5.1 above, then such Owner shall (i) remove any exterior architectural feature of the Owner's Significant Building or Structure that is threatened by Demolition by Neglect and store such feature*

safely until such time as it becomes feasible to recreate or reattach the original feature on the Building; and (ii) make all necessary temporary repairs in place of such removed feature to protect the structure and/or provide for the safe use of the Significant Building or Structure.

6. Miscellaneous

6.1 *No provision of this bylaw shall apply to buildings owned or operated by the Town of Acton or the Acton Water District.*

6.2 *The sections, paragraphs, sentences, clauses and phrases of this bylaw are severable, and if any phrase, clause, sentence, paragraph or section of this bylaw shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrase, clauses, sentences, paragraphs and sections of this bylaw.*