



CITY OF PORTSMOUTH
PLANNING DEPARTMENT

MEMORANDUM

TO: PLANNING BOARD
FROM: BEVERLY MESA-ZENDT, PLANNING DIRECTOR; SHANTI WOLPH, CHIEF BUILDING INSPECTOR; TREVOR MCCOURT, STAFF ATTORNEY; NICHOLAS CRACKNELL, PRINCIPAL PLANNER
SUBJECT: PLANNING BOARD REPORT BACK ON THE DEMOLITION COMMITTEE
DATE: 6-9-2022

Background

State Regulatory Authority

The Demolition Review Ordinance does not list a source of authority. A more detailed legal analysis would be necessary to identify a source of authority for this ordinance and the related committee.

Local Regulations

The Demolition Review Committee (DRC) not to be confused with the Historic District Commission (HDC) is a committee appointed by the City Council and comprised of five members as follows:

1. One member of the Historic District Commission
2. One member of the Planning Board
3. One member of the Portsmouth Historical Society
4. The Chief Building Inspector or his/her designee
5. The Planning Director or his/her designee.

Representatives of the Historic District Commission and Planning Board are appointed annually or as necessary. The primary purpose of the DRC and the Demolition Ordinance is to encourage the preservation of buildings and places of historic, architectural and cultural value.

The Demolition Ordinance is found in Chapter 14, Article II of the City Ordinances. The City's Demolition Ordinance provides a local review process for proposed demolition of privately-owned buildings and structures outside the Historic District with significant historic, architectural and cultural value.

City of Portsmouth Code of Ordinances Chapter 14: Housing Code

All projects proposing to demolish a portion of a building or structure must obtain a demolition permit from the Inspection's Department. Once the application has been submitted, most projects will be subject to a minimum 30-day review period as outlined in the Ordinance.

Demolition: Razing or destruction, entirely or in part, of a building or structure, whether or not reconstruction is planned after demolition, or removal of a building or structure in whole or in part from its present location. For the purpose of this Article, demolition shall not include (a) interior demolition that does not affect the exterior of the building or structure, or (b) work necessary to repair or replace exterior finishes such as roofing, siding, trim or windows.

https://files.cityofportsmouth.com/files/planning/demolition/demoordinance_111918.pdf

The following demolitions are exempt from the review process (but not exempt from a demolition permit):

- Demolition of a building or structure that has been granted a Certificate of Approval by the Historic District Commission or has been approved for demolition in association with a project approved, following a public hearing, by either the Planning Board or the Board of Adjustment.
- Demolition of any "dangerous building" that has been ordered to be demolished pursuant to Chapter 14, Article I, Section 14.109(C).
- Minor demolition projects, as determined by the Code Official, that are not located in the Historic District, including but not limited to chimneys, decks, porches, steps, small outbuildings or other similar design features.
- Removal of partial roof components for vertical expansion such as dormers or skylights on structures that are not located in the Historic District.

City Council Request

On March 15, 2021 the City Council voted to request a report back regarding the Demolition Ordinance from the Demolition Review Committee (DRC), the Historic District Committee, and the Planning Board. Specifically, the City Council requested *"a report back from the Planning Board, Historic District Commission, and Demolition Committee on how to improve the Demolition Committee. This will include but not be limited to deterrents for the demolition of Portsmouth buildings, fines for misconduct, and public comments at meetings. Also, incentive for preservation of historical buildings"*.

On April 12, 2021, the DRC discussed proposed revisions to the Demolition Ordinance. Below is a summary of the proposed changes, which are prompted by the City Council's vote and informed by nearly three years of administration under the current Ordinance.

DRC Proposed Revisions

- Increase the current 50 year threshold to 75 years for the applicability of review by the DRC for buildings proposed for demolition;
- Revise the definition of demolition to be the removal of 25% or more of the exterior roof or walls of a structure;
- Increase the maximum 90 day delay period for demolition to 180 days;
- Allow the DRC to request advisory opinions from the Historic District Commission regarding the historical, cultural, or architectural significance of a structure;
- Require the party requesting a hearing to formally present their objection(s) to the DRC at the posted public hearing;
- If a structure is demolished without a permit require a public hearing and include a penalty of up to a 180 day delay, which may be reduced by the DRC for good cause or suitable mitigation;
- Require written notice of a demolition hearing be sent directly to abutters within 300 feet of a property;
- Modify the purpose of the ordinance to better align with the jurisdiction, purpose, and intent of the Ordinance as well as the roles and responsibilities of the DRC
- Relocate the Demolition Ordinance to the Building Code;
- Add a clause for appeals of any DRC decision to the Board of Adjustment; and
- Retain the current composition of the DRC.

Staff Analysis

1. Because the HDC is charged with historic preservation, within the Historic District the role of the DRC should be more narrowly defined as providing adequate notification and an opportunity for discussion prior to demolition of older buildings outside the historic district.
2. State law does not empower local jurisdictions to prohibit a demolition outside the historic district, however, notice and delays are typical in most local jurisdictions.
3. The lack of direct statutory authority invites challenges to a significant expansion of the duties and powers of the DRC to stay demolitions.
4. The intent of the aforementioned recommendations was to set the threshold higher for demolitions that would trigger review but provide a longer period for public discussion.

5. Incorporating the local enabling legislation into the building code provides a stronger structural foundation for enforcement.

Staff Recommendations

1. Staff recommends consideration of all the aforementioned recommendations of the DRC subject to a detailed legal analysis to ensure that the recommendations are in conformance with state law, case law, and best practices.
2. At minimum current regulations should be migrated to the building code.
3. Rather than extending the stay of demolition to 180 days, it would be advisable to commence the 90-day demolition delay period from the date of the public hearing required under Section 14.205. Additionally, expanded notification procedures to abutters would serve the purpose of broadening public awareness of impending demolitions and it would provide opportunities to affected community members to gain photographic records, influence the property owner to consider other courses of action, and to consider alternatives to demolition.