

1. 6:30 P.M. Committee On Ordinance & Rules

Documents:

[19 MARCH 5 ORDINANCE AND RULES AGENDA.PDF](#)

2. 6:30 P.M. Committee On Ordinance & Rules

Documents:

[19 MARCH 5 OR MTG.PDF](#)



# **Braintree Town Council Committee on Ordinance & Rules**

One JFK Memorial Drive  
Braintree, Massachusetts 02184

## **MEMBERS**

Sean Powers, Chairman  
David Ringius, Vice-Chairman  
Charles Kokoros, Member  
Timothy Carey, Member

## **AGENDA**

**Tuesday, MARCH 5, 2019**

**Starting Time – 6:30 p.m.**

**Johnson Chambers, Town Hall**

**Pledge of Allegiance**

**Moment of Silence**

**Roll Call**

**Approval of Minutes**

- January 16, 2019

**New Business**

- NONE

**Old Business**

- 18 025 Mayor: Demolition Delay Ordinance or take up any action relative thereto

**Adjournment**



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Charles Kokoros, Member  
Timothy Carey, Member  
Charles B. Ryan, Ex-officio

## January 16, 2019 MINUTES

A meeting of the Committee on Ordinance & Rules was held in the Cahill Auditorium on Wednesday, January 16, 2019 beginning at 7:00pm.

Chairman Powers was in the Chair.

Clerk of the Council, Susan Cimino conducted the roll call.

Present: Sean Powers, Chairman  
David Ringius, Jr, Vice- Chairman  
Charles Kokoros, Member  
Timothy Carey, Member

Also Present: James Casey, Town Clerk  
Christine Stickney, Director Planning and Community Development  
Carl Johnson, Attorney for Simon Group  
Rick Tonzi, General Manager Simon Group South Shore Plaza  
Elizabeth Mees, Historical Commission Chair  
Ronald Frazier, Historical Commission Vice-Chair  
Rayna Rubin, Historical Commission  
Santina Giannino, Historical Commission  
Kate Nedelman Herbst, Historical Commission (not in attendance)  
Residents, Rezone concerns

There was a moment of silence for all those serving in our armed services, past and present, and the meeting was opened with the pledge of allegiance to the flag.

### Approval of Minutes

#### • May 9, 2018

**Motion:** by Councilor Kokoros to approve minutes of May 9, 2018

**Second:** by Councilor Carey

**Vote:** For (3 - Powers, Kokoros, Carey), Against (0), Absent (0), Abstain (1 - Ringius)

## **New Business**

### **• 18 062 Rezone: Braintree Property Associates LP or take up any action relative thereto**

Carl Johnson, Attorney submitted the following information:

This petition is submitted by Braintree Property Associates Limited Partnership ("BPA") the owner of the South Shore Plaza ("Plaza") located at 250 Granite Street being Braintree Assessor's Parcel 2089-0-22 and contains 111.654 acres of land. BPA also owns the un-zoned private portion of Lakeside Drive, Silver Road and Bonnieview Road, and residentially zoned Assessor's Parcels 2039-0-56 (off Silver Road), 2039-0-6 (131 Lakeside Drive) and 2039-0-7 (135 Lakeside Drive) containing a total of 1.78 acres. The total land area owned by BPA is 113.425 acres. The land area subject to the requested change in zoning classification from un-zoned and Residence B to Highway Business District amounts to 4.348 acres or roughly 3.8% of the total land area owned.

Existing Zoning Classification of the 4.343 acres consists of 1.24 acres of un-zoned private roadway layouts (Silver Road, Bonnieview Road and the private portion of Lakeside Drive) and 3.103 acres of Residence B zoned land (131 and 135 Lakeside Drive plus vacant wooded lots).

The vacant wooded lots comprise 2.563 acres of land although zoned Residence B was commonly owned prior to the 1993 text amendment to Bylaw Section 135-701 Dimensional and Density Requirements, Note (9), and has been used for lot coverage, building coverage and open space calculations as part of the 111.645 acres that comprise the Plaza. As a result, the Plaza has paid real estate taxes on the 2.563 acres as HBD property at the commercial tax rate; the 2.563 acres comprises 60% of the land area petitioned to be rezoned.

The Rezone is sought to:

1. Provide uniformity of zoning for the entire 113.425 acres owned by the petitioner consistent with the Highway Business District zoning for the property at 250 Granite Street used as a Regional Shopping Mall, and to enable the entire property owned by the petitioner to be utilized for dimensional and density calculations.
2. The majority (60%) of the land area subject to the requested reclassification is already taxed and utilized as Highway Business District land as part of the Plaza.
3. The adjoining land area is used for Highway Business. Residential zoning is no longer a suitable or desirable use of the property. The residential zoned land is not adjacent to any other residential zoned land and the South Shore Plaza should be uniformly zoned.
4. The rezone will allow for conformity with established use of the site as provided in the Zoning Ordinance Table of Uses.

The public benefits to the general area and the community:

1. Principal public benefit is increased taxable land area at the commercial tax rate. The 1.78 acres of land not already taxed at the commercial rate (un-zoned roadway layouts and remaining Residence B property) will increase tax dollars paid by roughly \$30,000.00 annually.
2. The area subject to the rezone is a small piece of the 113.425 acres owned by BPA; the rezone, however, will permit future development opportunities on the entire property that is suitable, complementary and vital to the economic future and social vitality of the South Shore Plaza with direct economic and social benefits to the Town of Braintree and South Shore region.

Carl Johnson stated an issue that has come up is the gate at the end of Lakeside Drive. It has been there for 25 years and it is a condition of the Special Permit that it is gated and it provides a turnaround for buses and people doing drop-offs at Flaherty School.

Rick Tonzi, General Manager of the South Shore Plaza stated we are under incredible, challenging times. We are working hard to be here for another 60 years. That means change. There will be no impact on Flaherty School. The gate will remain. It was only opened 5 times this past year. It is important to keep the gate if access is ever needed for especially emergency personnel.

Councilor Kokoros stated he would like a legal document signed by the owners of the South Shore Plaza in an agreement with the Town of Braintree, even outside of the original conditions in the Special Permit. Is this something you would be agreeable to?

Rick Tonzi replied yes to being agreeable to this.

Councilor Kokoros stated he would like some sort of agreement outside of the Special Permit. The commitment is there and I will work with the Mayor's office and Town Solicitor to come up with something.

Carl Johnson, Attorney for Simon Properties stated this would be up to the corporate office. There has been no deviation from the Special Permit.

Councilor Powers asked who currently controls the gate from Lakeside Drive to the South Shore Plaza?

Rick Tonzi stated the Police Chief and the Fire Chief and himself under authorization of a town official.

Rick Tonzi replied to the question are we going to put an apartment building there? The rumors are out there but we have not had conversations with the developer on this. Simon meets every week on ideas and uses. The conversations are recreation, hospitality and food, retail. We do not have any deal at this time. We will not make a deal until we have confidence we can do something with the area. We have had a lot of conversations.

Councilor Kokoros stated I have difficulty as a representative in this district without knowing what will happen there. How can I support this. I don't have a level of comfort to support this at this time.

Councilor Ringius stated generally when rezoning a property you will not get a site plan of what is going to be there prior to the rezone. That's just the way it works. There is a lot of concern from residents who have reached out with concerns over the use. Highway business allows many different uses. I have concerns on the impact to Flaherty school if there were an apartment building built there. I have concerns on the unknown.

Councilor Powers asked about the Special Permits. Any new zoning does not affect the Special Permit. Carl Johnson, Attorney stated you could re-affirm the Special Permit and conditions that are currently in place. We do not know what would go there. Anytime there is a rezone there is a full permitting process and needs to go before the Planning Board. It has to be vetted and it has to receive a Special Permit.

Councilor Powers stated this is challenging. We have no hard plans in front of us. We have public agreement from the representatives of the mall that no egress or access would be allowed from Lakeside Drive to the mall. It has been stated there is currently no plans for any residential development. We would not allow anything to be built that would be detrimental to that neighborhood and Flaherty school.

Carl Johnson, Attorney stated we have coexisted extremely well with the neighboring school and have not overburdened the neighborhood with traffic. Simon is very responsive to any needs. Simon cannot afford to have a negative impact on the neighborhoods or anyone else. There is no present intent to use this as a multi-unit residential or condos. I cannot say that will never be the case but there is no one presently speaking to Simon about that. In the past they have talked to people but have elected not to do it.

Councilor Powers stated I would say you would run into some very strong opposition if it was the case. What is the will of the committee on this?

Councilor Ringius stated there is no reason to table this because all the information has been vetted. We should vote and make a recommendation to the full Council.

Carl Johnson, Attorney asked if there was something Councilor Kokoros wanted to work out first?

Councilor Kokoros stated as far as the Lakeside Drive access, both the turnaround with the gate and the Lakeside Drive private road access are two issues that need to be put to bed. There is no commitment on what will happen with this piece of property leaves me to not support some of the uses that would be allowed there. That would put me in the negative at this point.

Councilor Ringius stated one of us should make the motion.

**Motion read by Councilor Ringius:**

That the Town Council vote, at the request of the property owner, Braintree Property Associates Limited Partnership, to amend the Zoning Map of the Town of Braintree, by rezoning from Residence B District to Highway Business District that portion of Assessors Parcel 2089-0-22 not already zoned as Highway Business District, including the private portion of Lakeside Drive, Silver Road and Bonnieview Road unzoned or not already zoned Highway Business District, and Assessors Parcels

2039-0-56 (off Silver Road), 2039-0-6 (131 Lakeside Drive), and 2039-0-7 (135 Lakeside Drive). The parcels to be rezoned are shown on a plan entitled, "Rezoning Plan Lakeside Drive, Braintree, Mass.," prepared by Feldman Land Surveyors, dated October 15, 2018 and on file with the Town Clerk. The acreage to be rezoned totals 189,176 square feet or 4.343 acres. The rezoning request has been recommended favorably by the Planning Board, as detailed in its report to the Town Council dated January 15, 2019.

**Motion:** by Councilor Ringius

**Second:** by Councilor Carey

**Vote:** For (1 - Powers), Against (3 - Kokoros, Carey, Ringius), Absent (0), Abstain (0)

• **19 001 Town Clerk: Request to Amend General Ordinance Chapter 5.580 Taxicabs or take up any action relative thereto**

James Casey, Town Clerk stated this change request is to have the Taxicabs licensing renewal happen in June instead of February. This would help administratively for many reasons including the excise taxes need to be paid prior to the licensing renewal.

**Motion read by Councilor Kokoros:**

That the Town Council vote to amend the Town's General Ordinances, Chapter 5.580 "Taxicabs", as most recently amended, by deleting, in Section 5.580.020 "Expiration of License" the word "February" and replacing it with the word "June".

**Motion:** by Councilor Kokoros for favorable recommendation to the full Council

**Second:** by Councilor Carey

**Vote:** For (4 - Powers, Kokoros, Carey, Ringius), Against (0), Absent (0), Abstain (0)

**Old Business**

• **18 025 Mayor: Demolition Delay Ordinance or take up any action relative thereto**

The Demolition Delay Ordinance is something the Town has been looking at for a number of years now. The driving force is the Historical Commission. It allows for some time to take a look at the structure to determine if it is deemed to be historic in nature and if it is worthy of preservation, photography or to keep components of it. Proposed is for structures 75 years in age or older.

Elizabeth Mees, Historical Commission stated we want to reiterate our concerns for such a by-law. We feel it is in the interest of the town to preserve and documents historical structures as much as possible. This would give us a method of potential changes to give us the ability to document buildings if they are determined to be significantly historical.

The Demolition Delay will restrict what I can do to my property – this is entirely false.

Elizabeth Mees stated we just want documentation. We would hopefully take some photos from the public way and work with the property owner. If it was their desire to demolish their building we would work with them. The intent is not to limit the use of the property or gain entry or violate privacy in anyway.

It is merely a pause so we can have the time to document a historically significant structure. Many structures would not be determined historically significant. The Historical Commission meets monthly. A structure would be determined significant within 60 days. If determined significant then the 6 month clock would begin. A lot of structures are not significant in town. It will be a very quick determination. If not significant we could determine that 5-10 business day's maximum. We are open to discussion and to hear any thoughts you may have.

Councilor Powers asked if all building permits will be screened through this process.

Christine Stickney stated this is for a demolition. This committee is interested if there is going to be a total rising of a structure at certain age. The addition to a structure of that certain age is not a concern. Also if removal or rising of 50% or more of a structure of historical significance. The purpose is to take a look at the exterior of these buildings. That is what we want to preserve.

Councilor Kokoros asked if someone pulls a permit to say side the outside and add to it this will not trigger the demolition delay ordinance.

Elizabeth Mees stated no we are just talking about demolition.

Councilor Kokoros asked if the Historical Commission has seen the timeline documentation from the Building Department.

Elizabeth Mees stated yes we have. The greatest amount of structures will not be determined significant. We would expect a maximum 60 day turnaround to make a decision.

Councilor Ringius referred to two areas of concern in the Ordinance. There is a fine line between these historical structures and the rights of the private property owner.

#### 5.700.040. Responsibilities of the Owner

Once a Significant Building is determined to be Preferably Preserved, the owner shall be responsible for properly securing the building, if vacant, to the satisfaction of the Inspector of Buildings. Should the owner fail to so secure the building, a subsequent destruction of the building at any time during the 6 month demolition delay period, which destruction could have been prevented by the required security measures, shall be considered a voluntary demolition in violation of this Ordinance.

#### 5.700.070. Regulations and Fees

A. The Commission may promulgate regulations to administer the provisions of this Ordinance.

B. The Commission is authorized to adopt a schedule of reasonable fees to cover the costs associated with the administration of this Ordinance (including the costs of publishing and mailing hearing notices).

Councilor Ringius stated who will be responsible for those fees and when will those fees be determined.

Christine Stickney stated abutters 300 feet out are notified. The advertising of this is mailed out in envelopes/stamps are provided by the property owner. The advertising cost is for the newspaper. Our base fee is \$300.

Councilor Ringius stated is there any talk to increase the age of the buildings beyond 75 to 100 years? Elizabeth Mees stated we are open to discussion.

Councilor Kokoros stated he has an email from the Assessor's office stating 37% of structures are 75 years and older. I would entertain 100 years. I do not agree with 75 years.

Elizabeth Mees stated all we are trying to do is ask for a pause.

Councilor Ringius referred to the list of delays from other towns. Also asking to adjust the 60 days. I would like to see this move forward.

Three things: The month total, the year total and the schedule of fees.

Councilor Powers stated I would like to see what the fee schedule would be to have a discussion on that.

Elizabeth Mees stated so we should come back with adjustments to the age of the building/structure, the time-frame to make a decision (30-60 days) and if it were of significant it could be less than 6 months and the schedule of fees. Also the period of years of 75 or 100 and the reason behind it.

Councilor Kokoros stated I would like you to consider the 125 years. I think 30 days would be adequate to make a decision on whether or not there should be a delay and I would ask the Building Inspector here to talk about this time table and how things work now and the process and time, what the application is like, fees, etc. I would like to hear how the system works now and how it will work if we approve the demolition delay ordinance.

Councilor Powers stated I would like to see pros/cons for 100 years and 125 years.

Councilor Kokoros stated "Motion to Table Order 18 025 to a future meeting"

**Motion:** by Councilor Kokoros to Table Order 18 025 to a future meeting

**Second:** by Councilor Carey

**Vote:** For (4 - Powers, Kokoros, Carey, Ringius), Against (0), Absent (0), Abstain (0)

It was unanimously voted to adjourn the meeting at 9:18 p.m.

Respectfully submitted,  
Susan M. Cimino  
Clerk of the Council

## **Documents provided for Meeting**

- 18 025 Mayor: Demolition Delay Ordinance
- 18 062 Rezone: Braintree Property Associates LP
- 19 001 Town Clerk: Request to Amend General Ordinance Chapter 5.580 Taxicabs

O+R

**Cimino, Susan M.**

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**From:** Kokoros Charles  
**Sent:** Wednesday, January 16, 2019 7:06 PM  
**To:** Cimino, Susan M.  
**Subject:** Fwd: Building ages

Sent from my iPhone

Begin forwarded message:

**From:** "Brinkmann, Robert" <[rbrinkmann@braintreema.gov](mailto:rbrinkmann@braintreema.gov)>  
**Date:** September 21, 2018 at 3:44:14 PM EDT  
**To:** Kokoros Charles <[ckokoros@braintreema.gov](mailto:ckokoros@braintreema.gov)>  
**Subject:** FW: Building ages

Councilor,

I didn't realize this list below was done four months ago. So there wouldn't be any changes yet. Does this suffice?

Thanks  
Bob

---

**From:** Kokoros Charles  
**Sent:** Thursday, May 10, 2018 1:10 PM  
**To:** Brinkmann, Robert  
**Subject:** Re: Building ages

Thanks Bob

Sent from my iPhone

On May 10, 2018, at 12:50 PM, Brinkmann, Robert <[rbrinkmann@braintreema.gov](mailto:rbrinkmann@braintreema.gov)> wrote:

Councilor Kokoros,

To follow up on your question for the age of buildings in the Town of Braintree, I have determined that we have a total of 12,157 improved properties. Of those we have the following:

4501 properties 75 years or older (37%)  
2001 properties 100 years or older (16.5%)  
627 properties 125 years or older (5.2%)  
219 properties 150 years or older (1.8%)  
84 properties 200 years or older (.069%)

Any other questions please let me know.

## Stickney, Christine

---

**From:** Brinkmann, Robert  
**Sent:** Thursday, May 10, 2018 1:20 PM  
**To:** Stickney, Christine  
**Subject:** RE: Discussions on demolition delay with Council

Good afternoon Christine,

There are 12,157 improved parcels in the Town.

**75 Years plus:**

4,501 of those are 75 years or older (37%).

\*Residential 4,302  
\*Commercial 95  
\*Exempt 51  
\*Mixed use 53

**100 Years plus:**

2,001 of those are 100 years or older (16.5%)

\*Residential 1,927  
\*Commercial 43  
\*Exempt 31

Regards  
Bob

---

**From:** Stickney, Christine  
**Sent:** Thursday, May 10, 2018 12:07 PM  
**To:** Brinkmann, Robert  
**Subject:** Discussions on demolition delay with Council

Bob,

Is there a way to get a # of structures in the Town that are over 75 years of age (separated by residential and commercial and other (church, school, town owned etc. )

And then the same information for structures over 100 years of age.

The Historical Commission has been asked to obtain this information to return to the Council prior to 5/25 - would that be possible?

Christine

## Stickney, Christine

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**From:** MassHistPres <masshistpres-bounces@cs.umb.edu> on behalf of Skelly, Christopher (SEC) <christopher.skelly@state.ma.us>  
**Sent:** Tuesday, January 15, 2019 12:03 PM  
**To:** masshistpres@cs.umb.edu  
**Subject:** [MassHistPres] Demo Delay-Length of Delay  
**Attachments:** ATT00001.txt

I've received a half dozen updates to this list since posting it yesterday. Here is the latest. Chris

Acton	18 months
Agawam	6 months
Amesbury	18 months
Amherst	12 months
Andover	12 months
Arlington	12 months
Ashburnham	6 months
Ashland	9 months
Barnstable	12 months
Becket	6 months
Bedford	12 months
Belmont	12 months
Berlin	6 months
Beverly	12 months
Billerica	6 months
Bolton	6 months
Boston	3 months
Bourne	12 months
Boxborough	12 months
Brookline	18 months
Burlington	6 months
Cambridge	6 months
Canton	6 months
Carver	6 months
Chatham	18 months
Chelmsford	12 months
Chilmark	6 months
Concord	12 months
Danvers	12 months
Dartmouth	6 months
Dennis	12 months
Dighton	6 months
Dover	6 months
Dudley	12 months
Dunstable	9 months
Duxbury	6 months
East Bridgewater	4 months
Eastham	12 months
Easthampton	6 months
Easton	12 months
Essex	4 months
Fall River	6 months
Falmouth	12 months

Foxborough	6 months
Framingham	6 months
Franklin	12 months
Freetown	12 months
Georgetown	6 months
Greenfield	12 months
Groton	6 months
Halifax	6 months
Hanover	12 months
Harwich	12 months
Hatfield	12 months
Hingham	6 months
Holliston	30 days
Holyoke	4 months
Hopkinton	6 months
Huntington	6 months
Ipswich	12 months
Kingston	6 months
Lakeville	6 months
Lawrence	9 months
Leicester	6 months
Leominster	6 months
Leverett	18 months
Lexington	12 months
Lincoln	6 months
Littleton	6 months
Longmeadow	9 months
Lunenburg	6 months
Lynn	5 months
Lynnfield	12 months
Malden	12 months
Marshfield	12 months
Maynard	18 months
Medfield	18 months
Medford	6 months
Medway	9 months
Mendon	6 months
Methuen	6 months
Middleborough	18 months
Middleton	6 months
Millis	30 days
Milton	24 months
Nantucket	30 days
Natick	6 months
Needham	6 months
New Bedford	12 months
Newbury	9 months
Newburyport	12 months
Newton	18 months
Norfolk	6 months
North Adams	12 months
North Andover	12 months
North Attleborough	6 months
Northampton	12 months
Northborough	6 months
Norwell	6 months

Oak Bluffs	6 months
Orleans	12 months
Peabody	3 months
Pembroke	3 months
Pittsfield	6 months
Plymouth	12 months
Plympton	18 months
Provincetown	6 months
Randolph	6 months
Reading	12 months
Rowley	9 months
Salem	6 months
Saugus	21 days
Scituate	12 months
Sharon	12 months
Sheffield	Unknown
Somerset	6 months
Somerville	9 months
Southborough	9 months
Springfield	9 months
Stockbridge	12 months
Stoughton	6 months
Sturbridge	12 months
Sudbury	6 months
Swampscott	9 months
Taunton	6 months
Tewksbury	3 months
Topsfield	6 months
Truro	12 months
Tyngsborough	6 months
Upton	12 months
Wakefield	6 months
Walpole	6 months
Waltham	12 months
Ware	9 months
Wareham	6 months
Watertown	12 months
Wellesley	12 months
Wellfleet	18 months
Westborough	6 months
Westfield	3 months
Westford	6 months
Weston	12 months
Westport	6 months
Westwood	6 months
Weymouth	6 months
Williamstown	3 months
Winchester	12 months
Woburn	12 months
Worcester	12 months
Wrentham	12 months
Yarmouth	6 months

Christopher C. Skelly  
 Director of Local Government Programs



# Department of Municipal Licenses and Inspections

Mary E. McGrath, R.S., Director

1 JFK Memorial Drive – Braintree, Massachusetts 02184

Building Division Telephone: 781-794-8070

Fax: 781-794-8022

Health Division Telephone: 781-794-8090

Fax: 781-794-8098

Joseph C. Sullivan  
Mayor

## DEMO DELAY Time Table

Please note all "days" are calendar days

**Day 1** – Applicant files for demolition permit.

**Day 10** – Notice is sent to Commission of receipt of application by Inspector of Buildings.

**Day 45** – Notice is sent to Applicant of "Initial Meeting" by Commission.

**Day 52** – Commission makes Initial Determination nearly eight weeks after initial application

Negative – Permit issues

Positive – Public Hearing is scheduled.

**Day 107** – Public hearing by Commission is conducted with Applicant.

**Day 122** – Notice of decision by Commission is sent to Applicant.

Negative – Permit issues, seventeen plus weeks after initial application

Positive – Demolition delay is imposed.

**Day 305** – Expiration of demolition delay allowing for demolition permit to be issued, forty-three plus weeks after initial application

### Proposed Changes to ordinance:

- Change "Demolition definition so that only demolition of greater than 50% of the buildings which qualify under this ordinance would be effected.
- Change "Significant Building" to cover buildings 100 years or more in age.
- Change all time tables to calendar days from business days. Saves applicant 19 days!
- Change period of demolition delay to a maximum of 90 days and allow the Commission flexibility of imposing 30 and 60 periods of delay as well.

### Rational for changes:

- Allowing for an optional **30** and **60** day periods of demolition delay as well as making all time periods calendar days would save an applicant between **112 – 172** Days!
- Right now with **75 years** being the dividing line, **36%** of buildings within the Town would be affected, in five years **39%** and in ten years **46%**. Changing to **100 years** reduces initial percentage to **15%**, five years **19%** and ten years **24%** reducing the potential impact to residents.
- Over the past five years an average of **84** projects involved additions requiring partial demolition of a structure which under the definition of "Demolition" could potentially require such projects to go through the Demolition Delay process. Using the **75 year** threshold and applying the percentages of qualifying buildings to this statistic it means the Commission would be hearing **30** projects annually initially, **33** projects annually in five years and **39** projects annually in ten years. Changing to a **100 year** threshold would reduce such project numbers to **12** annually initially, **16** annually in five years and **20** annually in

ten years which would make it more manageable for the Commission to handle in terms of review, advertisement and hearing schedule given that it is staffed by volunteers.



#18-025

Office of the Mayor  
One JFK Memorial Drive  
Braintree, Massachusetts 02184

Joseph C. Sullivan  
Mayor

781-794-8100

To: Charles Ryan, President of the Council  
Susan Cimino, Clerk of the Council  
James Casey, Town Clerk

From: Joseph C. Sullivan, Mayor

*JCS*

Cc: Joseph H. Reynolds, Chief of Staff and Director of Operations  
Christine Stickney, Director of Planning and Community Development

Date: April 24, 2018

Re: Demolition Delay Ordinance

RECEIVED TOWN CLERK  
BRAintree, MA  
2018 APR 24 PM 4:39

As you know, the Town of Braintree recently celebrated the 375<sup>th</sup> birthday of incorporation in the year 1640. Braintree has a unique and rich history marked by individual accomplishments and historical events which are well-known in the Commonwealth and across the nation. These individuals and events comprise the historical fabric of our community and are recorded in numerous documents, books and historical markers, preserved for the benefit of all citizens.

I am writing today in an effort to highlight another critical component of our historical record. It is important to identify the many structures within our Town of Braintree that uniquely support our history. These buildings have cultural, architectural, political or historical significance and should, whenever possible, be preserved for the benefit of our residents. In that spirit I ask that you favorably consider a new ordinance, a demolition delay ordinance, that will help us identify and preserve these important buildings.

This ordinance provides a mechanism, not to permanently prevent demolition, but rather to provide an opportunity to identify and develop preservation solutions. Accordingly, your review and approval of the following motion is requested.

**MOTION:** That the Town of Braintree adopt the provisions and procedures of the Demolition Delay Ordinance, as filed with the Office of the Town Clerk and attached hereto, for the purpose of encouraging and facilitating the preservation and protection of significant buildings within the Town of Braintree which are located outside designated Historic Districts.

**Town Council Motion to Amend the General Ordinances, by Enacting  
“Chapter 5.700: Demolition Delay”**

**MOTION:** That the Town Council vote to amend Title 5 of the Town’s General Ordinances, by adding “Chapter 5.700: Demolition Delay”, to read as follows:

RECEIVED TOWN CLERK  
BRAintree, MA  
2018 APR 17 AM 11:59

**CHAPTER 5.700. Demolition Delay**

**5.700.010. Intent and Purpose**

A. The Demolition Delay Ordinance is enacted for the purpose of encouraging and facilitating the preservation and protection of significant buildings within the Town of Braintree which are located outside designated Historic Districts. Such buildings reflect distinctive features of the architectural, cultural, economic, political, or social history of the Town, and their preservation promotes the public welfare by making the Town a more attractive and desirable place to live and work.

B. The intent of the Ordinance is not to permanently prevent demolition, but rather to provide an opportunity to develop preservation solutions for significant buildings threatened with demolition. The Ordinance is intended to encourage owners and townspeople to seek out persons who might be willing to purchase, preserve, rehabilitate or restore such buildings rather than demolish them, and to limit the detrimental effect of demolition on the historical architectural resources of the Town. To achieve these purposes, the Braintree Historical Commission (the “Commission”) is empowered to advise the Inspector of Buildings with respect to the issuance of permits for demolition of significant buildings, and, where appropriate and consistent with the intent and purpose of this ordinance, to allow demolition under conditions designed to minimize the loss of distinctive features of significant buildings.

**5.700.020. Definitions**

For the purposes of this Ordinance only, the following words and phrases shall have the following meanings, whether or not capitalized:

**APPLICANT** - the person or persons filing an application for review under this Ordinance.

**APPLICATION** - An application for review under this Ordinance filed pursuant to this Ordinance.

**BUILDING** - Any combination of materials forming a shelter for persons, animals, or property.

**BUSINESS DAY**- Any day which is not a legal municipal holiday, Saturday or Sunday.

**COMMISSION - The Braintree Historical Commission.**

**DEMOLITION - Any act of pulling down, destroying, removing, razing or moving a building or any portion thereof, or commencing such work with the intent of completing the same;**

**PREFERABLY PRESERVED- A Significant Building which, after a public hearing, the Commission determines that demolition of such building would be detrimental to the historical or architectural heritage or resources of the Town.**

**SIGNIFICANT BUILDING - Any building or portion thereof which in whole or in part is more than 75 years old, or is of unknown age, and which meets one or more of the following two criteria:**

(1) the building 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 building is determined by vote of the Commission to be of historical or architectural significance by reason of period, style, method or building construction, or by reason of its association with a particular architect, or a builder, or with a person or event of importance to the Town's history.

**5.700.030. Procedure**

A No demolition of a building, or any portion of a building, which is at least 75 years old, or which is of an indeterminate age, shall be permitted except in conformity with the provisions of this ordinance. This Ordinance shall not apply to any building located in a designated Historic District created pursuant to General Laws c. 40C or any special act of the legislature, or to any property certified as a landmark pursuant to G.L. c. 40, s. 8D.

B. Upon receipt of an application for a demolition permit for any building, or portion thereof, which is at least 75 years old, or which is of indeterminate age, the Inspector of Buildings shall forward a copy thereof to the Commission within seven business days, and shall notify the Applicant in writing of this action. No demolition permit shall be issued at that time.

C Within 45 business days of its receipt of a copy of an application for a demolition permit, the Commission shall make an Initial Determination as to the significance of the subject building. The Commission shall arrange for photographs to be taken of the subject building and collect other documentation related to the subject building as it deems necessary for the Commission to make its Initial Determination. The Initial Determination shall be positive if the building, or a portion thereof, meets the definition of a "Significant Building." Otherwise, the Initial Determination shall be in the negative. The Commission shall notify the Applicant of the meeting at which it intends to make its Initial Determination at least seven days in advance of said meeting, and the Applicant shall be given an opportunity to make a presentation to the Commission at said meeting.

D. The Commission shall notify the Building Inspector and the applicant in writing within 10 business days of its Initial Determination. If the Initial Determination is in the negative, or if the Commission fails to notify the Building Inspector of its Initial Determination within the said 10 business days, the Building Inspector may, subject to the requirements of the State Building Code and any other applicable law, ordinances, rules and regulations, issue a demolition permit.

E. If the Commission's Initial Determination is positive, the Commission shall, within 45 days of its Determination, conduct a public hearing to determine whether the Significant Building is Preferably Preserved. The Commission shall give public notice of said hearing by publishing notice of the time, place, and purpose of the hearing in a newspaper of general circulation in the Town twice, the first notice to be published at least 14 days before the hearing and the second notice no more than 7 days before the hearing, and by mailing a copy of said notice to the applicant, to the owner of the premises on which the Significant Building is located (if other than the applicant), to the owners of all property within 300 feet of the premises on which the Significant Building is located as appearing on the most recent tax list, and to such other persons as the Commission shall deem entitled to notice. The Applicant is encouraged to provide any information to the Commission that he or she believes will assist the Commission in reaching its decision. The conduct of the public hearing shall be in accordance with duly adopted ordinances or regulations adopted by the Commission.

F. If, after a public hearing, the Commission determines that demolition of the Significant Building would not be detrimental to the historical or architectural heritage or resources of the Town, the Commission shall so notify the applicant, the owner (if other than the applicant), and the Inspector of Buildings, in writing within 10 business days of such determination. Upon receipt of such notice, or upon the expiration of 10 business days from the date of the close of the Commission's public hearing without having received any notification from the Commission, the Building Inspector may, subject to the requirements of the State Building Code and any other applicable laws, ordinances, rules and regulations, issue a demolition permit for the subject building.

G. If, after the public hearing, the Commission determines that demolition of the Significant Building would be detrimental to the historical or architectural heritage or resources of the Town, such building shall be considered to be Preferably Preserved and the Commission shall so advise the applicant, the owner (if other than the applicant), and the Inspector of Buildings, in writing, within 10 business days, and no demolition permit shall be issued until six months after the date of such determination by the Commission. In making its determination, the Commission shall consider, among other relevant factors: (a) the building's condition; (b) whether the building is one of the last remaining examples of its kind in the neighborhood, the town, or the region; and (c) the building's historic, architectural, and urban design significance.

H. In the event the Commission imposes a demolition delay pursuant to this Ordinance, the Commission shall invite the Applicant (or owner of record, if different) to participate in an investigation of alternatives to demolition of the building. The Commission may also invite any other party to participate in such investigation, on an advisory basis, that it believes can be helpful. The investigation shall consider possibilities such as: the incorporation of the building into future development on the site; adaptive re-use of the building; financial incentives for

rehabilitation; removal of the building to another site; and, with the owner's consent, a search for a party willing to purchase and preserve, restore, or rehabilitate the building. During the six month delay period, the Commission shall notify the Massachusetts Historical Commission, the Mayor, the Director of Planning and Community Development, the Community Preservation Committee and any other interested party in an effort to obtain assistance in obtaining preservation funding or in finding an adaptive use of the building which will result in its preservation.

I. Upon expiration of any demolition delay period required by this Ordinance, the Inspector of Buildings may issue a demolition permit to the Applicant, subject to the requirements of the State Building Code and any other laws, ordinances, and regulations. Notwithstanding the Commission's imposition of a demolition delay, the Commission may issue a determination prior to the termination of the six month delay period that it is satisfied that no feasible alternative to demolition exists, thus authorizing the Inspector of Buildings to issue a demolition permit to the Applicant, subject to any other laws, ordinances, and regulations.

J. Notwithstanding the preceding paragraphs, the Inspector of Buildings may issue a demolition permit for a Preferably Preserved building at any time after receipt of written advice from the Commission to the effect that:

(1) notwithstanding the fact that a significant building is Preferably Preserved, the 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 six month demolition delay period has terminated; or

(3) the Commission has determined that the proposed moving or demolition may be conducted in a specified manner so as not to be detrimental to the historical or architectural heritage or resources of the Town.

K. The requirements of this Ordinance are in addition to, and not in lieu of, the requirements of any other codes, ordinances, statutes, or regulations related to the demolition of buildings.

L. Any determination issued pursuant to this Ordinance shall be in writing and shall specify the reasons for such determination. In the event a demolition delay is imposed, the written determination shall specify the date on which such delay period shall terminate.

#### **5.700.040. Responsibilities of the Owner**

Once a Significant Building is determined to be Preferably Preserved, the owner shall be responsible for properly securing the building, if vacant, to the satisfaction of the Inspector of Buildings. Should the owner fail to so secure the building, a subsequent destruction of the building at any time during the 6 month demolition delay period, which destruction could have been prevented by the required security measures, shall be considered a voluntary demolition in violation of this Ordinance.

**5.700.050. Emergency Demolitions**

A. Notwithstanding the foregoing provisions, the Inspector of Buildings may issue a demolition permit at any time in the event of imminent and substantial danger to the health or safety of the public due to deteriorating conditions. Prior to doing so, the Inspector of Buildings shall inspect the building and document, in writing, the findings and reasons requiring an emergency demolition, a copy of which shall be forwarded immediately to the Commission. Before allowing emergency demolition, the Inspector of Buildings shall make every effort to inform the Chairperson of the Commission of his intention to allow demolition before he issues a permit for emergency demolition.

B. Nothing in this Ordinance shall restrict the authority of the Inspector of Buildings to require the Applicant to take reasonable action to prevent the need for required demolition of a significant building, which may include securing the building and making it safe so that it does not present an imminent and substantial danger to the public.

C. No provision of this ordinance is intended to conflict with or abridge any obligations or rights conferred by G.L.c.143 regarding removal or demolition of dangerous or abandoned structures. In the event of a conflict, the applicable provisions of Chapter 143 shall control.

D. Nothing in this ordinance shall be deemed to conflict with the provisions of the Historic Districts Act, Massachusetts General Laws, Chapter 40C, with respect to requirements of notice, hearing and issuance by the Commission of a Certificate of Appropriateness, a Certificate of Non- applicability or a Certificate of Hardship prior to demolition of any building in an historic district.

**5.700.060. Enforcement and Remedies**

A. If the Commission determines that a significant building has been voluntarily demolished in violation of this Ordinance, the Building Commissioner shall not issue any building permit for new construction, or any use or occupancy permit for any use other than a park or recreational space, with respect to the premises for a period of two years after the date of the Commission's determination. As used herein, "premises" includes the parcel of land upon which the demolished building was located, and all abutting parcels under common ownership or control.

B. Notwithstanding the foregoing, whenever the Commission shall, on its own initiative, or on application of the landowner, determine that earlier reconstruction, restoration or other remediation of any demolition in violation of this Ordinance better serves the intent and purpose of this Ordinance, it may, prior to the expiration of said period of two years, but no sooner than six months from the date of completion of any demolition in violation of this Ordinance, authorize the Inspector of Buildings to issue a building permit upon such conditions as the Commission deems necessary or appropriate to effectuate the purposes of this Ordinance.

**5.700.070. Regulations and Fees**

A. The Commission may promulgate regulations to administer the provisions of this Ordinance

B. The Commission is authorized to adopt a schedule of reasonable fees to cover the costs associated with the administration of this Ordinance (including the costs of publishing and mailing hearing notices).

**5.700.080. Severability**

If any section, paragraph or part of this Ordinance for any reason declared invalid or unconstitutional by any court, every other section, paragraph and part shall continue in full force and effect.