

Sample Demolition-by-Neglect Ordinances

Table of Contents

D.C. Ordinance.....	2
Detroit Ordinance.....	5
New Orleans Ordinance.....	10
New Orleans Guidance Material.....	12

D.C.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Prevention of the Demolition of Historic Buildings by Neglect Amendment Act of 1999".

Sec. 2. An Act to authorize the Commissioners of the District of Columbia to remove dangerous or unsafe buildings and parts thereof, and for other purposes, approved March 1, 1899 (30 Stat. 923; D.C. Code §5-601 *et seq.*), is amended as follows: (a) By adding a new subsection 1(a-1) (D.C. Code §5-601(a-1)) to read as follows:

"(a-1) If the unsafe building or structure is an historic landmark or is located in an historic district, as defined in section 3 of the Historic Landmark and Historic District Protection Act of 1978, effective March 3, 1979 (D.C. Law 2-144; D.C. Code §5-1002), the Mayor shall not order or cause the building or structure or portion thereof to be removed or taken down, unless the Mayor determines, in consultation with the State Historic Preservation Officer, that: (1) there is an extreme and immediate threat to public safety resulting from unsafe structural conditions; and (2) the unsafe condition cannot be abated by shoring, stabilizing, or securing the building or structure."

(b) By adding a new subsection 1 (a-2) (D.C. Code _ 5-601 (a-2)) to read as follows:

"(a-2) If the subject building is an historic landmark or is located within an historic district, as defined in section 3 of the Historic Landmark and Historic District Protection Act of 1978, effective March 3, 1979 (D.C. Law 2-144; D.C. Code §5 1002), the Mayor shall not order the removal of said structure unless the Mayor determines that there is an extreme and immediate threat to the safety and welfare of the general public resulting from unsafe structural conditions. In instances where unsafe structural conditions have been identified in these buildings, the Mayor shall require the owner to make the building safe and secure in accordance with the provisions of subsection (a) of this section."

(c) By designating the existing paragraph in section 2 (D.C. Code _5-602) as subsection (a) and by adding a new subsection (b) to read as follows:

"(b) If the subject building is an historic landmark or is located within an historic district, as defined in section 3 of the Historic Landmark and Historic District Protection Act of 1978, effective March 3, 1979 (D.C. Law 2-144; D.C. Code §5-1002), the Mayor shall include as a fourth member of the board an architect or historic architect who meets the professional qualifications defined in federal regulations, 36 CFR Part 61, App. A (d) and (c). For the purposes of compliance with this subsection, the Mayor may designate a representative of the State Historic Preservation Officer, as defined in the federal regulations."

(d) By designating the existing paragraph in section 3 (D.C. Code §5-603) as subsection (a) and by adding a new subsection (b) to read as follows:

"(b) If the subject building is an historic landmark or is located within an historic district, as defined in section 3 of the Historic Landmark and Historic District Protection Act of 1978, effective March 3, 1979 (D.C. Law 2-144; D.C. Code §5-1002). the Mayor shall not require the removal of the structure unless the Mayor determines that there is an extreme and immediate threat to the safety and welfare of the general public resulting from unsafe structural conditions. In determining whether an extreme and immediate threat exists, the Mayor shall give great weight to the recommendations of the survey conducted in compliance with section 2 (D.C. Code §5-602).".

Sec. 3. The Historic Landmark and Historic District Protection Act of 1978, effective March 3, 1979 (D.C. Law 2-144; D.C. Code §5-1001 through 5-1015), is amended as follows:

(a) Section 3 (D.C. Code §5-1002) is amended by adding a new paragraph (3A) to read as follows:

"(3A) "Demolition by neglect" means neglect in maintaining, repairing, or securing an historic landmark or a building or structure in an historic district that results in deterioration of an exterior feature of the building or structure or the loss of the structural integrity of the building or structure."

(b) By adding a new section 5a to read as follows:

"Sec. 5a. (a) The owner of an historic landmark or a contributing building or structure within an historic district or within a proposed historic district shall comply with all applicable codes, laws, and regulations governing the maintenance of property. It is the intent of this section to preserve from deliberate or inadvertent neglect the exterior features of buildings and structures designated as contributing or significant. and the interior portions thereof when such maintenance is necessary to prevent deterioration and decay of the exterior. All such buildings or structures shall be preserved against such decay and deterioration and free from structural defects through prompt corrections of any of the following defects:

- "(1) Facades which may fall and injure persons or property;
- "(2) Deteriorated or inadequate foundation, defective or deteriorated flooring or floor supports, deteriorated walls or other vertical structural supports;
- "(3) Members of ceilings, roofs, ceiling and roof supports or other horizontal members which sag, split or buckle due to defective material or deterioration;
- "(4) Deteriorated or ineffective waterproofing of exterior walls, roofs, foundations, or floors, including broken windows or doors;
- "(5) Defective or insufficient weather protection for exterior wall covering, including lack of paint or weathering due to lack of paint or other protective covering; or
- "(6) Any fault or defect in the building which renders it not properly watertight or structurally unsafe.

"(b) Any owner who fails to maintain their building or structure in compliance with this section shall be subject to the remedial procedures of section 5b as well as the penalties under section 11."

(b) By adding a new section 5b to read as follows:

"Sec. 5b. Upon a finding by the Mayor that an historic landmark or a contributing building or structure within a historic district or within a proposed historic district is threatened by demolition by neglect, the Mayor may do either of the following:

"(a) Require the owner to repair all conditions contributing to demolition by neglect or

"(b) If the owner does not make repairs within a reasonable period of time the Mayor or his agents may enter the property and make such repairs as are necessary to prevent demolition by neglect. The costs of such work shall be charged to the owner, and may be levied by the District of Columbia as a special assessment against the property. The Mayor or his agents may enter the property for purposes of this section upon obtaining an order from the D.C. Superior Court."

Sec. 4. The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule, approved December 24, 1973 (87 Stat. 813; D.C. Code §1-233(c)(3)).

Sec. 5. This act shall take effect following approval by the Mayor (or in the event of a veto by the Mayor, action by the Council of the District of Columbia to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Authority Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code §47-392.3(c)), and a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code §1233(c)(1)), and publication in the District of Columbia Register.



100

Detroit, MI [edited down to provisions pertaining to demolition]

ARTICLE 1. IN GENERAL
(RESERVED)

ARTICLE II. HISTORIC LANDMARKS
AND DISTRICTS

DIVISION 1. GENERALLY,

Sec. 25-2-1. PURPOSE

Historic preservation is declared to be a public purpose, and the city may regulate the construction, reconstruction, alteration, repair, moving and demolition of historic and architecturally significant structures within the limits of the city as provided in this article. The purposes of this article are to:

1. Safeguard the heritage of the city by preserving areas in the city which reflect elements of its cultural, social, spiritual, economic, political, engineering or architectural history;
2. Stabilize and improve property values in such areas;
3. Foster civic beauty and community pride;
4. Strengthen the local economy; and
5. Promote the use of historic districts for the education, pleasure and welfare of the citizens of the city, the state and of the United States of America. (Code 1964, § 28A-1-1)

Sec. 25-2-2. DEFINITIONS

The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them:

Demolition shall include "demolition by neglect," which shall mean neglect in the maintenance, repair or security of a site, building or structure, resulting in any of the following conditions:

1. The deterioration of exterior walls or other vertical supports;
2. The deterioration of roofs or other horizontal members;
3. The deterioration of exterior chimneys;
4. The deterioration of exterior plaster or mortar;
5. The ineffective weatherproofing of exterior walls, roofs and foundations, including broken windows and doors; or

6. The serious deterioration of any documented exterior architectural feature or significant landscape feature which in the judgment of the commission produces a detrimental effect upon the character of the district.

....
Work means any excavation, new construction or erection of a building, fence, wall or other structure or significant landscape feature, including pavements. The term also includes any removal of an architectural or significant landscape feature, as well as reconstruction, alteration, a change of surface treatment, a change of color by painting or other means, or any demolition or a structure, a portion thereof, or significant landscape feature. (Code 1964, § 28A-1-2) Cross reference-Definitions and rules of construction generally, § 1-1-2.

Sec. 25-2-6. ORDINARY REPAIRS PERMITTED

Nothing in this article shall be construed to prevent ordinary maintenance or repair of any structure within any historic district. Ordinary maintenance or repair shall mean any maintenance or repair not defined as "**work**" herein. (Code 1964, § 28A-1-8).

Sec. 25-2-10. ENFORCEMENT

- (a) If it is determined by the historic district commission that a structure in an historic district is being demolished by neglect, the commission, on its own initiative, and to insure that the structure shall be preserved and protected in consonance with the purposes of this article may:
 1. File a petition with the department requesting that the department require the correction of defects or necessary repairs of the structures; or
 2. File a petition with the community and economic development department requesting that the community and economic development department, after notice to the property owner and an opportunity for a hearing before a disinterested hearing officer, cause the necessary corrections or repairs to be made and the cost, if not paid promptly by the property owner, to be reported to the board of assessors for levy as a special assessment against the property.
- (b) In addition to other enforcement rights created by this article, the requirements of an historic district may be enforced upon the complaint of any property owner or association of property owners within the district.
- (c) Any person or organization performing work within a designated historic district prior to the issuance of the required building permit or contrary to conditions specified in any permit issued for work within a district shall, upon conviction, be subject to a five hundred dollar (\$500.00) fine. The historic district commission may require that conditions created by violations of this article be

remedied in conformance with the requirements for the district.

(d) In cases where there is imminent danger of the loss of a designated historic structure, site, etc., the historic district commission may request the law department to seek such injunctive relief as it deems necessary and appropriate to preserve the structure, site, etc. (Code 1964, § 28A-1-9)

DIVISION 2. WORK PERMIT

Sec. 25-2-18. REQUIRED

Before work commences within an historic district or proposed historic district, an application for a building permit shall be submitted to the building department and no work shall begin before the issuance of a building permit. (Code 1964, § 28A-1-6)

Sec. 25-2-19. APPLICATION

Upon receipt of a building permit application under this division, the building department shall, within seven (7) calendar days, forward the same, together with all plans and specifications relative thereto, to the historic district commission. All plans, elevations, and other information deemed necessary by the commission to determine the appropriateness of the proposed "work" shall be submitted to the commission by the applicant. (Code 1964, § 28A-1-6)

Sec. 25-2-20. CONSIDERATIONS FOR APPROVAL BY HISTORIC DISTRICT COMMISSION

The historic district commission shall approve a building permit application for work which it determines to be appropriate in a designated historic district. In reviewing plans for the issuance of a certificate of appropriateness, the commission shall, in relation to the design treatment levels and the defined elements of design for the historic district, give consideration to:

1. The historical or architectural value and significance of the structure and its relationship to the historical value of the surrounding area;
2. The relationship of the exterior architectural features of such structure to the remainder of the structure and to the surrounding area;
3. The general compatibility of the exterior design, arrangement, texture, and materials proposed to be used;

4. Any other factor, including aesthetic, which the commission deems to be pertinent. (Code 1964, § 28A-1-6)

Sec. 25-2-21. EMERGENCY ISSUANCE

If it is determined by the director of the building department that work is immediately necessary for the protection of public health and safety, the department may issue a building permit for the necessary work and shall immediately notify the historic district commission of that action. (Code 1964, § 28A-1-6)

Sec. 25-2-22. CONDITIONS REQUIRED TO PERFORM WORK AFFECTING EXTERIOR APPEARANCE

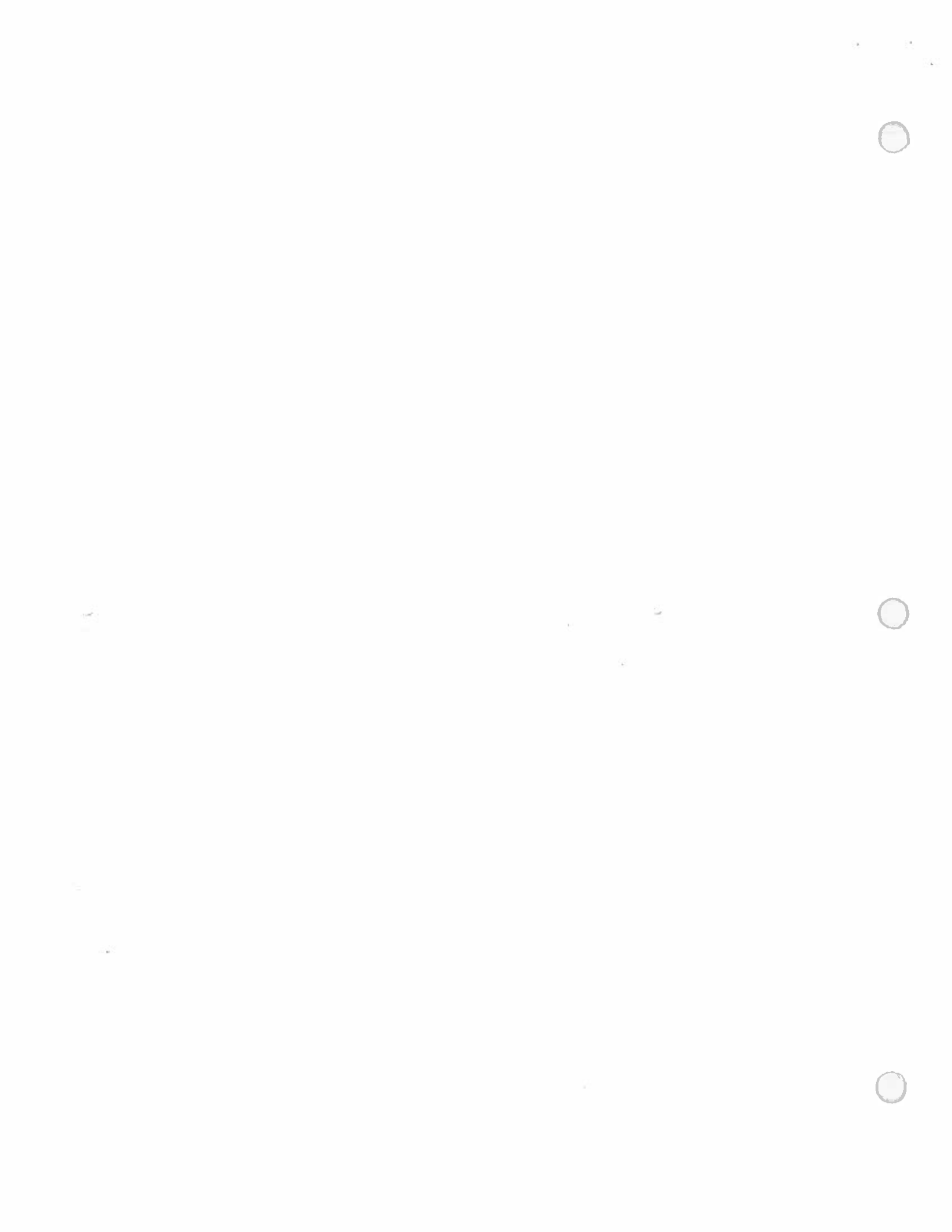
Pursuant to Michigan Public Act No. 169 of 1970, as amended [NICL 399.201 et seq., MSA 5.3407(l) et seq.], an application for work affecting the exterior appearance of an historic structure shall be approved by the historic district commission if any of the following conditions prevail and if, in the opinion of the commission, the work will materially improve or correct these conditions:

1. The structure constitutes a hazard to the safety of the public or the occupants;
2. The structure is a deterrent to a major improvement program which will be of substantial benefit to the community. Substantial benefit shall be found only if the improvement program includes adequate funding commitments and is otherwise feasible;
3. Retention of the structure would cause undue financial hardship to the owner. Undue financial hardship shall be found only if the owner has made all reasonable efforts to avoid financial hardship, including sale of the structure, for a period of one year minimum;
4. Retention of the structure would not be in the interest of the majority of the community. (Code 1964, § 28A-1-6)

Sec. 25-2-23. PUBLIC HEARING

In cases of structure additions, demolitions, or new construction in a designated historic district, the historic district commission shall conduct a public hearing. The commission may also conduct a public hearing on other historic preservation matters for informational purposes. All notices of public hearings shall be mailed to the applicant, all persons to whom any real property within three hundred (300) feet of the premises in question assessed, and the occupants or building

managers within three hundred (300) feet of the premises. The commission shall conduct a public hearing no sooner than ten (10), nor more than twenty (20) calendar days from the time the notice is mailed. Such notice shall include the time and place of the hearing and a general description of the nature of the work proposed. (Code 1964, § 28A-1-6).



New Orleans, Louisiana [actual ordinance edited down to demolition provisions]

Section V. Definitions.

G. Demolition. The complete or constructive removal by an applicant of a building on any site.

H. Demolition by Neglect. Neglect in the maintenance of any building resulting in any one or more of the following: (1) The deterioration of a building to the extent that it creates or permits a hazardous or unsafe condition as determined by the Department of Safety and Permits. (2) The deterioration of a building(s) characterized by one or more of the following: (a) Those buildings which have parts thereof which are so attached that they may fall and injure members of the public or property. (b) Deteriorated or inadequate foundation. (c) Defective or deteriorated floor supports or floor supports insufficient to carry imposed loads with safety. (d) Members of walls, or other vertical supports that split, lean, list, or buckle due to defective material or deterioration. (e) Members of walls or other vertical supports that are insufficient to carry imposed loads with safety. (f) Members of ceilings, roofs, ceiling and roof supports, or other horizontal members which sag, split, or buckle due to defective material or deterioration. (g) Members of ceilings, roofs, ceiling and roof supports, or other horizontal members that are insufficient to carry imposed loads with safety. (h) Fireplaces or chimneys which list, bulge, or settle due to defective material or deterioration. (i) Any fault, defect, or condition in the building which renders the same structurally unsafe or not properly watertight. (3) Action by the City, the State First Marshall, or the Department of Safety and Permits relative to the safety or physical condition of any building.

Section VI. Historic District Powers and Regulations.

A. No private building, structure, or edifice, including fences, boundary walls, signs, steps or seven (7) rises, and paving shall be erected, altered, restored, moved or demolished within any district until after an application for a Certificate of Appropriateness as to exterior architectural features has been submitted to and approved by the Commission. Similarly, if earthworks of historical or archaeological importance exist in a district, there shall be no excavating or moving of earth, rock, or subsoil without a Certificate of Appropriateness. For the purpose of this ordinance "exterior architectural features" shall include but not be limited to the architectural style, general design and general arrangement of a structure, including the kind and texture of the building material, the type and style of all roofs, windows, doors, and signs. The style, scale, materials, and location of outdoor advertising signs and bill posters within a district shall also be under the control of the Commission.

B. The Commission shall not consider interior arrangement or use, but shall consider the relationship of the exterior of the building concerned with all others in the district so as to avoid incongruity and promote harmony therewith. In all instances the Commission shall

regulate those outside surfaces of a building that can be viewed from a public right of way or street.

C. Nothing in this ordinance shall be construed to prevent ordinary maintenance or repairs which do not involve a change of design, material, or of the outward appearance of a building.

Section VIII. Criteria for the Issuance of Certificates of Appropriateness.

D. Demolition. In considering an application for the demolition of a landmark or a building in an historic district, the following shall be considered: (1) The historic or architectural significance of the building. (2) The importance of the building to the "tout ensemble" of the district. (3) The special character and aesthetic interest that the building adds to the district. (4) The difficulty or impossibility of reproducing such a building because of its design, texture, material or detail. (5) The future utilization of the site.

Section XII. Demolition by Neglect.

In the event the Commission determines that a building or landmark is being "demolished by neglect," they shall notify the applicant of this preliminary finding, stating the reasons therefore, and shall give the applicant thirty (30) days from the date of notice in which to commence work rectifying the specifics provided by the Commission. Such notice shall be accomplished in the following manner: (1) by certified mailing to the last known address of applicant; or (2) in the event the procedure outlined in (1) above is not successful, then such notice shall be attached to the building or landmark twice within a week.

Upon applicant's failing to commence work, the Commission shall notify the applicant in the manner provided above to appear at the next public hearing of the Commission. The Commission's staff or representative shall present to the Commission at said public hearing the reasons for the notice, and applicant shall have the right to present any rebuttal thereto. If, thereafter, the Commission shall determine that the building or landmark is being "demolished by neglect," and no efforts made to preserve it, the City may, through the Director of the Historic District Landmarks Commission or other appropriate officer of said Commission, bring charges against the applicant for the violation of this ordinance, and the City may cause such property to be repaired at its expense at such time as funds are appropriated; and in which event the City may file an affidavit of the Director of the Historic District Landmarks Commission to this effect in the office of the Recorder of Mortgages for the Parish of Orleans, which said notice shall constitute a lien and privilege against the property.

New Orleans, Louisiana [guidance material taken from the City's website, <http://www.cityofno.com/Portals/Portal99/portal.aspx?portal=99&tabid=20>]

Demolition By Neglect

"Demolition by Neglect" is one of the most serious problems affecting the fabric of our historic neighborhoods. The term "Demolition by Neglect" refers to the gradual deterioration of a building when routine or major maintenance is not performed. The ordinances which created both Historic District Landmarks Commissions entrust the Commissions with insuring that structures located within the local historic districts and landmarks designated by the Commissions are not allowed to be demolished through the neglect of the owners. A Demolition by Neglect citation issued by the Commission is against the owner of the property for failure to properly maintain the property as per the specific criteria stated in the following paragraphs.

The types of deficiencies identified as "Demolition by Neglect" include any structural deficiency or a deficiency in a building part which left unrepaired could lead to deterioration of the building's structural frame. A building is also identified as "Demolition by Neglect" if it is open to entry by vandals or vagrants.

Specific criteria for the determination of Demolition by Neglect are as follows:

- The deterioration of a building to the extent that it creates or permits a hazardous or unsafe condition as determined by the Department of Safety and Permits.
- The deterioration of a building(s) characterized by one or more of the following:
 - a. Those buildings which have parts thereof which are so attached that they may fall and injure members of the public or property;
 - b. Deteriorated or inadequate foundation;
 - c. Defective or deteriorated floor supports or floor supports insufficient to carry imposed loads with safety;
 - d. Members of walls, or other vertical supports that split, lean, list, or buckle due to defective material or deterioration;
 - e. Members of walls or other vertical supports that are insufficient to carry imposed loads with safety;
 - f. Members of ceiling, roofs, ceiling and roof supports, or other horizontal members which sag, split, or buckle due to defective material or deterioration;
 - g. Members of ceiling, roofs, ceiling and roof supports, or other horizontal members that are insufficient to carry imposed loads with safety;
 - h. Fireplaces or chimneys which list, bulge, or settle due to defective material or deterioration;
 - i. Any fault, defect, or condition in the building which renders the same structurally unsafe or not properly watertight.
- Action by the City, the State Fire Marshall, or the Department of Safety and Permits relative to the safety or physical condition of any building.

The process by which a building is officially cited for Demolition by Neglect involves several stages. They are as follows:

1. Identification by the staff that a building's condition falls under the Commission's criteria of Demolition by Neglect. This initial identification may be made by a staff inspection of the neighborhood or by referral from someone in the area.
2. The staff presents the building to the Commission at a public hearing with a report detailing the defects which, in the staff's opinion, qualifies the structure for Demolition by Neglect. To proceed with the citation process the Commission must vote by a majority to make a preliminary finding of Demolition by Neglect.
3. If a preliminary determination is made by the Commission, the owner is notified by certified mail of the defects in the building. The owner is given thirty (30) days in which to respond to the preliminary determination by obtaining a Certificate of Appropriateness for the corrective work. If a Certificate of Appropriateness is issued at this point, it will detail the specific work which is necessary to correct the Demolition by Neglect conditions, and a time limit for work to begin and be completed is set.
4. If the owner of the property receives the letter regarding the preliminary determination, but fails to respond, the matter is referred to the Commission for a citation hearing. If the owner fails to receive the letter regarding the preliminary determination after two attempts, the building is posted with a notice of the violation in accordance with the provisions of the Ordinance, and a public hearing on the citation is scheduled.
5. At the public hearing the Commission may issue a citation to the owner of the property for failure to correct the Demolition by Neglect conditions. The citation is made by a vote of the majority of the Commission on a motion recognizing the condition of the building and the owner's failure to correct the defects. The owner is invited to the public hearing to address the Commission's concerns and to show cause why a citation should not be issued. The Commission may also defer the matter to give the owner more time either to correct the deficiencies, make a proposal for repairs, or perhaps sell the property-
6. If the owner is cited for the condition of Demolition by Neglect of the property, he is given ten (10) days to respond with a proposal to correct the defects.
7. If a Certificate of Appropriateness is issued at this point, it is often worded to place specific constraints on the owner for initiating and completing the work.
8. If the owner fails to respond after the ten-day grace period following the citation, he is given an additional five (5) days to respond. After that additional period passes with no response, the matter is turned over to the City Attorney's office for action in Civil District Court.

Types of Demolition by Neglect and Recommended Corrective Measures.

Structural Failure.

Defects involving the structural failure of a building or a portion of a building are the most difficult to correct. For certain types of building failure, it is necessary to seek the

advice of a structural engineer to determine the measures necessary to correct them. If the condition of the building has deteriorated to the point the building or a portion of the building can not be saved, it is sometimes reasonable to propose demolition as a means of "correcting" the structural failure. See "Demolition Application."

Missing Exterior Finish Material.

Exterior finish material such as weatherboards, trim, fascia, soffits and window casings serve the important function of protecting the basic structure of the building as well as protecting the interior finishes. These building elements also often carry important information about the style and age of the building. When repairing loose or missing exterior finish material, care must be taken not to remove any important historic fabric. Where replacement material is necessary, it must match the original in material and detail. All replacement wood should be primed and painted after installation to insure that the work will not have to be repeated. If defects include failure of masonry, construction repairs must be made using masonry units (bricks) and mortar which match the existing in material, composition, size and density.

Broken or Missing Glazing, and Open or Missing Windows or Doors.

Missing windows, doors or glazing can allow the entry of water into the building. If left unchecked, water can lead to the deterioration of the structural fabric of the building and damage to both the interior and exterior finishes. An open building is also an invitation to vandals and vagrants to enter and possibly damage the building. The method used to correct this type of defect varies according to the seriousness of the problem. If the matter involves simply the need to replace glazing in existing frames, the work can be easily accomplished. If a building is missing doors or windows, or is abandoned, the Commission recommends that the building be boarded up.



In either case, a minimum of 3/8" plywood should be cut to fit tightly inside the frame of the window or door on the exterior of the building. In the first method of attachment, 2" drywall screws spaced no more than 12" on center are used to attach the plywood to the frame of the opening. In the second method of attachment, 3/8" carriage head bolts with 2" washers are used to attach the plywood to 2 x 4 wood bars mounted on the interior of the building. When the bolts are tightened, the wall is "sandwiched" between the plywood and the 2 x 4 bars, holding the entire assembly in place. In both examples, the plywood must be placed on the outside of the window opening. The Commission recommends that the plywood be primed and painted before installation to improve the general appearance of the building and to make it durable against the weather.

Roof, Gutters, Downspouts, and Flashing.

The roof surface and associated construction are the most important areas in protecting a building from water damage. If a Demolition by Neglect notice results from a fault in the roof or associated construction, the Commission recommends that repairs be made to match the original in material and detail. Sometimes if the damage to a roof surface is extensive or if other structural repairs are required, it is necessary to replace the entire roof surface.

The preceding suggestions for correcting Demolition by Neglect conditions are general. Specific situations may require different solutions. The staff of the Commission is willing to consider any suggestion so long as it adequately addresses the building fault which created the condition of Demolition by Neglect.