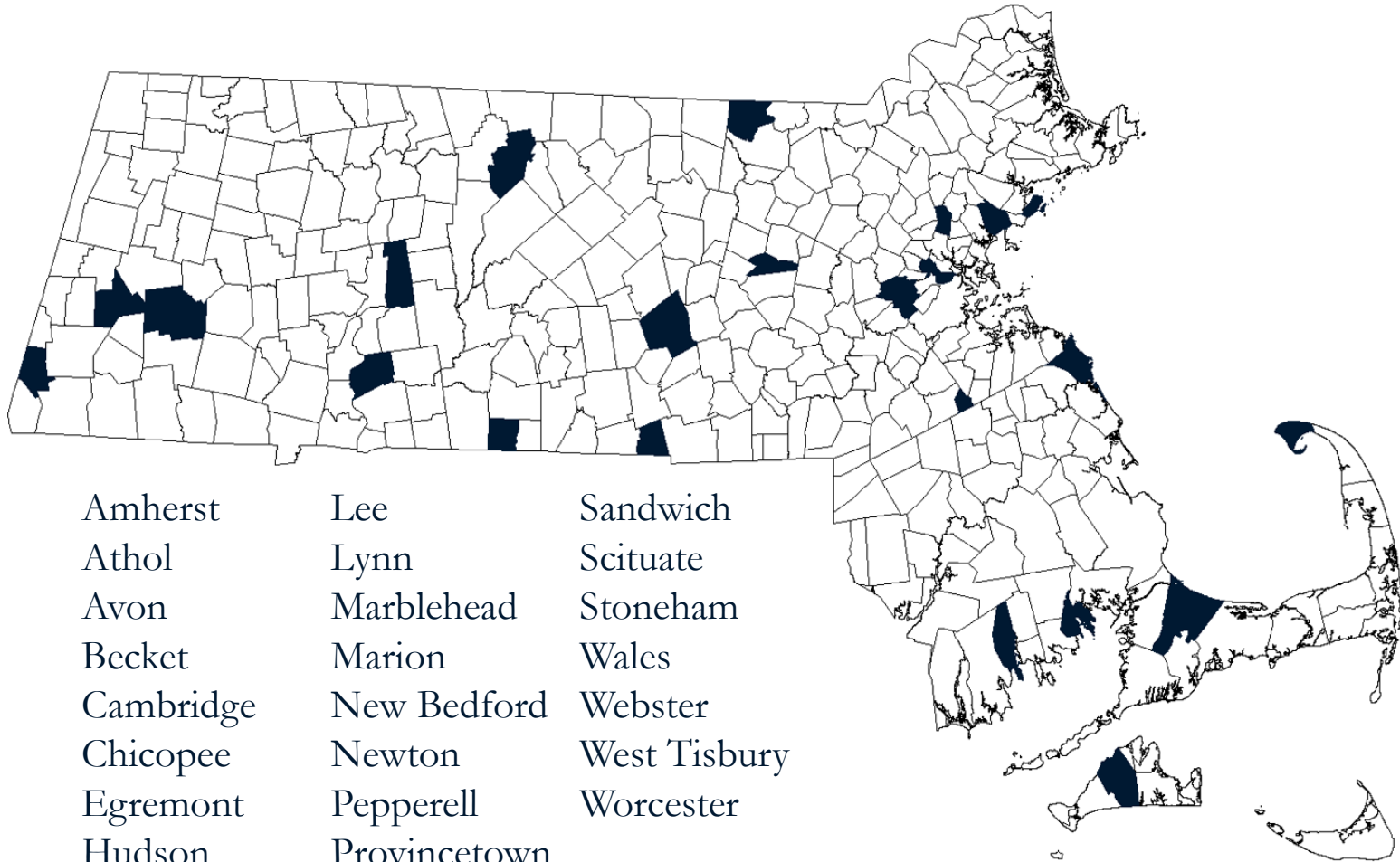


Workshop Attendees



Amherst

Athol

Avon

Becket

Cambridge

Chicopee

Egremont

Hudson

Lee

Lynn

Marblehead

Marion

New Bedford

Newton

Pepperell

Provincetown

Sandwich

Scituate

Stoneham

Wales

Webster

West Tisbury

Worcester

Adopting a Demolition Delay Bylaw or Ordinance



The John Perkins House, Wenham, demolished 2011



WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH
CHAIRMAN, MASSACHUSETTS HISTORICAL COMMISSION

Massachusetts Historical Commission

Jennifer B. Doherty

Local Government Programs Coordinator

January 27, 2022

Introduction

- Thank you!
- Local Government Programs at MHC
- After the presentation

Today's Presentation

- What is demolition delay
- Drafting and adopting a demolition delay bylaw or ordinance

Questions and Answers

All items in purple text are clickable links

After the demolition of this house in 2013, Newbury adopted a demolition delay bylaw the following year.



What is demolition delay?

Exactly that – a delay!

- Demolition delay does not prevent demolition
- It allows for a pause in the demolition process to consider alternatives
 - It is what you (and the applicant) make it
- It is one of many tools your community should have in its preservation toolbox
- Historical Commission can choose to delay – but will they always?



The 1805 House in Dudley was demolished in 2005 after a demolition delay.

Is this Legal? Yes!

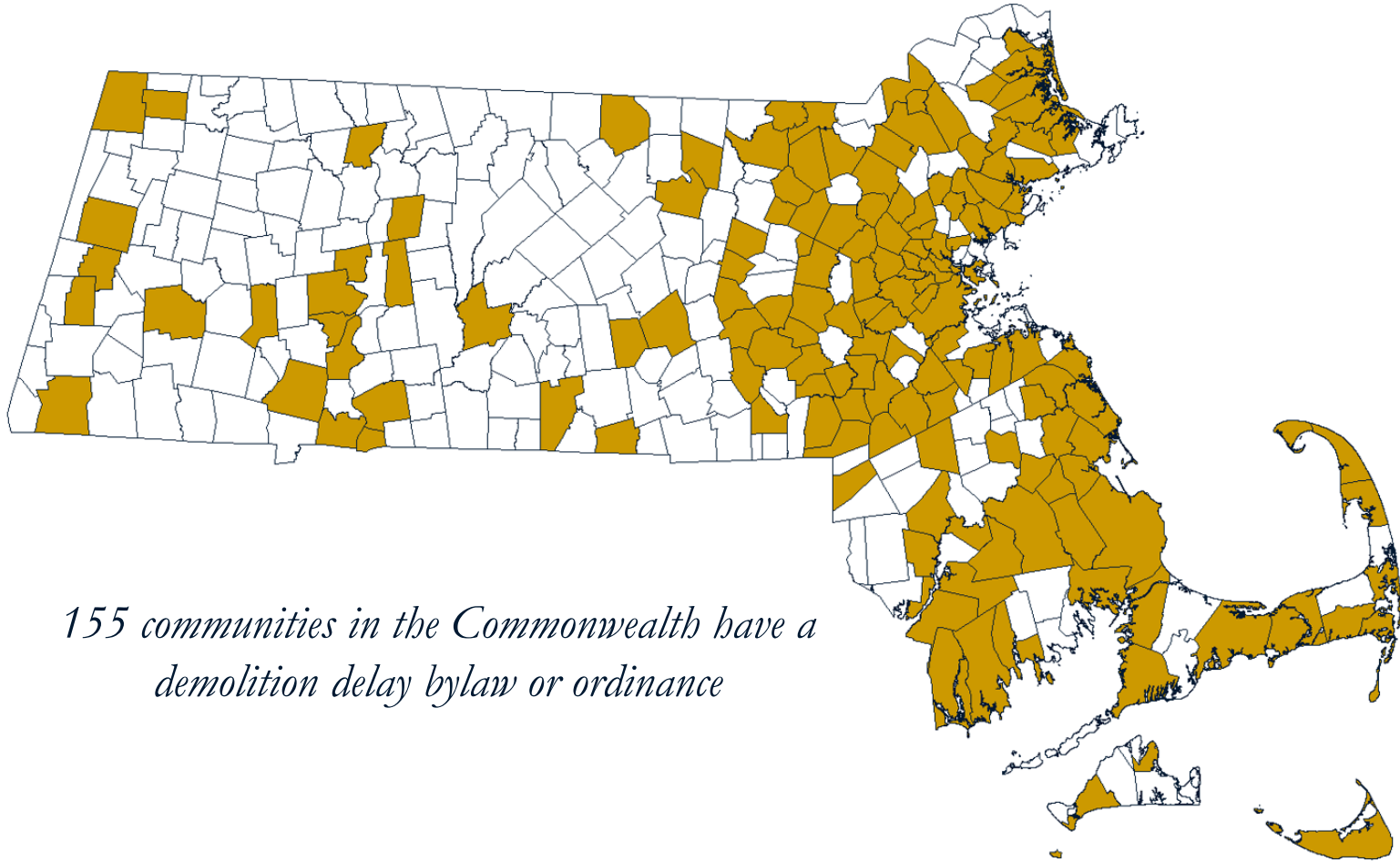


- City of Cambridge, Cambridge Historical Commission, Mid-Cambridge Neighborhood Conservation District Commission, and Cambridge Rent Control Board vs. Building Commissioner for the City of Cambridge
 - Middlesex Superior Court, No. 87-1522

Each of the ordinances subject to this controversy are designed to promote specific objectives the City has sought to regulate. The City's authority to pass these ordinances is firmly established in the Home Rule Amendment, Mass. Const. Art. 89 §6 and the Home Rule Procedures Act, G.L. c. 43B. There is no challenge to the validity of these ordinances other than those provisions allegedly in conflict with the state building code.

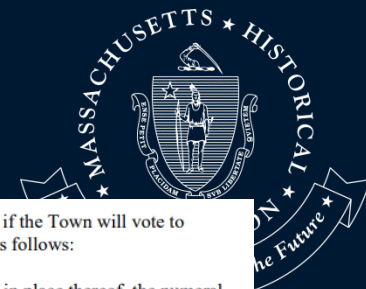
The Court finds and rules that the provisions in Ordinances 965 and 1002 which delay the issuance of demolition permits until after the Historic Commission and/or the NDC has taken steps to preserve the structure are reasonable and necessary. The Building Commissioner's interpretation of the state building code is not challenged by either ordinance. Without defendant's cooperation the success of these ordinances will be seriously threatened.

Communities with Demolition Delay



155 communities in the Commonwealth have a demolition delay bylaw or ordinance

How is demolition delay adopted?



With lots of public outreach!

- Under the Home Rule amendment of the state constitution
 - There is no enabling legislation, like there is for local historic districts (MGL Chapter 40C)
- Usually adopted as a General Bylaw/Ordinance following your usual legislative process
- Work with your Building Commissioner!
- MHC can provide a sample bylaw/ordinance
- Demolition delay does not apply in local historic districts
 - They can deny a proposed demolition

ARTICLE 47: Historic Preservation Bylaw Amendment: To see if the Town will vote to amend Chapter 125, Historic Preservation, of the General Bylaws, as follows:

1. By deleting the word "six" from §125-3.A(7), and inserting, in place thereof, the numeral "18," so that §125-3.A(7) will read as follows:

If the Commission determines the structure is worthy of classification as a preferably preserved significant structure, no further demolition permits may be applied for or issued with respect to such structure, for a period of 18 months from the date of such written determination.

2. By deleting the word "six" from §125-3.A(8), and inserting, in place thereof, the numeral "18," so that §125-3.A(8) will read as follows:

During such 18-month period, the Commission will invite the applicant (and the owner of record, if different from the applicant) to participate in an investigation of alternatives to demolition. If acceptable alternatives are agreed upon by the Commission and the applicant, the Commission will file a copy of said agreement with the Building Inspector and Town Clerk and the applicant may apply for necessary permits to begin work. Work shall only be done in accordance with the terms of the agreement unless and until new permit applications are filed and processed hereunder.

3. By deleting the word "six" from §125-3.A(9), and inserting, in place thereof, the numeral "18," so that §125-3.A(9) will read as follows:

If the Commission is satisfied that there is no feasible alternative to demolition, the Commission may so advise the applicant, the Building Inspector, and the Town Clerk in writing, at any time during this 18-month period, and the Building Inspector may issue a permit to demolish the structure in accordance with all applicable codes and regulations.

And

4. By inserting a new §125-6.C, as follows:

C. Any amendment to this Chapter that extends a period of demolition delay shall apply to any demolition delay period pending at the time that the amendment takes effect pursuant to *M.G.L. c.40, §32*.

Pass any vote or take any action thereto

Hopkinton amended their demolition delay bylaw at 2019 Annual Town Meeting, extending their delay from six to 18 months

The Demolition Delay Process



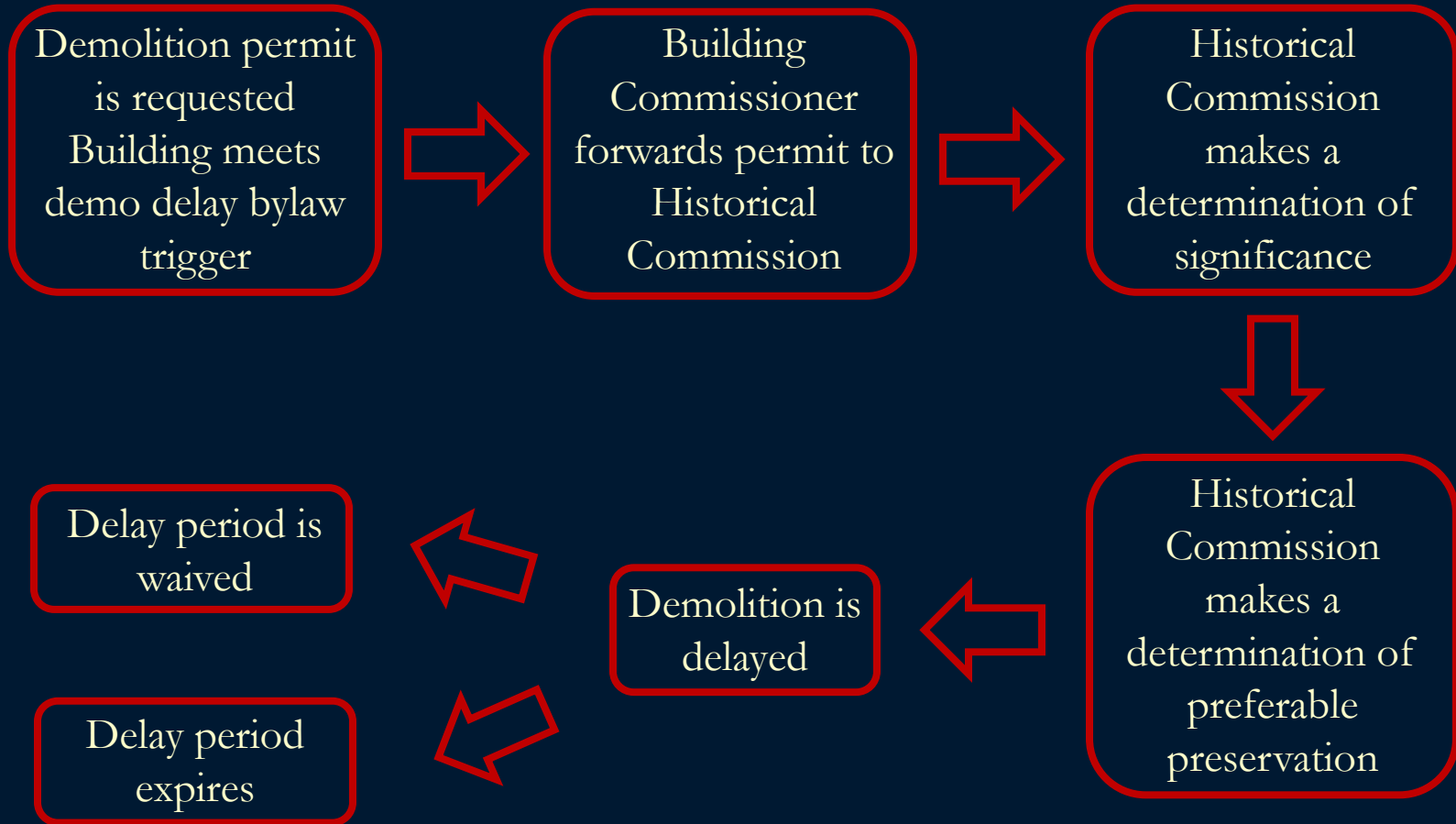
- Most common is a two-decision process – significance and preferably preserved
- If at any point the HC says “no,” the Building Commissioner can issue a demolition permit
 - And demolition can proceed the day after the delay expires
- Enforcement provisions in bylaw
 - \$300/day fine until violation is rectified
 - No-build order for a period of time
- Building Commissioner can require emergency demolitions without review

B. Anyone who engages in Demolition in violation of this By-Law may be subject to a fine of not more than three hundred (\$300) dollars. Each day the violation exists shall constitute a separate offense until a faithful restoration of the demolished Regulated Building or Structure or architectural element is completed or unless otherwise agreed to by the Commission.

C. No building permit shall be issued with respect to any premises upon which Demolition has occurred in violation of this By-Law for a period of three (3) years after the date of such violation. As used herein, "premises" refers to the parcel of land upon which the Regulated Building or Structure (or architectural element thereof) was located and all adjoining parcels of land under common ownership or control.

Hingham's bylaw includes both a daily fine and a no-build provision

The Demolition Delay Process



The Key Pieces of Demolition Delay



1. Trigger or threshold

- What buildings are subject to the bylaw?
- Think about what works best for your community, what you are seeking to preserve
 - What are people generally demolishing?
 - When were your major periods of development?
- All permit requests – not everything may make it to a meeting, though
- Age is recommended – 50 years or older, before 1950, etc.
 - 50 years is a preservation industry standard promoted by National Park Service
 - Use assessor's dates – but review them before deciding on final age
 - Make any building with unknown age subject to bylaw
- Not recommended:
 - Categorical – listed on the National Register, MACRIS
 - Incomplete, address issues, potential due process challenges
 - List – list developed by the Commission, usually after a hearing process
 - Can easily miss things

The Key Pieces of Demolition Delay



2. Definition of demolition

- Make sure it is clear, legal, and enforceable

SECTION 2. DEFINITIONS

For the purposes of this Bylaw the following words and phrases have the following meanings:

██████ – the ████████ Historical Commission

Demolition Permit – the permit issued by the Building Inspector as required by the state building code for the demolition, partial demolition or removal of a building or structure.

Historically Significant Building, Structure or Archeology Site - one which is (1) importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the Town, the Commonwealth of Massachusetts or the United States of America; or (2) is 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 or a group of buildings or structures.

Mystery bylaw – no demolition definition!

DEMOLITION-Any act of pulling down, destroying, removing, dismantling or razing a building or commencing the work of total or substantial destruction with the intent of completing the same.

MHC sample bylaw

The Key Pieces of Demolition Delay



2. Definition of demolition

- Make sure it is clear, legal, and enforceable

Demolition means any act of pulling down, destroying, removing, or razing any of the following: 50 percent of all exterior walls of a Building including framing, windows, doors, exterior finishes and details; or 50 percent of exterior walls of a building that are viewable from a public way; or 50 percent of all roof structures of a building; or 50 percent of roof assemblies of a building that are viewable from a public way; or enclosure or alteration of more than 50 percent of the exterior walls of a building so that they no longer function as exterior walls. Any combination of the above that occurs within a five-year time period shall be included in the calculation.

From the City of Salem, adopted August 2021

The Key Pieces of Demolition Delay



3. Delay period

- How long of a delay can your commission impose?
- Varies widely across the state
 - 21 days to 24 months
 - Most communities at 6 or 12 months – but trending longer
- Consider your community's goals, development situation, form of government
 - Harder to establish a local historic district in six months in a town vs. a city
- Note that the delay period is “up to ____ months”
 - Use this carrot of shortening the delay to work with property owners

Upon determination by the Commission that the significant building which is the subject of the application for a demolition permit is a preferably-preserved significant building, the Commission shall so advise the applicant and the Building Commissioner, within ten (10) days of said hearing, and no demolition permit may be issued until at least twenty-four (24) months after the date of such determination by the Commission for any significant building that falls into one of the categories identified in Section 2.3.a. of this bylaw, or until eighteen (18) months after the date of such determination by the Commission for any significant building that falls into one of the categories identified in Sections 2.3.b. or 2.3.c. of this bylaw.

*Some communities, such as Acton, use a split delay period,
with a longer delay for buildings listed on the
National Register of Historic Places.*

Other Considerations

- Have a separate demolition permit application for buildings subject to the bylaw
 - Typical demolition permit applications require utility disconnects – not good if you delay demolition
- Transferability of demolition delay – can a new owner use the old delay?
- Action on the demolition – review anew if not demolished?
- Require all permits and approvals for new use before the demolition permit is issued
 - Prevent unnecessary demolitions
- Consider documenting the building during the process
 - Before the significance or public hearing decision, have an inventory form prepared
 - Require property owners to allow the commission to photograph the building interior and exterior before demolition



FORM B – BUILDING		Assessor's Number	USGS Quad	Area(s)	Form Number
MASSACHUSETTS HISTORICAL COMMISSION MASSACHUSETTS ARCHIVES BUILDING 220 MORRISSEY BOULEVARD BOSTON, MASSACHUSETTS 02125		P 13 76	Boston North	BL	MDF.112
Town/City: Medford					
Place: (neighborhood or village): East Medford					
Address: 16 Foster Court					
Historic Name: Haskell - Cutter House (Rebecca Sprague House)					
Uses: Present: single-family residential Original: single-family residential					
Date of Construction: 1804-1813					
Source: maps					
Style/Form: Federal with Italianate overlay/ cape					
Architect/Builder: unknown					
Exterior Material: Foundation: parged; fieldstone and brick Wall/Trim: cementation shingle/aluminum panning and wood Roof: asphalt shingle					
Outbuildings/Secondary Structures: none					
Major Alterations (with dates): Dormers, late-19 th through early 20 th century; door hood, 19 th century; siding, mid-20 th century; sash, recent.					
Condition: fair					
Moved: no <input checked="" type="checkbox"/> yes <input type="checkbox"/> Date:					
Acreage: 0.31 acre					
Setting: 19 th century residential neighborhood on the edge of a 20 th century Medford Housing Authority development.					
Recorded by: John D. Clemson with Ryan Hayward Organization: Medford Historical Commission Date (month/year): February 2019					
RECEIVED OCT 18 2019 MASS. HIST. COMM.					

12/12 Follow Massachusetts Historical Commission Survey Manual instructions for completing this form.

Medford has a contract with a consultant to prepare inventory forms on demand in advance of demolition delay review.



We Delayed a Demo – Now What?

Demolition delay is what you (and the applicant) make it!

- This is your opportunity to work with the applicant to find alternatives to demolition
- Are they willing to rework their proposal?
- Are they willing to sell the property to a different owner?
- Can the lot be subdivided in a way to preserve the historic structure?
- Is the building so significant that you want to protect it with a local historic district?
 - This is legal and can be done!
 - Local historic district designation can prevent demolition
 - But it does not compel an owner to maintain their property

But ultimately, demolition delay is only a delay – the house can legally be demolished the day after the delay expires

The John Hemenway House in Framingham was designated a local historic district and sold to a new owner during a demolition delay





Key Takeaways

- Demolition delay is legal and used by 155 communities in Massachusetts
- A bylaw or ordinance is adopted under Home Rule
 - No enabling legislation, so adopt what suits your community best
- Demolition delay is a delay and does not prevent demolition – it is what you and the applicant make it!
- Be sure to consider your community's preservation goals
 - What do you want to protect? What are your most threatened resources?



Questions and Answers

The ca. 1710 Foster-Emerson House in Reading was saved through negotiations during a demolition delay period, and moved to a new site.



Adopting a Demolition Delay Bylaw or Ordinance

Thank you for coming!

For more information or additional questions:

Jennifer.Doherty@sec.state.ma.us
(617) 807-0685



WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH
CHAIRMAN, MASSACHUSETTS HISTORICAL COMMISSION

Massachusetts Historical Commission
Jennifer B. Doherty
Local Government Programs Coordinator