

Demolition/Alteration Processes and Related Issues

Topic Report 4 of 4:
Fort Collins Historic Preservation Codes & Processes
Winter 2017

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Background

This report is part of a series of reports on the City of Fort Collins' historic preservation codes and processes, including the Municipal Code and the Land Use Code. All four reports will be compiled once reviewed by the Citizen Advisory Committee, Landmark Preservation Commission, and City staff. The reports focus on the following four topics:

- A. Landmark Designation Codes & Processes**
- B. Designated Resources: Processes and Standards for Review**
- C. Development Review and Historic Resources: Processes and Standards for Review**
- D. Demolition/Alteration Processes and Related Issues**

INTRODUCTION

This report includes a review of the City of Fort Collins' codes and processes related to "Demolition/Alteration Review" and other related topics. The documents reviewed for this report include Chapter 14 of the Municipal Code, particularly Articles I and IV. This report assesses the program area's current conditions and provides recommendations for proposed improvements. A review of peer cities was completed to compare these Fort Collins demolition- and alteration-related processes to other communities.

The report summarizes the Demolition/Alteration review process and its effectiveness in protecting eligible historic resources from demolition and major alterations, discusses several main topics associated with demolition, highlights relevant approaches used throughout the country, and provides conclusions and recommendations for improvements in Fort Collins.

SUMMARY OF RECOMMENDATIONS

The following sections of this report review four topics related to the Demolition/Alteration process and related issues, and provide recommendations for each topic based on peer city research. The recommendations are summarized below:

Demolition/Alteration Review Process	<ul style="list-style-type: none"> • Clarify the role of the Design Review Subcommittee. • Consider using a decision matrix to more clearly differentiate between minor and major alterations. • Reevaluate the criteria for approval and potentially add an economic hardship determination. • Consider increasing the amount of time that the LPC can delay a decision in order to find alternatives to demolition.
Determinations of Eligibility	<ul style="list-style-type: none"> • Focus on completing survey work to proactively identify eligible resources. • Create an inventory of eligible historic resources. • Reconsider the five-year period of validity. Consider a process for property owners to obtain a certificate of ineligibility with a five year limit on validity.
Demolition by Neglect	<ul style="list-style-type: none"> • Specify the types of repairs that are required to prevent demolition by neglect. • Increase penalties for properties undergoing demolition by neglect. • If an inventory of eligible resources is created, extend maintenance requirements to eligible structures on the inventory. • Incorporate preservation-related requirements in the general property maintenance standards. • Develop financial incentives to assist with required property maintenance.
Public Safety Exclusions	<ul style="list-style-type: none"> • Clarify the requirement to fix dangerous conditions when deemed repairable by the building official. • Review relevant building code definitions. • Improve coordination between the LPC/preservation staff and the building official in regards to dangerous buildings.

Organizational Recommendations

As we have recommended in each report, we believe that the organization of Article IV could be improved. In particular, Section 14-72, which describes the procedure for determining which type of review applies, is structured in a confusing and overly complex way and could be simplified.

Research Topics

A. DEMOLITION/ALTERATION REVIEW PROCESS

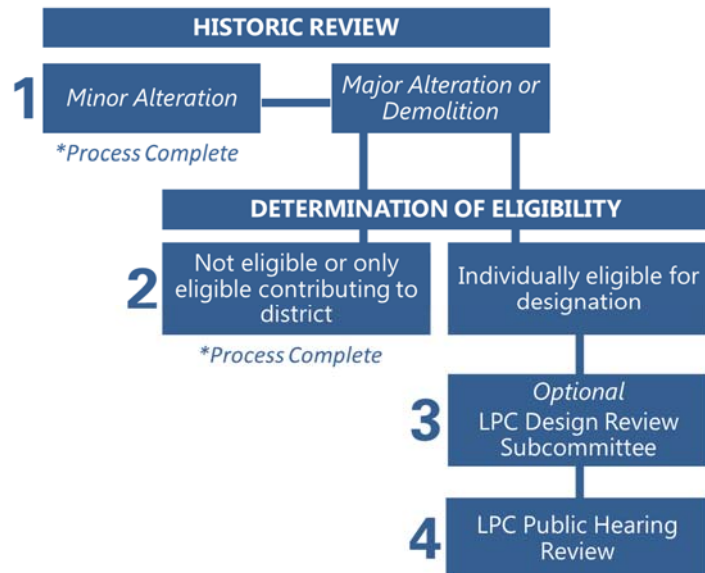
There are properties in most communities that are informally recognized as significant, perhaps because of age or unique architecture, yet have not been formally designated as “historic” or worthy of regulatory protection. Inevitably, some of these properties become candidates for demolition. When this occurs, many communities, including Fort Collins, require special review prior to their demolition. Sometimes this review also extends to proposed major alterations that would substantially change the structure’s physical integrity, such as removal of a significant portion of the building.

Having this type of review process in place helps ensure that potentially significant properties are not demolished or substantially modified before they may be considered for formal regulatory protection through landmark designation. In many communities, this process involves delaying the release of a demolition or other permit while the review takes place, in order to allow exploration of other opportunities to preserve the structure. Communities with these programs typically set parameters to identify the types of demolition permits that will be reviewed (e.g., permits for all properties listed on a potential resource inventory, or permits for all properties over a certain age).

Demolition/Alteration Review Process in Fort Collins

The Fort Collins Demolition/Alteration review process is triggered upon submission of a permit application for any property that is 50 years of age or older within the city limits and has not been designated historic (the Design Review process covered in Report B would be used for demolition and exterior alteration requests for listed properties). When possible, applicants are encouraged by city staff to submit demolition/alteration review applications prior to submitting permit applications in order to create a more predictable and efficient process and timeline. The review involves both the demolition and alteration of structures.

The first step in the review process is for the Director of CDNS and the LPC Chair to determine whether the proposed work is considered a major or minor alteration. The city’s website describes this as a “historic review” (although that term is not actually used in the ordinance). If the scope only includes minor alterations, no additional historic review is necessary. If



the work is considered a major alteration (a category of determination which includes partial or total demolition), the structure is then evaluated for its eligibility for individual designation as a local landmark to determine whether a final review by the Landmark Preservation Commission (LPC) is necessary. The LPC must review and approve the alteration or demolition, following a public hearing, if the structure is found to meet at least one of the standards of eligibility for designation. Alternatively, an applicant may consent to review by the Design Review Subcommittee of the LPC. If the work is approved by the subcommittee based on the proposed work's compliance with the Secretary of the Interior's standards for rehabilitation, the applicant is not required to take the review to a public hearing at the LPC.

The following definitions in Section 14-1 are integral to the process:

Alteration shall mean any act or process, including relocation, which changes one (1) or more of the physical characteristics of a designated site, structure, object, or district or a site, structure, object or district eligible for designation.

Major alteration shall mean work that has the potential to substantially affect more than one (1) aspect of exterior integrity.

Minor alteration shall mean work that has the potential to substantially affect no more than one (1) aspect of exterior integrity.

Demolition shall mean any act or process that destroys in its entirety an eligible or designated site, structure or object, or a site, structure or object within an eligible or designated district.

"Integrity" is not defined in the definitions section of the ordinance. However, Section 14-5, which describes the standards for determining eligibility, explains that exterior integrity is based on a property's retention of the seven aspects or qualities established by the National Park Service: location, design, setting, materials, workmanship, feeling, and association (the individual definitions of these terms are listed in the Topic C report).

Other than partial or full demolition of a structure, major alterations typically include large additions, front porch additions or remodels, or façade fenestration changes. Rear additions that are not visible from the public right-of-way are typically determined to be a major alteration based on their size, massing, bulk, and structural relationship to the original building. Changes that are automatically considered minor include changes to decks and patios, rear enclosed porches, changes in window openings, and similar alterations. The city also authorizes administrative staff to approve minor changes such as reroofing permits, mechanical equipment, and egress windows without undergoing any level of review by historic preservation staff. Other alterations such as changes to decks and patios, enclosing rear porches, and changes in fenestration (dependent on location) can be approved by historic preservation staff without a demolition/alteration review meeting. These automatic approvals are based on staff discretion and any of these that are borderline cases can be referred for an official determination if needed.

In the last five years, city staff has processed an average of 618 Demolition/Alteration requests of buildings 50 years and older per year. Almost all of these were reviewed administratively because they

involved either minor alterations or the building was not eligible for individual designation. Each year, an average of just five major alterations or demolitions proceeded to the Landmark Preservation Commission, where they are typically approved on the consent agenda as long as the application materials are complete.

There are no standards enumerated in the code for a LPC decision on the Demolition/Alteration application. The commission has the option to approve, to approve with conditions, or to postpone consideration of the application for up to 45 days. Although not described in the ordinance, staff notes that the current ordinance essentially presumes that approval will be granted if the correct application materials are submitted, unless the LPC adopts a motion and findings as to why it should instead proceed to Council. Staff also adds that the presumption is that an application would proceed to Council only if the LPC or members of the public felt it should be considered for non-consensual designation. The findings that the LPC should base this decision upon are not codified. This absence of standards implies (whether intentionally or not) that the LPC is only deciding upon what types of mitigating documentation or conditions should be added or whether to forward the application on to Council for consideration as a nonconsensual designation. The intent of this review could be better clarified. If the application is ultimately approved, the application can move forward through the typical city permitting processes. If denied, the applicant has the option to appeal the decision to the City Council.

As noted, an applicant may have their application reviewed by the Design Review Subcommittee. If a resolution is met with the subcommittee, the process ends and the applicant is not required to appear before the LPC in a public hearing. The Design Review Subcommittee was first established in 2011, and the ability for the subcommittee to review these applications was added in 2014 in order to shorten review times. City staff has not tracked how many applications have been reviewed by the Design Review Subcommittee instead of the LPC. In contrast to the full LPC process, which does not have listed criteria, the ordinance lists the following criteria to guide the subcommittee's review of the application:

- (a) The effect of the proposed work upon the general historical and/or architectural character of the landmark or landmark district;
- (b) The architectural style, arrangement, texture and materials of existing and proposed improvements, and their relation to the landmark or the sites, structures and objects in the district;
- (c) The effects of the proposed work in creating, changing, obscuring or destroying the exterior characteristics of the site, structure or object upon which such work is to be done;
- (d) The effect of the proposed work upon the protection, enhancement, perpetuation and use of the landmark or landmark district; and
- (e) The extent to which the proposed work meets the standards of the City and the United States Secretary of the Interior for the preservation, reconstruction, restoration or rehabilitation of historic resources.

Similar Review Processes in Peer Cities

Properties Reviewed

Several peer cities we studied have similar processes to Fort Collins' Demolition/Alteration review. These types of reviews are almost always decided by the city's preservation commission. While it is most common for cities to limit demolition review to locally designated landmarks or properties within local historic districts, several cities extend this review to structures that are of a certain age and are potentially eligible for designation. Additionally, some cities review proposed demolitions of national- or state-designated landmarks. This extends regulatory protection to nationally or state designated properties that may not have also been locally designated.

In addition to reviewing the demolition of locally designated properties, the peer cities below have demolition review processes for the following types of properties:¹

- Boulder: Structures over 50 years
- Cambridge: Structures over 50 years
- Denton: Structures on the National Register
- Eugene: Structures on the National Register
- Gainesville: Structures over 45 years; Structures on the state inventory
- Santa Barbara: Structures over 50 years in mapped area; Structures on the Potential Historic Resource List
- Syracuse: Structures on the National Register; Structures on the city inventory

Proposals Reviewed

Most cities we studied review only proposed demolitions, not every alteration of these resources. However, in some cities the definition of demolition includes major alterations that remove a significant amount of historic fabric. Santa Barbara, for example, considers the removal of significant components or character-defining elements to be "demolition" (as excerpted below.)

Santa Barbara, California

22.22.020 - Definitions.

K. "DEMOLITION." The permanent removal from a structure of either a significant component or a character defining element, as may be determined by the Historic Landmarks Commission or where appropriate, by the Community Development Director. Demolition shall include, but not be limited to, the act of pulling down, destroying, removing, relocating or razing a structure or commencing the work thereof with the intent of completing the same.

Of the peer cities we studied, Boulder has the most specific definition of "demolition" and incorporates helpful graphics to demonstrate how alterations may meet the definition of "demolition" without removing the entire structure:

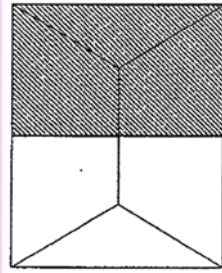
¹ Boulder [9-11-23](#); Cambridge [2.78.090](#); Denton [35-221](#); Eugene [9.0-19](#); Gainesville [6-19](#); Santa Barbara [22.22.035](#); Syracuse [VII-8](#)

Boulder, Colorado

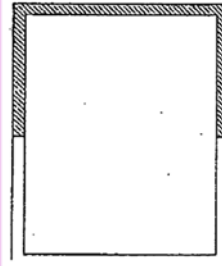
9-16-1 – General Definitions

Demolition or demolish means an act or process which removes one or more of the following. The shaded area illustrates the maximum amount that may be removed without constituting demolition.

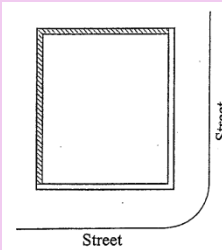
- (1) Fifty percent or more of the roof area as measured in plan view (see diagram);



- (2) Fifty percent or more of the exterior walls of a building as measured contiguously around the "building coverage" as defined in this section (see diagram); or



- (3) Any exterior wall facing a public street, but not an act or process which removes an exterior wall facing an alley (see diagram).



A wall shall meet the following minimum standards to be considered a retained exterior wall

- (A) The wall shall retain studs or other structural elements, the exterior wall finish and the fully framed and sheathed roof above that portion of the remaining building to which such wall is attached;
- (B) The wall shall not be covered or otherwise concealed by a wall that is proposed to be placed in front of the retained wall; and
- (C) Each part of the retained exterior walls shall be connected contiguously and without interruption to every other part of the retained exterior walls.

Demolition or Alteration Delay

It is common for cities to implement a stay or delay of the release of an approval of a permit in these types of demolition reviews. This is often used to allow for time to find alternatives to demolition and to provide additional public notice of the proposed demolition. This delay time may allow for the designation of the property, or to search for willing purchasers of the building, or to allow the city and property owner to negotiate solutions for the preservation of the structure. In the peer cities we

researched, these delays range from 40 days in Denton to six months in Cambridge. If no alternatives are found within the delay time, the demolition permit is then released.²

Denial and Concurrent Designation

In some cities, the preservation commission is required to concurrently initiate a designation of the property if they deny a demolition request. In Santa Barbara (shown below), the commission is required to designate a structure that is denied demolition as a Structure of Merit or initiate the designation of the structure as a landmark. For partial demolitions of properties that are not currently on the city's potential historic resource list but are determined eligible during a demolition review, the commission is required to place the property on the potential historic resource list.

Santa Barbara, California

22.22.037 Demolition of a Listed Historic Structure.

B. AUTHORITY TO PROHIBIT THE DEMOLITION OF A POTENTIAL CITY HISTORIC RESOURCE.

The Commission may appropriately condition the demolition or partial demolition of a structure, site, or natural feature listed on the Potential Historic Resources List as necessary to mitigate the potential loss of Historic Resources resulting from the demolition or partial demolition. However, the Commission may not deny an application to partially or completely demolish a listed structure, natural feature, or site unless the Commission undertakes one of the following actions:

1. initiates and completes the designation of the structure, natural feature, or site as a City Structure of Merit, or
2. the Commission adopts a resolution of intention recommending the designation of the structure, site, or feature as a City Landmark to the City Council pursuant to the Landmark designation processes and notice requirements established by this Chapter.

Economic Hardship

Many cities allow exceptions to demolition review if the applicant demonstrates "economic hardship." In other words, the demolition may be allowed if the applicant is able to prove that the structure is not economically viable and the costs of rehabilitation or reuse are unreasonable.

Determining whether all potential economic options have been considered can involve a complex determination based on extensive background data. Communities with economic hardship provisions typically identify a list of economic data to support any claim of hardship, and place the burden of proof on the applicant to prove a hardship exists. Because preservation commissioners may not be equipped to evaluate these claims of economic hardship, many communities bring in outside experts to help in the determination.

For example, in Salt Lake City (not one of the peer cities reviewed in these reports), the landmark commission establishes a three-person economic review panel composed of real estate and redevelopment experts to evaluate claims of economic hardship. The commission and the applicant respectively choose one of the panel members and they must agree upon the third member. The panel evaluates the application in an open meeting and may convene a public hearing to receive additional testimony. Standards used to make the determination are related to the applicant's knowledge of the

² Denton [35-221](#); Cambridge [2.78.090](#)

property's historic designation, the property's level of economic return and marketability, the feasibility of alternative uses, and the availability of economic incentives.³

Other cities, such as Gainesville, rely on their preservation board to determine economic hardship, but clearly list the detailed materials required of the applicant, as shown below:

Gainesville, Florida

Sec. 6-19. - Waiting period for certain demolition permits.

(d) At the next regularly scheduled meeting not less than ten days after the referral is received, the historic preservation board may waive the demolition delay if the applicant can demonstrate economic hardship, with consideration given to the economic impact of the delay on the applicant and the reasonableness of the applicant carrying out the decision of the board.

(1) In the event that economic hardship due to the effect of this section is claimed by an owner, the historic preservation board may require from the property owner any or all of the following information before it makes a decision on the application, as long as such information is relevant for the historic preservation board to decide whether an economic hardship exists:

- a. A report from a licensed engineer, contractor or architect with experience in rehabilitation as to the structural soundness of any structures on the property and their suitability for rehabilitation;
- b. The estimated market value of the property in its current condition, after completion of the proposed demolition, and after redevelopment of the existing property for continued use;
- c. An estimate from an architect, licensed contractor, real estate consultant, appraiser, or other real estate professional experienced in rehabilitation as to the economic feasibility of rehabilitation or reuse of the existing structure on the property;
- d. The amount paid for the property, the date of purchase, and the party from whom purchased, including a description of the relationship, if any, between the owner of record or applicant and the person from whom the property was purchased, and any terms of financing between the seller and buyer.

(2) If the property is income-producing, the historic preservation board may also require:

- a. The annual gross income from the property for the previous two years, itemized operating and maintenance expenses for the previous two years, and depreciation deductions and annual cash flow before and after debt service, if any, during the same period;
- b. The remaining balance on any mortgage or other financing secured by the property and annual debt service, if any, for the previous two years;
- c. All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing or ownership of the property;
- d. Any listing of the property for sale or rent, price asked, and offers received, if any, within the previous two years;
- e. The assessed value of the property according to the two most recent assessments;
- f. The real estate taxes for the previous two years;
- g. The form of ownership or operation of the property, whether sole proprietorship, for profit or not-for-profit corporation, limited partnership, joint venture, or other;
- h. Any other information considered necessary by the preservation board to a determination as to whether the property does yield or may yield a reasonable return to the owners.

(e) After invoking a demolition delay, the historic preservation planner shall post the subject property with a sign notifying the public of the owner's intent to demolish the structure in order to allow interested parties to come forward and move the structure upon consent of the owner.

³ Salt Lake City [21A.34.020\(K\)](#)

Although economic hardship considerations are typically considered in the context of historic building demolition in most cities, they could also in theory be applied to other processes. For example, economic hardship could be considered in the larger Fort Collins development review process, set forth in Section 3.4.7 of the Land Use Code, which requires applicants to retain and adaptively reuse eligible buildings on the development site “to the maximum extent feasible.”

Demolition or Alteration Denial

Some cities give their preservation commission the discretion to deny a demolition or alteration proposal for the community’s most important historic properties, as opposed to merely delaying such projects. Denials are appealable to the city council. Most of the peer cities have the authority to deny requests to demolish landmarked properties, but only authorize the delay of the demolition of potential resources. Only Santa Barbara and Syracuse expressly authorize their commission to deny demolition of potential resources. But as noted above, these denials must happen concurrently with a designation. Adding the authority to explicitly deny demolition/alteration of eligible properties (rather than de facto deny through nonconsensual designation) would likely be considered a policy change in Fort Collins and thus is beyond the scope of immediate recommended changes.⁴

Discussion and Recommendations

Fort Collins’ Demolition/Review process is comparable to many of the cities that we studied. Several aspects are noteworthy:

First, the option for an application to be reviewed by the Design Review Subcommittee rather than the LPC is a good practice that offers the potential to shorten review times and provide helpful feedback, and we recommend maintaining this option. However, the subcommittee’s role and the reasoning behind some projects being considered by the subcommittee rather than the LPC should be better explained in the code. It may be helpful to set parameters for precisely which types of applications may be considered by the subcommittee, rather than leaving it up to the applicant’s discretion. Also, it would be helpful to track the number and type of projects reviewed by the subcommittee. This information could be reviewed at regular intervals in the future and could lead to suggestions for improvements or updates to code standards.

The approval criteria for LPC decisions in the demolition process should also be reviewed and updated to provide more certainty and consistency. Although it is relatively rare for a Demolition/Alteration review application to require LPC approval, it is critical that objective standards be established upon which the LPC can base its decisions. The ordinance does not clearly explain the LPC’s options or the standards they should use in reviewing a demolition/alteration application. While staff notes that the LPC is only

Recommendations

- Clarify the role of the Design Review Subcommittee.
- Consider using a decision matrix to more clearly differentiate between minor and major alterations.
- Reevaluate criteria for approval and potentially add an economic hardship determination.
- Consider increasing the amount of time that the LPC can delay a decision in order to find alternatives to demolition.

⁴ Santa Barbara [22.22.035](#); Syracuse [VII-8](#)

reviewing applications to determine potential mitigating conditions of approval or to forward the application to Council to consider a nonconsensual designation, the ordinance does not currently accurately describe this intent or the limitations of the LPC's review. In addition, there could be greater consistency in the criteria used by the subcommittee and the LPC. The current "considerations" used by the subcommittee are not mandatory standards to be met—only factors for the subcommittee to "consider" that could be evaluated along a wide spectrum of acceptability.

Similar to our recommendation in the Topic B report related to Design Review, we suggest that the difference between minor and major alterations be better explained in the code. The current definitions rely on impacts to integrity and require case-by-case review of each modification to determine the appropriate process. The same or a similar matrix as we recommended for Design Review could be used to determine the scope of the alteration. This would increase predictability for applicants and improve the efficiency of processing Demolition/Alteration Review applications, since the individual determination of whether an alteration is minor or major can unnecessarily consume significant staff time. Since Fort Collins applies Demolition/Alteration review to all structures that are 50 years or older and Fort Collins experienced significant growth in the late 1960s and 1970s, making this process administratively efficient will be imperative in the coming decade as more properties reach the age where they are potentially significant. It is worth noting that some cities around the country have set a specific date of construction as the benchmark for whether a review is required (for instance, only buildings built before 1970 are reviewed, rather than any buildings over 50 years of age); that date can be sunsetted, which allows for periodic adjustments. In addition, other cities determine a geographic area within which the review's applicability is limited.

We also recommend considering the inclusion of an economic hardship determination. Such a process could offer an extra type of relief valve in unusual situations where applicants feel the regulations unduly limit their options for their property. Whether the LPC or a separate panel is used to make these determinations, the materials required of the applicant and the standards used to determine economic hardship must be made clear. The burden of proof in claiming economic hardship should be placed on the applicant.

The LPC's authorization to postpone a decision on a demolition/alteration application by up to 45 days is on the shorter end of time periods of the cities we studied that allow for a delayed decision. However, when coupled with the 180-day interim control period (should a property be ultimately considered for designation by the City Council), the time limitations are similar to other cities we studied. Fort Collins may want to consider whether the 45-day continuation period for the demolition/alteration review process allows for enough time to seek other options for a property that would not be forwarded to the Council for potential designation (for example, exploring the potential for material salvage, moving the building finding a new owner, or incentives to encourage adaptive reuse). It would also be useful to develop a variety of tools (financial incentives or otherwise) that could help the LPC in negotiating outcomes that can preserve more of a property's history.

**Clarify the role of the Design Review Subcommittee (DRS).
[Municipal Code Section 14-72(b) and 14-72(d)]**

- **CAC:** Agrees. LPC members participating in DRS should still be able to participate in later LPC hearings on item, like DDA does.
- **LPC:** Agrees. LPC members participating in DRS should be able to participate in later hearings on item. DRS should be utilized more, offered as alternative to conceptual design review of changes to landmarks and for preliminary reviews of new development.

Consider using a decision matrix to more clearly differentiate between minor and major alterations.

- **CAC:** Agrees.
- **LPC:** Agrees.

Reevaluate the criteria for approval and potentially add an economic hardship determination.

[Municipal Code Section 14-72(b), 14-72(f)(7) and 14-7]

- **CAC:** Disagrees with Clarion. Does not support adding economic hardship as a criterion. Very difficult, adds complexity. Potentially unfair; different results between savvy investors with large portfolios, lawyers and accountants, vs Mom and Pop owners.
 - Develop intermediate options for LPC between must approve or non-consensual landmark designation.
- **LPC:** Disagrees with Clarion. Does not support adding economic hardship as a criterion. Noted that this is Council policy, affects all city codes.
 - Agrees with developing intermediate options between two extremes.

Consider increasing the amount of time that the LPC can delay a decision in order to find alternatives to demolition.

- **CAC:** Agrees. Concern that easy to miss deadline, such as by a meeting cancelled for weather or lack of quorum. Make sure timing is adequate.
- **LPC:** Agrees. Staff needs to address as part of review of overall timing.

B. DETERMINATIONS OF ELIGIBILITY

Many cities maintain inventories of properties that have been determined to be eligible for designation, either through a survey or other means, but have not yet been formally designated. Such lists are important in the context of demolition review: If a property that may be demolished is not designated, the first step is typically to evaluate its eligibility for designation, and that step is quicker and more efficient if a list of eligible resources already exists.

It is important that cities proactively evaluate structures for potential historic significance even beyond case-by-case demolition reviews. These proactive evaluations could happen during citywide or area surveys, as discussed in the Topic A report. While a survey is just a first step toward affording a structure or district protection under an ordinance and provides no formal protection on its own, it does offer early notice to property owners that demolition review may be required. Providing early notice to a property owner helps ensure that preservation principles are considered early in the planning for a development project. In contrast, waiting to determine eligibility once an application has already been submitted means that preservation may take a back seat to other development goals. It also may add controversy and politicize the historic evaluation.

Determinations of Eligibility in Fort Collins

The City of Fort Collins identifies eligible historic resources through survey work, during the course of the Demolition/Alteration Review process, and during the Development Review process. Historic surveys can identify properties that are potentially eligible and can either recommend a property for further research, or determine that the property is eligible for designation based on the survey research. Property owners can also simply apply for a determination of their property's eligibility outside of any process. In Fort Collins, a determination of eligibility is valid for five years. Prior to 2014, determinations of eligibility were only valid for one year – the period of validity was increased as part of an overhaul of the preservation ordinance intended to improve historic review processes.

Knowing whether a property is eligible for individual designation determines what types of historic review processes are required. Determinations of eligibility essentially have created an additional class of protected properties in Fort Collins. Applications involving eligible properties must go through the Demolition/Alteration process described above, and all new construction is reviewed for compatibility with and preservation of eligible properties through the Development Review process.

Fort Collins' identification of separate levels of eligibility is somewhat unique. Only properties that are individually eligible for designation are subject to the Demolition/Alteration review process; properties that are only eligible as a contributing property within a potential historic district are not subject to the Demolition/Alteration review process. This distinction was added into the code in 2002. Of the peer cities reviewed in this report, Gainesville is the only similar city in which levels of eligibility impact the applicability of different processes; the city's demolition by neglect rules apply only to landmarks or those contributing to a district, not to noncontributing properties.⁵

Fort Collins, like many cities, uses historic surveys to identify potentially eligible historic resources. However, according to city staff, Fort Collins has surveyed fewer than 2,500 of the estimated 19,000 older buildings in the city. The majority of these surveys were completed in the 1980s and 1990s. The city's most recent survey work was completed in 2017 and focused on the Loomis Addition near downtown. Over 250 properties were surveyed and 121 were identified as qualifying as local landmarks. Other surveys completed in the past have focused on particular historic or architectural themes, including agricultural buildings in the urban growth area, the old fort site, postwar development, Quonset huts, schools, and the sugar factory neighborhoods. Most of these surveys were undertaken at a "reconnaissance level," meaning they are high level and merely recommend some properties for further study, rather than going into detail and identifying eligibility for particular buildings.

The city is moving towards compiling their previous determinations of eligibility and making that information available to the public. For instance, the city has been tracking the results of decisions made on Demolition/Alteration Review applications and posting these on their website since 2016. We also understand from city staff that there is an internal spreadsheet that is used to track the determinations that have been made. This work could help supplement the determinations of eligibility that have been made during historic surveys. Additionally, we understand that in early 2018 a GIS map of recent

⁵ Gainesville [30-112](#)

determinations of eligibility made through both survey work and the official determinations will be available to the public. The public will be able to see those properties, as well as designated local landmarks and properties listed on the state and national registers, via the city’s online GIS portal, “FC Maps.”⁶

Determinations of Eligibility in Peer Cities

In many other cities, determining eligibility is merely a portion of the overall demolition review and does not establish an independent level of protection for the property that applies in other reviews, as it does in Fort Collins. For example, in both Boulder and Gainesville, structures are evaluated for their eligibility during the demolition review process. In Cambridge, buildings are determined to be “preferably preserved significant buildings” during the review of a demolition of any property over 50 years of age. None of the other cities we studied have an expiration of these determinations of eligibility like Fort Collins’s five-year period of validity.⁷

Some cities complete inventories or lists of properties that have been determined to be eligible for designation. These cities have the support of detailed survey work that assists in creating the inventories. For example, Gainesville uses an inventory created by the State of Florida, and Syracuse relies on a past citywide inventory. Santa Barbara maintains a Potential Historic Resource List and explains the process of creating this list in great detail in their code.⁸ Properties must either be identified by a survey or by a commission member and a public hearing is held to put them on the list. If a survey identifies a property as eligible for designation, that property must be put on the potential historic resource list within a year or it is deemed to be ineligible.⁹

Santa Barbara, California

22.22.030 - The Preparation and Use of Historic Resource Surveys; Identification of Potential Historic Resources for Possible Designation as a City Landmark or a Structure of Merit.

- A. POTENTIAL HISTORIC RESOURCES LIST. The Historic Landmarks Commission, acting with the administrative support of Community Development Department staff, shall periodically review, amend, and maintain a master list of potential Historic Resources within the City.
- D. LISTING OF STRUCTURES, SITES, AND NATURAL FEATURES ON THE CITY’S POTENTIAL HISTORIC RESOURCES LIST.
1. *Use of Survey Identifications.* Those structures, real property sites, or natural features identified through the survey process established by Subsection (B) hereof as having potential for designation as a City Historic Resource shall be considered and acted upon by the Commission for official listing on the City’s Potential Historic Resources List at a noticed hearing conducted in accordance with subsection (E) below held not more than one year after the identification of the structure, real property site, or feature through the completion of the Survey process for that area of the City. Pending a hearing on possible listing initiated pursuant to this subsection (D), the Community Development staff may arrange for the preparation of an expert Historic Structure/Site Report regarding the possible Historic Resource significance of the structure, site, or feature. Such report shall be prepared in accordance with the requirements of the MEA Historic Resources Guidelines. The failure of the Commission to list an identified structure, site

⁶ <https://www.fcgov.com/historicpreservation/review-list.php>

⁷ Boulder [9-11-23](#); Gainesville [6-19](#); Cambridge [2.78.090](#)

⁸ The Santa Barbara Potential Historic Resources List is available online at [this link](#).

⁹ Gainesville [6-19](#); Syracuse [VII-8](#); Santa Barbara [22.22.030](#)

or feature within the one-year time frame required by this subsection shall constitute a determination by the Commission that the structure, site, or feature is not appropriate for listing on the City's Potential Historic Resources List, unless a delay beyond one year is at the specific written request of the owner of the real property being considered for listing.

2. *Commissioner Historic Resource Identification Requests.* Those structures, real property sites, or natural features identified as a result of a Commissioner request as having a potential for designation as City Historic Resources pursuant to Subsection (C) above shall be considered and acted upon by the Commission for listing on the Potential Historic Resources List at a noticed hearing conducted in accordance with subsection (E) below held not more than one hundred twenty (120) days after the date of the filing with the Community Development Director of the written request by a Commissioner pursuant to subsection (C) hereof. Pending a hearing on a possible listing initiated pursuant to this subsection, the Community Development staff may request the preparation of a report prepared by the City's Urban Historian regarding the possible Historic Resource significance of the site, structure, or feature.

Although Denver is not one of the peer cities studied for this report, it is also helpful to study the City and County of Denver's "Certificate of Non-Historic Status" process. Property owners in Denver who want increased certainty about their property may apply for this certificate prior to submitting a demolition application. City staff then reviews the property for potential eligibility for local designation. If the property is deemed not to be eligible, a Certificate of Non-Historic Status is issued, which remains in effect for five years. In this time, the property owner may submit a demolition application without requiring further preservation review. Additionally, no designation application for the property may be processed during this time.¹⁰

Discussion and Recommendations

Unlike several of the peer cities we studied, a determination of eligibility in Fort Collins creates a certain level of protection for properties because it spurs Demolition/Alteration review if demolition or a major alteration is proposed. It also triggers additional compatibility and preservation review during the Development Review process, as discussed in the Topic C report (in Section 3.4.7 of the Land Use Code).

Because the determination of eligibility has such significance in Fort Collins processes, we believe these determinations should be recorded in an inventory or list that is available to residents and property owners. This would greatly improve the predictability of the processes that then apply to these properties. This inventory can build upon the work that the city has already begun in compiling all past determinations of eligibility. The inventory will also need to be supported by additional surveys of the city. The city should place greater emphasis and focus on surveying properties that have not yet been surveyed and creating this list. It will be important to complete additional intensive-level survey work of the older buildings in Fort Collins to help proactively determine the eligibility of these

Recommendations

- Focus on completing survey work to proactively identify eligible resources.
- Create an inventory of eligible historic resources.
- Reconsider the five-year period of validity. Consider a process for property owners to obtain a certificate of ineligibility with a five year limit on validity.

¹⁰ Denver [30-6](#)

properties. The city is already on the path to achieving this with the previously mentioned GIS map that will be available early in 2018.

To formalize this updated inventory, Fort Collins could take the approach that Santa Barbara takes and require a public hearing. This would involve adopting all current determinations of eligibility at once at a hearing, which would be thoroughly noticed and provide property owners an opportunity to comment before the inventory is adopted. Ideally, most of the inventory could be created at one time, and it would conceivably be a relatively rare occurrence to add more properties to the inventory. Future additions to the inventory would then require additional hearings. The hearing would provide greater opportunities for public input in creating the inventory. Another option would be for staff to add properties to the inventory and allow property owners to appeal their listing to the LPC. This may be easier from an administrative perspective. Like Santa Barbara, a time limit should also be established in which a property identified as eligible for designation in a survey must be placed on the inventory.

We also recommend reconsidering the five-year period of validity for determinations of eligibility. There are benefits and downsides to establishing time limits on determinations of eligibility. The main benefit of having a time limit on the listing of eligible properties on an inventory is that it would require the city to continuously update their surveys or risk that eligible properties would lose the protection that eligibility currently provides. However, this may be unrealistic administratively for some cities and therefore would provide little value. But, it is also important to have some expiration for declarations of non-historic eligibility, as properties may gain historic significance over time.

Instead, Fort Collins should focus on developing an inventory of eligible resources that can be used in a more predictable manner for applicants and property owners. If a property is not listed on the inventory, property owners could request something similar to Denver's Certificate of Non-Historic Status to ensure that their property is not put on the inventory for five years and therefore is not subject to Demolition/Alteration review. Like Denver's certificate, this could also ensure that designation proceedings for the property could not be initiated within this time limit.

Focus on completing survey work to proactively identify eligible resources.

- **CAC:** Strongly agrees. Notes that each of Clarion's reports states need for far more survey.
- **LPC:** Strongly agrees. Would greatly benefit predictability; aid developers and property owners.

Create an inventory of eligible historic resources.

- **CAC:** Agrees.
- **LPC:** Agrees.

Reconsider the five-year period of validity. Consider a process for property owners to obtain a certificate of ineligibility with a five-year limit on validity.

[Municipal Code 14-6(a)]

- **CAC:** Clarify. Clarion appears to say that all buildings are eligible until determined not to be. Not sure how this would help. Request more information.
- **LPC:** Currently no presumption of a building's eligibility. More information needed to understand why Clarion recommends this change.

C. DEMOLITION BY NEGLECT

Many communities have adopted regulations to protect historic properties from being effectively demolished by incremental neglect. A wide variety of approaches are taken throughout the country. For example, a common approach is to permit a specified local agency to take necessary steps to secure a derelict historical resource against vandalism. Often the local government and its preservation agency have the power to make repairs and bill the owner when historic properties fall into disrepair. In some cities, the local preservation commission even has the power to initiate or recommend condemnation proceedings where demolition by neglect is occurring, allowing the local government to assume ownership of and begin repairs on neglected properties.

Beyond being more specific as to affirmative maintenance obligations, the preservation ordinance should also include enforcement procedures that identify authorized personnel who can investigate and report neglected properties to the Commission, the process/timing for issuing notices of violation, and city authority to correct conditions of neglect and to recoup expenses if the property owner fails to act within a specified timeframe. Generally, a preservation ordinance will only be as effective as the power and willingness of the community to enforce it. Ignoring the details of enforcement in a preservation ordinance may have unfortunate consequences. Enforcement provisions should include remedies for noncompliance, maintenance and upkeep requirements, and details of how the ordinance should be administered.

Demolition by Neglect in Fort Collins

In Fort Collins, regulations preventing demolition by neglect are limited to designated resources. Section 14-53 of the preservation ordinance sets forth minimum maintenance standards that apply to owners of designated landmarks and all sites, structures, and objects within designated landmark districts. The minimum standards consist of the International Property Maintenance Code requirements (citywide standards, not focused specifically on preservation), as well as requirements to keep exterior structural elements in good condition and free from deterioration and decay. Any violation of the preservation ordinance is subject to the city's general penalties and surcharges for misdemeanor offenses and civil infractions.

The ordinance also allows the LPC to request that the Director require correction of any defects and repairs to any designated properties. However, staff notes that the building official has limited ability to require repairs if the building is adequately secured.

Demolition by Neglect in Peer Cities

Minimum Maintenance Requirements

The most typical approach to prevent demolition by neglect is to adopt minimum affirmative maintenance provisions that require property owners to keep buildings in good condition. Such requirements identify measures that property owners must take to maintain the physical integrity of the building and keep it from falling into serious disrepair. Almost every city we studied has similar regulations requiring maintenance of properties to prevent demolition by neglect. Usually, this

requirement in the preservation ordinance is limited to formally designated properties, like in Fort Collins. However, Santa Barbara requires maintenance provisions for both landmarks and structures of merit. Gainesville requires upkeep of both locally designated properties and properties that are contributing to a local or national historic district.¹¹

All cities have general maintenance requirements not specific to preservation that are incorporated in their general building code regulations. As an example, Boise is specific about what types of repairs are required (excerpted below):

Boise, Idaho

11-05-09(14): MAINTENANCE AND REPAIR REQUIRED; DEMOLITION BY NEGLECT

A. Any property located within an historic district, historic district – residential or designated as a landmark shall be preserved by the owner, or such other person or persons as may have the legal custody or control thereof, against decay and deterioration and free from unreasonable structural defects. The owner or other person having legal custody and control thereof shall repair such resource if it is found to have one or more of the following defects, or other defects that in the judgment of the Commission has a detrimental effect on the historical characteristics of the property or district.

- (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 or removal of exterior finishes or fenestration;
- (5) The ineffective waterproofing of exterior walls, roofs and foundations including broken windows or doors; and
- (6) The deterioration of any feature so as to create or permit the creation of any hazardous or unsafe condition or conditions.

Commission Notification and Involvement

Some cities, such as Boise, Denton, and Madison, have created hearing processes for determining whether demolition by neglect is occurring. This establishes processes whereby an owner must complete repairs by a certain time and if not, enforcement action is taken. In addition, many of the cities we studied specify that the preservation planning department or the preservation commission must be notified by the building official when violations are cited or orders are given on landmarked properties.¹²

Enforcement of Demolition by Neglect

Of the cities we studied, Madison has the strictest enforcement provisions for cases of demolition by neglect. If a court determines that demolition by neglect is occurring (using an initial LPC decision as evidence), all fines for violations of the ordinance are tripled. The ordinance is excerpted below (with emphasis added):

¹¹ Santa Barbara [22.22.070](#); Gainesville [30-112](#)

¹² Boise [11-05-09\(14\)](#); Denton [35-222](#); Madison [41.15](#)

Madison, Wisconsin

41.14 MAINTENANCE OBLIGATION; ENFORCEMENT; PENALTIES.

(1) Maintenance Obligation. Every owner of a landmark, improvement on a landmark site, or improvement in a historic district shall do all of the following:

- (a) Protect the improvement against exterior decay and deterioration.
- (b) Keep the improvement free from structural defects.
- (c) Maintain interior portions of the improvement, the deterioration of which may cause the exterior portions of such improvement to fall into a state of disrepair.

(2) Enforcement.

- (a) The Building Inspector or designee is authorized to enforce the provisions of this chapter.
- (b) The Building Inspector may issue an official written notice to a property owner, requiring the property owner to correct a violation of Sec. 41.14(1) above by a date specified in the notice.
- (c) *The Building Inspector shall notify the Preservation Planner of all official compliance notices issued to owners of landmarks or improvements in historic districts. The Building Inspector shall further notify the Preservation Planner whenever a property owner fails to correct a violation by the compliance date specified in an official notice.*
- (d) City agencies or commissions responsible for enforcing Chapters 18, 27, 29, 30 and 3, MGO, or, in the absence of such city agency or commission, the Building Inspector, may grant individual variances from those chapters to facilitate historic preservation and maintenance under this chapter, provided that such variance does not endanger public health or safety or vary any provisions of this chapter.

(3) Penalties. Violations of the provisions in this ordinance shall be subject to a minimum forfeiture of two hundred fifty dollars (\$250) and a maximum forfeiture of five hundred dollars (\$500) for each separate violation. A second violation within thirty-six (36) months shall be subject to a minimum forfeiture of five hundred dollars (\$500) and maximum forfeiture of one thousand dollars (\$1000) for each separate violation. A third violation within thirty-six (36) months shall be subject to a minimum forfeiture of one thousand dollars (\$1000) and maximum forfeiture of two thousand dollars (\$2000) for each separate violation. Each and every day during which a violation continues shall be deemed to be a separate violation. *All fines imposed under this ordinance shall be tripled if the Court makes an additional finding that the subject property is undergoing demolition by neglect as defined by this ordinance. A finding of demolition by neglect by the Landmarks Commission as provided in Sec. 41.15 below shall be prima facie evidence of demolition by neglect for purposes of any civil court action.*

41.15 DEMOLITION BY NEGLIGENCE.

The owner of a landmark, improvement on a landmark site, or improvement in a historic district, may not allow the landmark or improvement to undergo demolition by neglect.

(1) Notice of Demolition by Neglect.

If the Building Inspector believes that a landmark or improvement is undergoing demolition by neglect, the Building Inspector shall give written notice of that belief to the owner of the landmark or improvement. The Building Inspector shall give a copy of the notice to the Preservation Planner and the Landmarks Commission.

(2) Public Hearing.

Upon receiving a notice under Sec. 41.15(1), the Landmarks Commission shall issue a hearing notice under Sec. 41.06 and hold a public hearing to determine whether the landmark or improvement is undergoing demolition by neglect. The Commission shall hold the public hearing within ninety (90) days of receiving the notice under Sec. 41.15(1).

(3) Landmarks Commission Finding.

If, after a public hearing, the Landmarks Commission finds that a landmark or improvement is undergoing demolition by neglect, it shall report its finding to the Common Council, the Building Inspector and the Office of the City Attorney. A Landmarks Commission finding of demolition by neglect is prima facie evidence of demolition by neglect for purposes of any administrative or civil court action, and also constitutes a determination that a public nuisance exists under Sec. 27.05(3), MGO.

(5) Abatement by the City.

If the Landmarks Commission finds under Sec. 41.15(3) that a landmark or improvement is undergoing demolition by neglect, the Building Inspector may proceed under the non-summary abatement procedures set forth in Sec. 27.05(3)(e), to repair the landmark or improvement to abate the nuisance. The cost of the required

repairs shall be paid by the property owner, or shall be imposed as a special charge against the property and collected pursuant to the provisions of Sec. 4.09(13), MGO, and Wis. Stat. § 66.0627.

(6) Acquisition by City.

If the Landmarks Commission finds under Sec. 41.15(3) that a landmark or improvement is undergoing demolition by neglect, the Common Council may authorize the City to acquire the property under Wis. Stat. § 66.1111(2), if necessary through the initiation of condemnation proceedings under Wis. Stat. § 32.06.

Discussion and Recommendations

Fort Collins should focus on enumerating areas of neglect that could lead to serious repair costs if left unattended. It is important to be specific in the ordinance about what types of repairs are most necessary to preserve a structure. In addition, the city should consider increasing the penalties for properties that are deemed to be undergoing demolition by neglect. This could be determined by the LPC at a public hearing, as seen in the peer city examples. Also, similar to Madison, each violation within a certain time period should be considered a separate offense. This may require amendments to different parts of the Fort Collins Municipal Code. Considerations of an applicant’s economic hardship, similar to that recommended in the first section of this report, could be incorporated into the LPC’s review to provide a relief valve.

Understandably, most cities are also concerned with preserving the exterior structural integrity of structures that could be eligible for historic designation in the future, but have yet to be formally designated. In the interim, a “gap” condition exists in which properties that may warrant future designation are not properly maintained and risk losing their integrity prior to formal designation—but this fact may not come to light until a property owner applies for a permit to physically demolish the structure.

One potential resolution for this issue may be to use the inventory of eligible resources list that is recommended in the previous section of this report. After creating such an inventory, the city can then incorporate language in the minimum maintenance requirements that extend the minimum maintenance requirements to all eligible properties listed in the inventory. Using the inventory to clearly and predictably define a new class of properties would allow Fort Collins to then extend affirmative maintenance requirements to that new class. Then, staff can prioritize monitoring of exterior structural conditions on these properties, as well as exercise the authority to enforce violations in order to avoid demolition by neglect.

In addition, the city should incorporate some preservation-related requirements in the general property maintenance standards. This could include adding a clear policy statement to the International Property Maintenance Code as a local amendment that City policy is to pay particular attention to maintenance standards of designated and eligible historic resources.

Recommendations

- Specify the types of repairs that are required to prevent demolition by neglect.
- Increase penalties for properties undergoing demolition by neglect.
- If an inventory of eligible resources is created, extend maintenance requirements to eligible structures on the inventory.
- Incorporate preservation-related requirements in the general property maintenance standards.
- Develop financial incentives to assist with required property maintenance.

Finally, we recommend balancing these maintenance requirements with financial incentives to complete repairs. Often, properties are not being kept up for financial reasons. Assistance may be the “carrot” approach that can balance the “stick” approach of stronger and wider-reaching maintenance requirements and enforcement. These incentives could also be used to make necessary repairs before they are exponentially more expensive. The city’s Design Assistance Program is already extended to eligible resources and can provide up to 2,000 dollars of design assistance for a proposed exterior modification. An incentive program to actually complete the repairs could be modeled based on the Design Assistance Program.

Specify the types of repairs that are required to prevent demolition by neglect.

[Municipal Code 14-8 and 14-73]

- **CAC:** Agrees. Proactive enforcement before they become imminently dangerous. Neglected/dangerous buildings should have to go through city’s processes, not be able to circumvent.
- **LPC:** Agrees with CAC. Noted that how repairs are done could damage integrity of building.

Increase penalties for properties undergoing demolition by neglect.

- **CAC:** Agrees. Way to circumvent City processes. Penalties within certain time frame should also be cumulative rather than treated as separate incidents.
- **LPC:** Agrees with CAC. Used as way to circumvent City processes.

If an inventory of eligible resources is created, extend maintenance requirements to eligible structures on the inventory.

- **CAC:** Agrees.
- **LPC:**

Incorporate preservation-related requirements in the general property maintenance standards.

- **CAC:** Agrees.
- **LPC:** Agrees.

Develop additional financial incentives to assist with required property maintenance.

- **CAC:** Agrees. Bigger carrots to incentivize rehabilitation.
- **LPC:** Agrees. Also use to address energy efficiency.

D. PUBLIC SAFETY EXCLUSIONS

Many local preservation ordinances contain provisions whereby a historic resource declared to be a public hazard may be altered, repaired, or demolished without the local preservation review body having any input or taking action. On their face, public safety exclusions appear reasonable—if a building is about to tumble down on pedestrians below, surely something must be done quickly—but in practice, they could be used to circumvent local review procedures or to avoid facing up to hard choices between a proposed redevelopment scheme and preservation of an important historic resource.

At a minimum, local preservation ordinances should attempt to strike a balance between concerns about public safety and preservation—for example, by allowing the preservation commission to comment on the proposed demolition unless the legislative body specifically finds there is an immediate and serious threat to the public safety that cannot be addressed through less drastic measures.

Public Safety Exclusions in Fort Collins

In 2014, Fort Collins updated the ordinance language related to remedying dangerous conditions and public safety exclusions. This amendment inserted new language requiring that, if the structure is capable of being made safe by repairs, it must be repaired or demolished in accordance with the provisions of the Demolition/Alteration review process.

Determining what is “repairable” versus “imminently dangerous” happens on a case-by-case basis. The Buildings and Building Regulations chapter of the Fort Collins Municipal Code sets forth definitions for determining whether a structure is “dangerous” and when there is “imminent danger” (excerpted below). Further, an adopted appendix lays out a sample list of conditions that are considered to be substandard or dangerous.

108.1.5 Dangerous structure or premises. A structure or premises is dangerous if any part, element or component thereof is no longer within its serviceability limit or strength limit state as defined in this code or, when considered in totality, the structure or premises pose an imminent threat to the health and safety of the public or the occupants of the structure or premises as referenced in Appendix A of this code.

109.1 Imminent danger. When, in the opinion of the code official, there is imminent danger of failure or collapse of a building or structure which endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure, or when there is actual or potential danger to the building occupants or those in the proximity of any structure because of explosives, explosive fumes or vapors or the presence of toxic fumes, gases or materials, or operation of defective or dangerous equipment, the code official is hereby authorized and empowered to order and require the occupants to vacate the premises forthwith. The code official shall cause to be posted at each entrance to such structure a notice reading as follows: "This Structure Is Dangerous and Its Occupancy Has Been Prohibited by the Code Official." It shall be unlawful for any person to enter such structure except for the purpose of securing the

structure, making the required repairs, removing the hazardous condition or demolishing the same.

Public Safety Exclusions in Peer Cities

Most cities give the building official significant latitude in determining what is dangerous, and exempt ordered repairs or demolition from typical preservation process requirements. However, a few of the cities we studied limit the authority of the building official. For instance, Syracuse requires that the ordered changes undergo the typical Certificate of Appropriateness approval process, if time allows. Ultimately, their preservation commission must approve the changes ordered by the official, but may add conditions to their approval that will mitigate the historic impact. However, if the time to obtain a Certificate of Appropriateness will “prevent timely compliance,” the ordered work can be exempted from the process altogether.¹³

As another example, Berkeley contains a provision for a public safety exemption from historic preservation regulations, but instructs that the exemption is specifically limited to activities necessary to correct public safety issues, preventing demolition in many cases (emphasis added):

Berkeley, California

3.24.280 Landmarks, historic districts or structures of merit--Unsafe or dangerous conditions--Effect.

None of the provisions of this chapter shall be construed to prevent any measures of construction, alteration or demolition necessary to correct or abate the unsafe or dangerous condition of any structure, other feature, or part thereof, which such condition has been declared unsafe or dangerous by the Planning and Community Development Department or the Fire Department, and where the proposed measures have been declared necessary, by such department or departments, to correct the said condition; *provided, however, that only such work as is reasonably necessary to correct the unsafe or dangerous condition may be performed pursuant to this section.* In the event any structure or other feature is damaged by fire or other calamity or by act of God, or by the public enemy to such an extent that in the opinion of the aforesaid department or departments it cannot reasonably be repaired or restored, it may be removed in conformity with normal permit procedures and applicable laws.

Cities also vary in how much involvement of the preservation commission is built into the determinations of what is “dangerous.” Cambridge requires notification of the Executive Director of their Historical Commission for inspections of buildings over 50 years in age and the director is given the authority to “pursue all reasonable courses of action to prevent emergency demolition” of structures that are determined to be significant buildings. In Gainesville, the preservation commission is empowered to appeal the building official’s determinations that a building is “dangerous” to the city’s board of adjustment. Gainesville also helpfully identifies the preservation board’s roles, responsibilities, and rights to notification regarding maintenance issues in their ordinance.¹⁴

¹³ Syracuse [VII-6](#)

¹⁴ Cambridge [2.78.110](#); Gainesville [30-112](#)

Gainesville, Florida

30-112. 4.g. Demolition by Neglect.

The intent of this section of the land development code is to stop the continuing deterioration of historic properties and neighborhoods through application of chapters 13 and 16 of the code of ordinances.

1. The historic preservation board may, on its own initiative, file a formal complaint with the codes enforcement division requesting repair or correction of defects to any designated structure so that it is preserved and protected.
2. The code enforcement division shall provide written notice to the staff member assigned to the historic preservation board of any minor or major housing code violation for a building or structure that is either listed on the national or local historic register or is a contributing structure to either a nationally or locally designated historic district.
3. The code enforcement office shall provide written notice to the staff member assigned to the historic preservation board of a determination that a building or structure that is either listed on the national or local historic register or is a contributing structure to either a nationally or locally designated historic district is "dangerous," as defined by section 16-17 of the code of ordinances.
4. Upon receipt of this notice, the city manager or designee is authorized to access these properties accompanied by a code enforcement officer to assess the damage that formed the basis for the decision to find the building "dangerous." The assessment will be presented to the historic preservation board, which shall be allowed to appeal the determination to the board of adjustment pursuant to section 16-27 of this code and present evidence against the determination that the building is "dangerous".

Discussion and Recommendations

The Fort Collins ordinance already does a good job of requiring repair where possible and not purely exempting public safety exclusions from the historic review process. Many cities do not have this level of specificity. However, the applicability of this provision could be more clearly explained in the ordinance.

In addition, the definitions of "dangerous structures," "imminent danger," and the examples of dangerous buildings in the building code should be reviewed. While the Fort Collins definition of "imminent danger" is generally similar to the other cities we studied, it is somewhat circular, essentially noting that imminent danger means whenever the code official believes there is imminent danger. Many cities maintain this somewhat open-ended approach to provide flexibility to treat unique situations on a case-by-case basis. One possible option for additional clarification could be further emphasis on time, clarifying that "imminent danger" is "A condition that immediately threatens the health, safety, and welfare of an individual or the public due to danger of collapse or other dangers to enter."

Potential exclusions for historic buildings should be added to the building code Appendix A list of specific substandard or dangerous conditions, to ensure that historic resources are not ordered for demolition when dangerous but repairable conditions exist.

Recommendations

- Clarify ordinance language requirement to repair dangerous conditions when deemed repairable by the building official.
- Review and update relevant building code definitions.
- Improve coordination between the LPC/preservation staff and the building official in regards to dangerous buildings.

Finally, the ordinance should more clearly describe the roles, responsibilities, and relationship of the building official and the commission or preservation staff. The process for notifying the LPC should be better detailed and a process for appealing these orders or involving the LPC should also be developed.

Clarify the requirement to fix dangerous conditions when deemed repairable by the building official.

- **CAC:** Agrees. City should have distinction between dangerous and imminently dangerous.
- **LPC:** Agrees with Clarion and CAC.

Review relevant building code definitions.

- **CAC:** Need definition of dangerous and imminently dangerous; reference in all relevant codes. City Attorney's Office will prepare definition.
- **LPC:** Agrees with Clarion and CAC. CAO crafting definition good; defensible.

Improve coordination between the LPC/preservation staff and the building official in regards to dangerous buildings.

- **CAC:** Agrees.
- **LPC:** Agrees. More coordination helpful in both preventing and resolving issues.

Peer Cities

The following table compares the basic characteristics of the cities we studied for this report. The peer cities researched were determined based on similar characteristics to Fort Collins: a population size between 90,000 and 300,000 people, the presence of a large university, a growing or stable population, and a robust preservation program determined by number of historic districts and landmarks.

CITY	2016 POPULATION (APPROX.)	STUDENT POPULATION (APPROX.)	POPULATION GROWTH RATE 2000-2016	HISTORIC RESOURCES
Fort Collins, Colorado	164,000	33,000 <i>Colorado State University</i>	Growing: 36%	248 landmarks, 3 historic districts
Berkeley, California	121,000	40,000 <i>University of California, Berkeley</i>	Growing: 18%	281 landmarks, 4 historic districts, and 39 structures of merit
Boise, Idaho	223,000	22,000 <i>Boise State University</i>	Growing: 14%	30 landmarks, 9 historic districts
Boulder, Colorado	108,000	32,000 <i>University of Colorado Boulder</i>	Growing: 14%	186 landmarks, 10 historic districts, 75 structures of merit
Cambridge, Massachusetts	111,000	33,000 <i>Harvard University & Massachusetts Institute of Technology</i>	Growing/ stable: 9%	30 landmarks, 2 historic districts, 4 conservation districts, and 39 properties with conservation easements
Denton, Texas	134,000	53,000 <i>University of North Texas & Texas Woman's University</i>	Growing: 60%	2 historic districts, 1 conservation district
Eugene, Oregon	167,000	23,000 <i>University of Oregon</i>	Growing: 20%	60 landmarks and 2 historic districts
Gainesville, Florida	132,000	52,000 <i>University of Florida</i>	Growing: 16%	10 landmarks and 5 historic districts
Lincoln, Nebraska	280,000	25,000 <i>University of Nebraska</i>	Growing: 23%	160 landmarks, 18 historic districts
Madison, Wisconsin	253,000	43,000 <i>University of Wisconsin</i>	Growing: 20%	182 landmarks, 5 historic districts
Norman, Oklahoma	122,000	31,000 <i>University of Oklahoma</i>	Growing: 26%	3 historic districts
Provo, Utah	117,000	33,000 <i>Brigham Young University</i>	Growing/ stable: 11%	150 landmarks, 2 historic districts
Santa Barbara, California	92,000	24,000 <i>University of California, Santa Barbara</i>	Growing/ stable: 3%	124 landmarks, 3 historic districts, 132 structures of merit
Syracuse, New York	143,000	21,000 <i>Syracuse University</i>	Stable: -2%	59 landmarks, 4 historic districts

Links

PEER CITY ORDINANCES

Berkeley, California:

<http://www.codepublishing.com/CA/Berkeley/html/Berkeley03/Berkeley0324/Berkeley0324.html#3.24>

Boise, Idaho: <http://cityclerk.cityofboise.org/media/262806/1100.pdf>

Boulder, Colorado:

https://library.municode.com/co/boulder/codes/municipal_code?nodeId=TIT9LAUSCO_CH11HIPR_9-11-3INDEINLAHIDI

Cambridge, Massachusetts: <http://code.cambridgema.gov/2.78.180/>

Denton, Texas:

https://library.municode.com/tx/denton/codes/code_of_ordinances?nodeId=SPBLADECO_CH35ZO_ARTVHILAPRHIDI

Eugene, Oregon: <https://www.eugene-or.gov/DocumentCenter/Home/Index/262>

Gainesville, Florida:

https://library.municode.com/fl/gainesville/codes/code_of_ordinances?nodeId=COORGAFL_CH30LADECO_ARTVIRESPREUS_S30-112HIPRCO

Lincoln, Nebraska: <http://lincoln.ne.gov/city/attorn/lmc/ti27/ch2757.pdf> ;

Madison, Wisconsin:

https://library.municode.com/wi/madison/codes/code_of_ordinances?nodeId=Chapter%2033%20Boards%20%20Commissions%20%20and%20Committees

Norman, Oklahoma:

<http://www.normanok.gov/sites/default/files/WebFM/Norman/Planning%20and%20Development/Planning%20and%20Zoning/5-22-14%20Complete%20Zoning%20Ordinance.pdf>

Provo, Utah: <http://www.codepublishing.com/UT/Provo/?Provo16/Provo16.html>

Santa Barbara, California: <http://www.santabarbaraca.gov/civicax/filebank/blobdload.aspx?BlobID=12168>

Syracuse, New York: <http://www.syracuse.ny.us/pdfs/Zoning/Zoning%20Ordinance%20Part%20C.pdf>

OTHER RELATED SITES

City and County of Denver, Colorado

https://library.municode.com/co/denver/codes/code_of_ordinances?nodeId=TITIIREMUCO_CH30LAPR_ARTIINGE_S30-6PRAUERCOREALDEST

City of Santa Barbara, "Santa Barbara Potential Historic Resources List"

<https://www.santabarbaraca.gov/civicax/filebank/blobdload.aspx?BlobID=17352>

Fort Collins Demolition/Alteration Review and Appeals

<https://www.fcgov.com/historicpreservation/review-list.php>