

## **Montague Demolition Delay Bylaw**

### **§ 1 Purpose.**

The purpose of this Bylaw is to preserve and protect, through advance notice of their proposed demolition, significant buildings within the Town of Montague which constitute or reflect distinctive features of the architectural, cultural, political, economic, or social history of the Town, to encourage owners of preferably preserved significant buildings to seek out persons who might be willing to purchase and to preserve, rehabilitate, or restore such buildings rather than demolish them, to alert residents of the Town to impending demolitions of significant buildings, and by furthering these purposes to promote the public welfare, to preserve the resources of the Town, and to make the Town a more attractive and desirable place in which to live. To achieve these purposes, the Montague Historical Commission is empowered to advise the Montague Inspector of Buildings with respect to the issuance of permits involving demolition, and the issuance of demolition permits for significant buildings is regulated as provided in this By Law.

### **§ 2 Definitions.**

As used in this Bylaw, the following terms shall have the meanings indicated:

#### **APPLICATION**

An application for a permit involving demolition, as defined in this Bylaw, of a significant building on the historic inventory. Every application shall include the address of the building to be demolished, the owner's name, address and telephone number, photographs of all sides of the building visible from a public way taken within the past year, plans, a narrative description of the building and justification of the proposed demolition, and a brief description of the proposed reuse, reconstruction or replacement.

#### **BUILDING**

Any combination of materials capable of providing shelter for persons, animals or property.

#### **COMMISSION**

The Montague Historical Commission.

#### **DEMOLITION**

Any act of pulling down, destroying, removing or razing a structure or portion thereof, or commencing the work of total or substantial destruction with the intent of completing the same.

### **DEMOLITION PERMIT**

A permit issued by the Inspector of Buildings under the State Building Code for the demolition of a building or structure.

### **INSPECTOR OF BUILDINGS**

The administrative chief of the building department in a municipality who is charged with the administration and enforcement of 780 CMR, the Massachusetts State Building Code.

### **SIGNIFICANT BUILDING**

- A.** Any building or structure individually listed on the National Register of Historic Places; or
- B.** Any building or structure evaluated by Massachusetts Historical Commission to be a contributing building within a National Register or State Register District; or
- C.** Any building or structure which has been certified by the Massachusetts Historical Commission to meet eligibility requirements for individual listing on the National Register of Historical Buildings.

### **§ 3 Preferably preserved significant buildings.**

- A.** A preferably preserved significant building is any significant building which the Montague Historical Commission determines, after a public hearing, is in the public interest to be preserved or rehabilitated rather than to be demolished. A preferably preserved significant building is subject to the one-year delay period of this By Law.
- B.** The Montague Historical Commission shall determine that a structure be designated as a significant structure if it meets one or more of the following criteria:
  - (1)** It is listed on, or is within an area listed on, the National Register of Historic Places, or is the subject of a pending application for listing on said National Register; or
  - (2)** The Montague Historical Commission determines that the structure meets one or more of the following three criteria:

**(a)** Historical importance. The structure meets the criteria of historical importance if it:

[1] Has character, interest or value as part of the development, heritage or cultural characteristics of the Town of Montague, the Commonwealth of Massachusetts or the nation; or

[2] Is the site of an historic event; or

[3] Is identified with a person or group of persons who had some influence on society; or

[4] Exemplifies the cultural, political, economic, social or historic heritage of the community.

**(b)** Architectural importance. The structure meets the criteria of architectural importance if it:

[1] Portrays the environment of a group of people in an era of history characterized by a distinctive architectural style; or

[2] Embodies those distinguishing characteristics of an architectural type; or

[3] Is the work of an architect, master builder or craftsman whose individual work has influenced the development of the Town; or

[4] Contains elements of architectural design, detail, materials or craftsmanship which represent a significant innovation.

**(c)** Geographic importance. The structure meets the criteria of geographic importance if:

[1] The site is part of, or related to, a square, park, or other distinctive area; or

[2] The structure, as to its unique location or its physical characteristics, represents an established and familiar visual feature of the neighborhood, or the community as a whole.

#### **§ 4 Procedure.**

**A.** The Inspector of Buildings, on the day of receipt of an application for demolition of a listed significant building or within seven days, shall cause a copy of each such permit application to be forwarded to the Montague Historical Commission. No demolition

permit shall be issued at that time, unless the Inspector of Buildings deems the building is in need of emergency demolition and the emergency demolition provisions of this By Law have been met. The Montague Historical Commission may make preliminary determinations of significance for discussion with the Building Inspector.

- B.** The Montague Historical Commission shall hold a public hearing within 45 days of receiving a copy of such application, and shall give public notice thereof by publishing notice of the time, place, and purpose of the hearing in a local newspaper at least 14 days before said hearing. The Montague Historical Commission shall mail a copy of said notice to the applicant and shall, at least seven days prior to said hearing, notify the Selectboard, Town Administrator, Inspector of Buildings, Planning Department, Planning Board, Zoning Board of Appeals, and such other persons as the Montague Historical Commission shall deem entitled to notice. The applicant shall notify all abutting landowners as they appear on the most recent local tax list no later than seven days prior to said hearing.
- C.** If, after such hearing, the Montague Historical Commission determines that the demolition of the significant building would not be detrimental to the historical or architectural heritage or resources of the Town, the Montague Historical Commission shall so notify the Inspector of Buildings and Selectboard within seven days of such determination. Upon receipt of such notification, or after the expiration of 21 days from the date of the close of the public hearing, if he or she has not received notification from the Montague Historical Commission, the Inspector of Buildings may, subject to the requirements of the State Building Code and any other applicable laws, rules or regulations, issue the demolition permit.
- D.** If the Montague Historical Commission determines that the demolition of the significant building would be detrimental to the historical or architectural heritage or resources of the Town, such building shall be considered a preferably preserved significant building. The Montague Historical Commission's determination remains in effect for one year from the date of decision. Upon a determination by the Montague Historical Commission that the significant building which is the subject of the application for a demolition permit is a preferably preserved significant building, the Montague Historical Commission shall, within seven days, so advise the applicant by registered mail, and the Inspector of Buildings, and no demolition permit may be issued until at least one year after the date of designation as a preferably preserved significant building. The applicant shall, upon notice of said designation, secure the building or site against vandalism, fire or other destruction and post a copy of said designation on the building in a place visible from the

nearest public way. The applicant shall give reasonable access to the building or site to the Montague Historical Commission.

**E.** Notwithstanding the preceding section, the Inspector of Buildings may issue a demolition permit for a preferably preserved significant building at any time after receipt of written advice from the Montague Historical Commission to the effect that either:

**(1)** The Montague Historical Commission is satisfied that there is no reasonable likelihood that either the owner or some other person or group is willing to purchase, preserve, rehabilitate or restore such building; or

**(2)** The Montague Historical Commission is satisfied that reasonable efforts have been made to identify a purchaser to preserve, rehabilitate or restore the subject building, and that such efforts have been unsuccessful. This may be extended an additional six months upon recommendation of the Montague Historical Commission and a majority vote of the Selectboard.

#### **§ 5 Emergency demolition.**

Nothing in this By Law shall be construed to derogate in any way from the authority of the Inspector of Buildings derived from Massachusetts General Laws Chapter 143. However, before acting pursuant to this By Law, the Inspector of Buildings shall provide the Montague Historical Commission with a memorandum describing the condition of the building and the basis for his/her decision.

**A.** If a building poses an immediate threat to public health or safety due to its deteriorated condition, the owner of such building or structure may request issuance of an emergency demolition permit from the Inspector of Buildings.

**B.** Upon receipt of any application for an emergency demolition permit, the Inspector of Buildings shall within five days transmit a copy thereof to the Montague Historical Commission.

**C.** As soon as is practicable, but within 14 days after receipt of such an application, the Inspector of Buildings shall inspect the building with an inspection team consisting of the Inspector of Buildings, Fire Chief, Montague Historical Commission Chair or the designees of said officials.

- D.** Within five days after inspection of the building and after consultation with other members of the inspection team, the Inspector of Buildings shall determine:
- (1)** Whether the condition of the building or structure represents a serious and imminent threat to public health and safety; and
  - (2)** Whether there is any reasonable alternative to the immediate demolition of the building which would protect public health and safety.
- E.** If the Inspector of Buildings finds 1) that the condition of the building or structure poses a serious and imminent threat to public health and safety, and 2) that there is no reasonable alternative to the immediate demolition of the building or structure, then the Inspector of Buildings may issue an emergency demolition permit to the owner of the building.
- F.** If the Inspector of Buildings finds 1) that the condition of the building does not pose a serious and imminent threat to public health and safety, and/or 2) that there are reasonable alternatives to the immediate demolition of the building which would protect public health and safety, then the Inspector of Buildings may refuse to issue an emergency demolition permit to the owner of the building or structure.
- G.** Upon issuing an emergency demolition permit under the provisions of this section, the Inspector of Buildings shall submit a brief written report to the Montague Historical Commission describing the condition of the building and the basis for his/her decision to issue an emergency demolition permit. Nothing in this section shall be inconsistent with the procedure for the demolition and/or securing of buildings and structures established by MGL c. 143, §§ 6 through 10.

**§ 6 Enforcement and remedies.**

The Inspector of Buildings is specifically authorized to institute any and all actions and proceedings, in law or equity, as he/she may deem necessary and appropriate to obtain compliance with the provisions of this By Law or to prevent a threatened violation thereof.

- A.** No permit for erection of a new structure on the site of an existing preferably preserved significant building may be issued prior to issuance of a permit for demolition of such existing building.
- B.** No permit for erection of a new building, paving of drives or for parking shall be issued for one year from the commencement of such work if a structure is demolished in violation of this By Law.

**C.** Any owner of a building and/or structure subject to this By Law who knowingly acts to demolish said building and/or structure, or damage a portion of a building or structure in a way which increases its likelihood of total failure, without first obtaining a building permit for demolition in accordance with the provisions of this By Law, or who likewise by some causative action contributes to the deterioration of said building or structure during the demolition review period, shall be in violation of this By Law and subject to enforcement by a noncriminal complaint pursuant to the provisions of MGL c. 40, § 21D, as amended.

**D.** Notwithstanding the provisions of Section 11.45, the fine for any such violation shall be \$300 for each offense. Each day the violation exists shall constitute a separate offense until the demolished building is rebuilt or recreated as directed by the Montague Historical Commission, or unless otherwise agreed to by the Montague Historical Commission.

**§ 7 Historic Districts Act.**

If any provision of this By Law conflicts with Massachusetts General Laws Chapter 40C, the Historic District Act, that Act shall prevail.

### Montague Demo Delay Bylaw Flow Chart

