

2. REVIEW AND APPROVALS

Demolition By Neglect

2.70. Applicability

Owners of certain historic properties are required to maintain their properties and not allow them to fall into disrepair. The requirements of this subsection are applicable only to certain properties, termed "historic properties" in this subsection. That term as used in this subsection is defined to include designated historic landmarks and properties identified as "contributing" or "pivotal" in designated historic districts.

2.71. Conditions of Neglect Defined and Prohibited

Owners shall maintain or cause to be maintained the exterior and structural features of their historic properties and not allow conditions of neglect to occur on such properties. Conditions of neglect are as defined below. It shall be a violation of this zoning ordinance to not remedy a condition of neglect within the period of time set by a final administrative determination, as described in subsequent subsections of this ordinance. Conditions of neglect include the following:

- A. Deterioration of exterior walls, foundations, or other vertical support that causes leaning, sagging, splitting, listing, or buckling.
- B. Deterioration of flooring or floor supports, roofs, or other horizontal members that causes leaning, sagging, splitting, listing, or buckling.
- C. Deterioration of external chimneys that causes leaning, sagging, splitting, listing, or buckling.
- D. Deterioration or crumbling of exterior plasters or mortars.
- E. Ineffective waterproofing of exterior walls, roofs, and foundations, including broken windows or doors.
- F. Defective protection or lack of weather protection for exterior wall and roof coverings, including lack of paint, or weathering due to lack of paint or other protective covering.
- G. Rotting, holes, and other forms of decay.
- H. Deterioration of exterior stairs, porches, handrails, window and door frames, cornices, entablatures, wall facings, and architectural details that causes delamination, instability, loss of shape and form, or crumbling.
- I. Heaving, subsidence, or significant cracking of sidewalks, steps, or pathways.
- J. Deterioration of fences, gates, and accessory structures.
- K. Deterioration that has a detrimental effect on the surrounding historic district, or on the special character of the historic landmark.
- L. Deterioration that contributes to a hazardous or unsafe condition.

2.72. Process And Administration

A. Administrator Investigation and Determination

1. The initial determination that there is a condition of neglect shall be made by the Department of Code Administration, after an investigation that is initiated by a petition from any person who is familiar with the subject property, which may include but not be limited to a City employee.

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B. Notice of Investigation

1. On receipt of a petition, the Zoning Administrator shall notify the owners in writing of the allegation and the process for making a decision regarding the petition, including any applicable deadlines. Among other things, the notice shall offer the owner the opportunity to meet in person with the Zoning Administrator and to present any relevant information. Notice shall be delivered by personal service, or by certified or registered mail, return receipt requested. If certified mail is refused or unclaimed, notice may be delivered by first class mail, and shall be considered effective if such mail is not returned by the post office within 15 days of mailing. In the case of notice by first class mail, notice shall also be posted on the property. Notice of the investigation may also be given to the owners of nearby or adjacent properties or neighborhood associations.

C. Responsibilities of Zoning Administrator

1. Hold one or more meetings at a time to be set by the Zoning Administrator in which the owner, other persons who have received notice, or other interested persons may give information;
2. Retain all information presented by the owner or other persons;
3. Deliver the written determination through any of the means for delivery of notice, as described above;
4. Designate the written determination as a final administrative determination with the right of appeal to the Historic Zoning Commission; and
5. Include information regarding rights to a de novo hearing before the Historic Zoning Commission in accordance with the process described in Item 2.74.

D. Responsibilities of the Code Administration Department

1. The Code Administration Department shall investigate the allegation that a condition of neglect exists;
2. Issue a written determination, supported by findings of fact, regarding the allegation within 30 days of the owner's receipt of notice;
3. Include within the determination a time period for correcting the condition of neglect, if a condition of neglect has been found;

2.73. Suspension of Process

The above process may be suspended in the event the owner agrees in writing to correct the alleged condition of neglect within a time period determined to be reasonable by the Zoning Administrator. If the condition is not corrected within that time period, the process shall continue where it was suspended.

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2.74. Appeal of Zoning Administrator Decision- Hearing before Historic Zoning Commission

- A. If the property owner disagrees with the Zoning Administrator's determination, the owner may appeal and may request hearing before the Historic Zoning Commission.
- B. The request shall be delivered to the Planning Department, in writing, within 30 days of receipt of the Zoning Administrator's determination.
- C. The Historic Zoning Commission shall hold a hearing on the issue of whether demolition by neglect is occurring on the property. Procedures that would be followed by the Board of Zoning Appeals shall be used.
- D. The Zoning Administrator's determination shall be considered an administrative determination, which has been appealed to the Historic Zoning Commission. The Historic Zoning Commission's determination on the administrative determination shall be in accordance with the standards established in Article 2 of this Ordinance.
- E. The Historic Zoning Commission's written decision shall include findings of fact and conclusions regarding demolition by neglect consistent with this subsection. It shall be delivered to the appealing party by certified mail, return receipt requested.
- F. Unsatisfactory decisions by the Historic Zoning Commission may be appealed to the Courts in the same manner as an appeal of a Board of Zoning Appeals' decision. If the decision is not appealed it shall be considered a final decision subject to enforcement with no rights of appeal.

2.75. Safeguards from Undue Economic Hardship

- A. Right of Claim of Economic Hardship
 - 1. The property owner is entitled to make a claim of undue economic hardship if the owner is unable to make needed repairs to the property because it is economically unfeasible.
- B. Issuance of Stay for Economic Hardship
 - 1. In the event that the owner and/or other parties in interest do not wish to contest the determination regarding the condition of neglect, but do wish to petition for a claim of undue economic hardship, the Zoning Administrator's order shall be stayed until after the Historic Zoning Commission's determination regarding the claim.

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C. Process

1. If a claim of undue economic hardship is made, the Zoning Administrator shall receive all information from the property owners that the Historic Zoning Commission is entitled to receive pursuant to this ordinance, make a determination regarding whether there is undue economic hardship, and develop a plan for dealing with such hardship, if it is found to exist. The recommendation and plan shall be sent to the owner, certified mail, return receipt requested, with notice of the owner's rights to appeal to the Historic Zoning Commission within 30 days of receipt. If the owner disagrees with the recommendation and plan the owner may request a hearing before the Historic Zoning Commission. In the event of such a request, the hearing shall be a quasi-judicial hearing, in the nature of a Board of Zoning Appeals hearing and the decision shall be in writing, supported by findings and conclusions. The Zoning Administrator's determination as to economic hardship and the plan for dealing with that hardship shall be considered a final administrative determination, and any Historic Zoning Commission decision altering such recommendation or plan shall be passed consistent with the requirements of Article 2 of this Ordinance.

D. Evidence Regarding Undue Economic Hardship

1. When a claim of undue economic hardship is made owing to the effects of this Section, the owner and/or parties in interest shall, where reasonably possible, provide the evidence below, describing the circumstances of hardship, and any additional evidence requested by the Zoning Administrator or Historic Zoning Commission or evidence the owner considers relevant.
2. Nature of ownership (individual, business, or nonprofit) or legal possession, custody, and control.
3. Financial resources of the owner and/or parties in interest.
4. Cost of repairs.
5. Assessed value of the land and improvements.
6. Real estate taxes for the previous two years.
7. Amount paid for the property, date of purchase, and party from whom purchased, including a description of the relationship between the owner and the person from whom the property was purchased, or other means of acquisition of title, such as by gift or inheritance.
8. Annual debt service, if any, for previous two years.
9. Any listing of the property for sale or rent, price asked, and offers received, if any.
10. Annual gross income, if any, from the property for the previous two years.
11. Itemized operating and maintenance expenses for the previous two years, including proof that adequate and competent management procedures were followed.
12. Annual cash flow, if any, for the previous two years.

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2.76. Other City Powers: City's Election of Remedies

Nothing contained within this Section shall diminish the City's power to declare a building unsafe or in violation of the minimum housing code or any other applicable statute or code. In addition, the procedures described herein are mandatory only for determinations being made solely under the authority of this section. Where other sections of the City Code apply, the City Council may, in its discretion, choose to process any action regarding the property under such other provisions alone, or under such provisions along with these provisions concurrently, or solely under these provisions. The City Council may also suspend the procedures of this section at any time if an action has been initiated under other applicable law.

2.77. Penalties and Remedies

Enforcement of this Section may be by any one or more of the following methods, and the institution of any action under any of these methods shall not relieve any party from any other civil or criminal proceeding prescribed for violations and prohibitions.

2.78. Equitable Remedy

The City may apply for any appropriate equitable remedy to enforce the provisions of this Section.

2.79. Order of Abatement

The City may apply for and the court may enter an order of abatement. An order of abatement may direct that improvements or repairs be made, or that any other action be taken that is necessary to bring the property into compliance with this Section. Whenever the party is cited for contempt by the court and the City has executed the order of abatement, the City shall have a lien on the property for the cost of executing the order of abatement.

2.80. Civil Penalty

Civil penalties may be assessed for failure to comply with a final administrative determination or an un-appealed Historic Zoning Commission decision under the provisions and guidelines for assessing such penalties for zoning code violations. Prior to imposing a civil penalty the Zoning Administrator shall deliver a written notice by personal service or by registered mail or by certified mail, return receipt requested, to the person responsible for the violation indicating the nature of the violation and ordering corrective action. Where the violation is the failure to remedy a condition of neglect within the time periods provided by the Zoning Administrator or the Historic Zoning Commission no additional time period for compliance need be given. The notice shall include information regarding the possible assessment of civil penalties and other possible enforcement actions. If this notice is appealed to the Board of Zoning Appeals, the Board shall not rehear any issue that was heard by the Historic Zoning Commission or could have been so heard had an appeal to the Historic Zoning Commission been made. Rather, the Board of Zoning Appeals shall limit the scope of its review to whether there has been compliance with the Zoning Administrator's determination or the Historic Zoning Commission's determination, as applicable.