



# City of Cambridge

## Executive Department

**YI-AN HUANG**  
City Manager

April 3, 2023

To the Honorable, the City Council:

Please find attached a revised response to proposed amendments to Ch. 2.78, Art. III., received from Executive Director of the Historical Commission Charles M. Sullivan for referral to the Ordinance Committee for further discussion.

Very truly yours,

Yi-An Huang  
City Manager

Attachment(s)





## CAMBRIDGE HISTORICAL COMMISSION

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Bruce A. Irving, *Chair*; Susannah Barton Tobin, *Vice Chair*; Charles Sullivan, *Executive Director*  
Joseph V. Ferrara, Chandra Harrington, Elizabeth Lyster, Jo M. Solet, Yuting Zhang, *Members*  
Gavin W. Kleespies, Paula A. Paris, Kyle Sheffield, *Alternates*

March 17, 2023

From: Charles Sullivan, Executive Director

To: Yi-An Huang, City Manager

Re: Proposed Amendments to Ch. 2.78, Art. III (Revised)

I am submitting the following proposed amendments for discussion at the April 26 hearing of the Ordinance Committee. This memo replaces an earlier version dated October 17, 2022.

The Neighborhood Conservation District and Landmarks Ordinance (Ch. 2.78, Art. III of the City Code) was the first of its kind in Massachusetts. Almost forty years of experience suggests several amendments that would align its objectives with current city policies, rationalize the NCD study process, and clarify certain procedures.

### 1. Revise Membership Requirements for NCD Commissions (2.78.160)

The current system of membership qualifications is weighted toward property ownership while allowing for tenant representation when appropriate. When the ordinance was written it was thought desirable to include an Historical Commission member on each NCD commission. However, this condition has often proved impossible to meet. Accordingly, inclusion of an Historical Commission member on NCD commissions should be limited to the initial three years of the commission's existence. The requirement that one member represent the real estate profession should be eliminated because there may be no district residents with that qualification. A business owner or operator should be appointed when properties in the NCD are zoned for business, industry, or other non-residential uses.

#### 2.78.160.A and B. - Neighborhood conservation district commission—Established—Membership requirements.

A. Upon designation as provided in Section 2.78.180 of this article of any neighborhood conservation district, and unless the designation provides that the Historical Commission itself shall exercise authority with respect thereto, the City Manager shall appoint a neighborhood conservation district commission to consist of five members and three alternates. At the establishment of the district the members shall include three residents of the neighborhood, not less than two of whom shall ~~be homeowners~~ own their place of residence in the district and one of whom shall, if possible, be a tenant; one neighborhood property owner (who may or may

not be a neighborhood homeowner) or, in the event that properties in the neighborhood conservation district are located in a zoning district other than Residence A, B, or C, an owner or operator of an establishment or use permitted by right; and one member or alternate of the Cambridge Historical Commission. Three years after establishment of the district the requirement that one member be a member or alternate of the Cambridge Historical Commission shall cease and a district resident shall be appointed to that position. One member ~~and~~/or one alternate of a neighborhood conservation district commission, in addition to the mandated member of the Cambridge Historical Commission, may be a Cambridge resident who lives outside the district. The remaining alternates shall be ~~neighborhood property owners~~district residents. The neighborhood conservation district commission shall act solely in the exercise of those functions described in this article which are applicable to the district under its administration.

The following table compares the current and proposed minimum requirements:<sup>1</sup>

Current		CHC Proposal	
Members - 5	2 homeowners 1 other resident (may be a tenant) 1 owner of other property in the district (residency not required) 1 CHC member	Members – 5	2 homeowners 1 other resident (may be a tenant) 1 owner of other property in the district (residency not required), <u>or a business owner or operator</u> CHC member (first 3 years only)
Alternates - 3	2 or 3 property owners (1 alternate may be a Cambridge resident living outside the district)	Alternates – 3	2 or 3 residents (1 alternate may be a Cambridge resident living outside the district)

B. Any member or alternate of the Historical Commission may be appointed to a neighborhood conservation district commission for a term coterminous with such person's term as a member or alternate of the Historical Commission. Members and alternates of a neighborhood conservation district commission who are not members of the Historical Commission shall by reason of experience or education have demonstrable knowledge and concern for improvement, conservation, and enhancement of the district, and at least ~~two of the one members~~member or ~~alternates~~alternate shall have professional qualifications related to ~~real estate or~~ architecture or historic preservation. The members and alternates of the neighborhood conservation district commission shall be appointed by the City Manager with regard to the diverse viewpoints expressed in the creation of the district. Appointments shall reflect the City's goals for antiracism, diversity, equity, and inclusion. Members and alternates must have the ability to work and interact effectively with individuals and groups with a variety of identities, cultures, backgrounds, and

<sup>1</sup> Unless otherwise noted, property ownership and residency requirements refer to property or residency in the NCD.

ideologies; women, minorities, veterans, members of the LGBTQ+ community, and persons with disabilities should be represented to the extent possible.<sup>2</sup> Members and alternates shall serve for a term of three years, except that the initial appointments shall be for one member to serve one year and one member to serve two years, and vacancies shall be filled for the unexpired term of office. Each member and alternate shall continue in office after expiration of his or her term until a successor is duly appointed and qualified, except that no member shall serve more than two consecutive terms.

## **2. Enlarge NCD Study Committees (2.78.180)**

Study committee membership should be enlarged from seven to nine members. This would allow representation of a broader range of views on the committee.

C. In the case of a landmark, the report shall be prepared by the Historical Commission. In the case of a neighborhood conservation district, the report shall be prepared by a study committee consisting of three members or alternates of the Historical Commission and ~~four~~six persons appointed by the City Manager, including at least four residents of the study area, not less than three of whom shall own their place of residence in the study area, at least one person who resides in the district under consideration, at least one person who owns property in the district under consideration, and one person who owns property or resides who may reside elsewhere in the City and has demonstrated knowledge and concern for conservation and enhancement of those exterior features of the City which are important to its distinctive character. Appointments shall reflect the City's goals for antiracism, diversity, equity, and inclusion. Members and alternates must have the ability to work and interact effectively with individuals and groups with a variety of identities, cultures, backgrounds, and ideologies; women, minorities, veterans, members of the LGBTQ+ community, and persons with disabilities should be represented to the extent possible.

## **4. Establish Separate Designation Procedures and Review Authority for Landmarks and NCDs (2.78.180)**

Section 2.78.180 establishes identical designation procedures for landmarks and neighborhood conservation districts: upon initiation of a landmark or NCD designation study, the Historical Commission protects the properties for up to one year while a recommendation is prepared for City Council action.

Designation procedures should be separated to eliminate and eliminating interim CHC jurisdiction over NCD study areas. Doing so would align the NCD ordinance with the provisions of MGL Ch. 40C, the Historic Districts statute, which contains no such provision for interim jurisdiction.

Landmarks and neighborhood conservation districts are fundamentally different. The potential landmark is an individual building that may face imminent threats to its existence. It is essential that the

<sup>2</sup> Adapted from the following policy statement, published by City Manager Yi-An Huang on October 24, 2022:

“The City is committed to advancing a culture of antiracism, diversity, equity, and inclusion. All board and commission members in Cambridge must have the ability to work and interact effectively with individuals and groups with a variety of identities, cultures, backgrounds, and ideologies. Women, minorities, veterans, members of the LGBTQ+ community, and persons with disabilities are encouraged to apply.”

Historical Commission be able to exercise temporary jurisdiction to prevent the destruction of a potential landmark. On the other hand, the pressures facing neighborhoods are diffuse; while individual buildings may be threatened, a neighborhood in its entirety offers more resilience in the face of change.

In the case of a landmark the report is prepared by the staff, but a neighborhood conservation district study requires the appointment of a study committee. Recruitment of members and organization of a committee can easily consume a third of the time allotted for the study. The study itself requires that the committee reach consensus on a series of difficult topics while educating the public about the need for conservation and the policy choices involved in preparing a recommendation to the City Council.

Removing the Historical Commission's interim jurisdiction over building permits in proposed neighborhood conservation districts would allow the study committee time to study the issues and educate the public. I propose the following amendments to paragraph 2.78.180.I:

I. Following acceptance of a designation petition by the Historical Commission, no application for a building permit for new construction or alterations on the premises of a property being considered for landmark designation shall be granted until reviewed by the Commission as though the property were designated as a landmark ~~or a neighborhood conservation district~~ under this Article III. Beginning with the acceptance of a designation petition or a vote to initiate a landmark designation study and until (a) the Historical Commission makes a negative recommendation on a proposed designation, (b) the City Council determines not to enact the proposed designation, or (c) one year has elapsed, whichever is less, the Commission shall review all proposed construction, demolition, or alteration that affects the exterior architectural features, other than color, of the structures on the premises of a proposed landmark ~~or within a proposed neighborhood conservation district~~. The Commission shall have no jurisdiction over issuance of building permits in a neighborhood conservation district study area until that district has been established pursuant to other provisions of this Ordinance except in the case of properties that are already designated as landmarks or protected by a preservation restriction or with regard to demolition applications of buildings more than fifty (50) years old.

## **5. Alignment with City Goals (2.78.220)**

In recent years Cambridge has faced growing problems of gentrification, diminishing diversity, and lack of affordable housing. It is critical that efforts to "preserve, conserve and protect the beauty and heritage of the city [and to] resist and restrain environmental influences adverse to this purpose" be aligned with city goals. Accordingly, the following new paragraph C could be added to Section 2.78.220 - Factors considered by Commissions:

C. In passing upon matters before it, the Historical Commission or neighborhood conservation district commission shall also consider community goals as may from time to time be expressed by the City Council, including the need to provide additional housing, affordable and otherwise, and to promote the sustainable use of energy and capacity for climate resilience.

The proposed amendments would accomplish a realignment of Historical Commission and NCD commission goals with the city's overall goals and eliminate some of the time pressure and conflict that accompanies the NCD study process.

cc: Nancy E. Glowa, City Solicitor  
Bruce Irving, CHC Chair

Attachment

**Proposed Amendments – March 17, 2023**

**Chapter 2.78, Article III. - Establishment of Neighborhood Conservation Districts and Protected Landmarks**

**2.78.140 - Purpose.**

The City Council finds it necessary to enact this article under Section 6 of the Home Rule Amendment in order to preserve, conserve and protect the beauty and heritage of the City and to improve the quality of its environment through identification, conservation and maintenance of neighborhoods, areas, sites and structures which constitute or reflect distinctive features of the architectural, cultural, political, economic or social history of the City; to resist and restrain environmental influences adverse to this purpose; to foster appropriate use and wider public knowledge and appreciation of such neighborhoods, areas or structures; and by furthering these purposes to promote the public welfare by making the City a more attractive and desirable place in which to live and work. To achieve these purposes, the City may designate neighborhood conservation districts and landmarks to be administered as set forth in this article.

(Ord. 1002 (part), 1983: prior code § 2-147(k)(1))

**2.78.150 - Definitions for Article III.**

In addition to the terms defined in Section 2.78.080 of this Chapter, the following terms, when used whether or not capitalized in this subsection, shall have the meanings set forth in this section, unless the context otherwise requires:

A. "Demolition" means the act of pulling down, destroying, removing or razing structures, or commencing the work of total or substantial destruction with the intent of completing the same.

B. "Exterior architectural features" means and includes such portion of the exterior of a structure as is open to view from a public street, way, park or body of water, including but not limited to the architectural style and general arrangement and setting thereof, the kind, material and texture of exterior building materials, and the type and style of windows, doors, lights, signs and other appurtenant exterior fixtures.

C. "Historic district" means an area so established under the authority of Chapter 40C of the General Laws.

D. "Landmark" means any property within the City so designated in accordance with Section 2.78.180 of this article.

E. "Neighborhood conservation district" means any area within the City so designated in accordance with Section 2.78.180 of this article.

F. "Neighborhood conservation district commission" or "district commission" means a commission provided for by Section 2.78.160 of this article.

G. "Structure" means a combination of materials including a building, sign, fence, wall, terrace, walk, driveway, street, bridge, statue, monument or other manmade feature.

H. "Gross floor area" means the floor area so defined in Article 2.000 of the Zoning Ordinance of the City of Cambridge.

(Ord. 1166 §§7, 16, 1995; Ord. 1002 (part), 1983: prior code § 2-147(k)(2))

**2.78.160 - Neighborhood conservation district commission—Established—Membership requirements.**

A. Upon designation as provided in Section 2.78.180 of this article of any neighborhood conservation district, and unless the designation provides that the Historical Commission itself shall exercise authority with respect thereto, the City Manager shall appoint a neighborhood conservation district commission to consist of five members and three alternates. At the establishment of the district the members shall include three residents of the neighborhood, not less than two of whom shall ~~be homeowners~~ own their place of residence in the district and one of whom shall, if possible, be a tenant; one neighborhood property owner (who may or may not be a neighborhood homeowner) or, in the event that properties in the neighborhood conservation district are located in a zoning district other than Residence A, B, or C, an owner or operator of an establishment or use permitted by right; and one member or alternate of the Cambridge Historical Commission. Three years after establishment of the district the requirement that one member be a member or alternate of the Cambridge Historical Commission shall cease and a district resident shall be appointed to that position. One member and/or one alternate of a neighborhood conservation district commission, in addition to the mandated member of the Cambridge Historical Commission, may be a Cambridge resident who lives outside the district. The remaining alternates shall be ~~neighborhood property owners~~ district residents. The neighborhood conservation district commission shall act solely in the exercise of those functions described in this article which are applicable to the district under its administration.

B. Any member or alternate of the Historical Commission may be appointed to a neighborhood conservation district commission for a term coterminous with such person's term as a member or alternate of the Historical Commission. Members and alternates of a neighborhood conservation district commission who are not members of the Historical Commission shall by reason of experience or education have demonstrable knowledge and concern for improvement, conservation and



enhancement of the district, and at least ~~two of the members or alternates~~one member or alternate shall have professional qualifications related to ~~real estate or~~ architecture or historic preservation. The members and alternates of the neighborhood conservation district commission shall be appointed by the City Manager with regard to the diverse viewpoints expressed in the creation of the district. Appointments shall reflect the City's goals for antiracism, diversity, equity, and inclusion. Members and alternates must have the ability to work and interact effectively with individuals and groups with a variety of identities, cultures, backgrounds, and ideologies; women, minorities, veterans, members of the LGBTQ+ community, and persons with disabilities should be represented to the extent possible. Such members shall serve for a term of three years, except that the initial appointments shall be for one member to serve one year and one member to serve two years, and vacancies shall be filled for the unexpired term of office. Each member and alternate shall continue in office after expiration of his or her term until a successor is duly appointed and qualified, except that no member shall serve more than two consecutive terms.

C. The neighborhood conservation district commission shall elect annually a Chairman and Vice-Chairman from its own number. In the case of absence, inability to act, or unwillingness to act because of self-interest on the part of a member, his or her place shall be taken by an alternate member designated by the Chairman, if available, otherwise by the Vice-Chairman if available, otherwise by a majority vote of the members and alternate members of the Commission present. The person exercising the function of Executive Director of the Historical Commission shall serve as secretary of each neighborhood conservation district commission. Persons serving as members or alternate members of a neighborhood conservation district commission shall, as a result of such service, be considered as "special municipal employees" for purposes of Chapter 268A of the General Laws.

(Ord. 1331, 12/14/2009; Ord. 1166 § 8, 1995; Ord. 1002 (part), 1983: prior code § 2-147(k)(3))

#### **2.78.170 - Powers and duties.**

The Historical Commission and each neighborhood conservation district commission shall have like powers, functions and duties with respect to each landmark and neighborhood conservation district over which it has jurisdiction as is provided Historic District Commissions under clauses (a) through (g) under Section 10 of Chapter 40C of the General Laws with respect to historic districts, including without limitation with respect to the approval and disapproval of certificates of appropriateness, nonapplicability and hardship, the dating and signing of such certificates, the keeping of records and adoption of rules and regulations, the filing with the City Clerk and

Building Department of certificates and determinations of disapproval by it, and the determination of designs of appurtenances (excluding colors) which will meet the requirements of the landmark or neighborhood conservation district.

(Ord. 1002 (part), 1983: prior code § 2-147(k)(9))

### **2.78.180 - Designation procedures.**

A. The Historical Commission by majority vote may recommend for designation as a landmark any property within the City being or containing a place, structure, feature or object which it determines to be either (1) importantly associated with one or more historic persons or events, or with the broad architectural, aesthetic, cultural, political, economic or social history of the City or the Commonwealth or (2) historically or architecturally significant (in terms of period, style, method of construction or association with a famous architect or builder) either by itself or in the context of a group of structures; may recommend for designation as a neighborhood conservation district any area within the City containing places and structures which it determines are of importance to the architectural, aesthetic, cultural, political, economic or social history of the City, and which considered together cause such area to constitute a distinctive neighborhood or to have a distinctive character in terms of its exterior features; and may recommend amendments to any designation of landmark or neighborhood conservation district theretofore made.

B. Prior to the recommendation of designation or amendment of designation of any landmark or neighborhood conservation district an investigation and report on the historical, architectural and other relevant significance thereof shall be made. The report shall recommend the boundaries of any proposed landmark or neighborhood conservation district and shall recommend for incorporation in the order of the City Council designating each landmark or neighborhood conservation district general and/or specific standards and appropriate criteria consistent with the purposes of this article and the provisions of Section 2.78.190 of this article that are to be applied in making any determination of the type referred to in Sections 2.78.170, 2.78.210 and 2.78.220 of this article, with respect to the designated landmark or within the designated neighborhood conservation district.

C. In the case of a landmark, the report shall be prepared by the Historical Commission. In the case of a neighborhood conservation district, the report shall be prepared by a study committee consisting of three members or alternates of the Historical Commission and ~~four~~ six persons appointed by the City Manager, including at least four residents of the study area, not less than three of who shall own their place of residence in the study area, one person who resides in the district

~~under consideration, at least one person who owns property in the district under consideration,~~  
 and one person who owns property or resides elsewhere in the City and has demonstrated knowledge and concern for conservation and enhancement of those exterior features of the City which are important to its distinctive character. Appointments shall reflect the City's goals for anti-racism, diversity, equity, and inclusion. Members and alternates must have the ability to work and interact effectively with individuals and groups with a variety of identities, cultures, backgrounds, and ideologies; women, minorities, veterans, members of the LGBTQ+ community, and persons with disabilities should be represented to the extent possible

D. Any ten registered voters of the City may petition that the Historical Commission initiate, or the Historical Commission on its own may initiate, the process of designating a landmark or neighborhood conservation district or amending or rescinding any such designation theretofore made. The Commission shall within forty-five days following the filing of such request or petition hold a preliminary hearing and arrange for the preparation of a report and, if required, request the appointment of a study committee. The Historical Commission shall not reconsider a proposed designation, amendment or rescission of designation within one year of its previous hearing thereon, unless two-thirds of all its members vote to do so. No later than forty-five days after the transmittal of a report to the Commission pertaining to a proposed designation, the Commission shall hold a public hearing. The Commission shall give not less than fourteen days notice of such public hearing by publication in a newspaper of general circulation in the City and by mailing notice thereof to the owner of the proposed landmark and to every owner abutting the proposed landmark or within the proposed neighborhood conservation district, each such owner to be determined from the then current records of the Assessing Department, and to the City Manager, the Planning Board and the City Clerk.

E. Prior to the public hearing, the Commission shall transmit copies of the report to the Planning Board for its consideration and recommendations.

F. The recommendation of the Historical Commission with regard to any designation, amendment or rescission shall be transmitted to the City Manager and to the City Clerk with a copy of the approved designation report. Designation of a landmark or a neighborhood conservation district or amendment or rescission of designation shall be by order of the City Council. In the case of a designation, the order shall include a statement of the reasons for such designation and a statement of standards which the Historical Commission or neighborhood conservation district commission is to apply under Sections 2.78.170 and 2.78.190 through 2.78.220 of this article.

G. No designation, amendment or rescission of designation shall become effective until a map setting forth the boundaries of the landmark or neighborhood conservation district or change in the boundaries thereof, has been filed with the City Council and has been recorded with the Registry of Deeds for the South District of Middlesex County.

H. If the order establishing or amending a neighborhood conservation district contains provisions for both regulatory and educational/incentive programs, the regulatory provisions of the order shall not be effective unless and until the educational/incentive provisions of the order are funded.

I. Following acceptance of a designation petition by the Historical Commission, no application for a building permit for new construction or alterations on the premises of a property being considered for landmark designation shall be granted until reviewed by the Commission as though the property were designated as a landmark ~~or a neighborhood conservation district~~ under this Article III. Beginning with the acceptance of a designation petition or a vote to initiate a landmark designation study and until (a) the Historical Commission makes a negative recommendation on a proposed designation, (b) the City Council determines not to enact the proposed designation, or (c) one year has elapsed, whichever is less, the Commission shall review all proposed construction, demolition, or alteration that affects the exterior architectural features, other than color, of the structures on the premises of a proposed landmark ~~or within a proposed neighborhood conservation district~~. The Commission shall have no jurisdiction over issuance of building permits in a neighborhood conservation district study area until that district has been established pursuant to other provisions of this Ordinance except in the case of properties that are already designated as landmarks or protected by a preservation restriction or with regard to demolition applications of buildings more than fifty (50) years old.

J. Notwithstanding the prior provisions of this section 2.78.180, a neighborhood conservation district previously established by order of the City Council, in accordance with this section, which order instructs that there be a review of the activities of the neighborhood conservation district commission established pursuant to that order, following one or more public hearings by such neighborhood conservation district commission and by the Historical Commission, and a report to the City Council by such commissions containing a summary of testimony at such hearings and recommendations by such commissions for amendments to the powers, responsibilities and procedures of such neighborhood conservation district commission (including amendments to the boundaries of the affected neighborhood conservation district), may be amended by the City

Council, in a manner consistent with the recommendations of such report, or be rescinded without the necessity of the appointment of a new study committee or of a de novo study process.

(Ord. 1331, 12/14/2009; Ord. 1166 §§9, 10, 17, 18, 1995; Ord. 1009A (part), 1984; Ord. 1002 (part), 1983; prior code § 2-147(k)(4))

**2.78.190 - Review procedures.**

A. Except as the order designating or amending a landmark or neighborhood conservation district may otherwise provide in accordance with this article, the Historical Commission or neighborhood conservation district commission having jurisdiction shall review all construction, demolition or alteration that affects the exterior architectural features, other than color, of any landmark or within any neighborhood conservation district.

B. The order designating or amending a landmark or neighborhood conservation district may provide that the authority of the Historical Commission or neighborhood conservation district commission having jurisdiction shall not extend to the review of one or more of the following categories of structures or exterior architectural features of the landmark or within the neighborhood conservation district in which event the structures or exterior architectural features so excluded may be constructed or altered without review by the Commission:

1. The application of exterior wall material in a manner that does not require the removal or enclosure of any cornice, fascia, soffit, bay, porch, hood, window or door casing, or any other protruding decorative element;
2. Alternations to the exterior of existing structures that do not increase or diminish the size and location of windows and doors, cause the removal of any bay, porch, hood, window or door casing or any other protruding decorative element, or alter the appearance of a roof;
3. The exterior appearance of a new structure that does not require a variance or special permit under the zoning ordinance then in effect;
4. Signs, temporary structures, lawn statuary, or recreational equipment, subject to such conditions as to duration of use, dimension, location, lighting, removal and similar matters as the Commission may reasonably specify;
5. Terraces, walks, driveways, sidewalks and similar structures substantially at grade level;
6. Walls and fences;

7. Storm doors and windows, screens, window air conditioners, lighting fixtures, antennae, trelliswork and similar appurtenances.

C. The Historical Commission or a neighborhood conservation district commission may determine from time to time after a public hearing that certain categories of exterior architectural features or structures, including, without limitation, any of those enumerated in this section, if the provisions of the applicable order do not limit the authority of such commission with respect thereto, may be constructed or altered without review by such commission without causing substantial derogation from the intent and purposes of this article.

D. If the order establishing or amending a neighborhood conservation district provides, the determination of a neighborhood conservation district commission shall be binding only with regard to applications to construct a new building, to demolish an existing structure if a demolition permit is required, to construct a parking lot as a principal use, and to construct an addition to an existing structure that would increase its gross floor area, and in all other cases the determinations of a commission shall be advisory only and not binding on an applicant. In no case shall a building permit be issued until the commission has made a determination under the applicable provisions of this article.

(Ord. 1002 (part), 1983: prior code § 2-147(k)(5))

#### **2.78.200 - Maintenance, repair and reconstruction.**

Nothing in this chapter shall be construed to prevent the ordinary maintenance, repair or replacement of any exterior architectural feature of a landmark or within a neighborhood conservation district which does not involve a change in design or material or the outward appearance thereof, nor to prevent landscaping with plants, trees or shrubs, nor construed to prevent the meeting of requirements certified by duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition, not construed to prevent any construction or alteration under a permit duly issued prior to the effective date of the order which designates that landmark or district, nor construed to prevent the reconstruction, substantially similar in exterior design, of a structure or exterior architectural feature damaged or destroyed by fire, storm or other disaster, provided such reconstruction is begun within one year thereafter and carried forward with due diligence.

(Ord. 1002 (part), 1983: prior code § 2-147(k)(6))

#### **2.78.210 - Certificates of appropriateness, nonapplicability or hardship.**

A. Except as the order establishing or amending a landmark or neighborhood conservation district may otherwise provide, no structure designated a landmark or within a neighborhood conservation district shall be constructed or altered in any way that affects exterior architectural features unless the Historical Commission or neighborhood conservation district commission having jurisdiction shall first have issued a certificate of appropriateness, a certificate of nonapplicability or a certificate of hardship with respect to such construction or alteration.

B. Any person who desires to obtain a certificate from the Historical Commission or neighborhood conservation district commission shall file with the Commission an application for a certificate of appropriateness, a certificate of nonapplicability or a certificate of hardship, as the case may be, in such form as the commission may reasonably determine, together with such plans, elevations, specifications, material and other information, including in the case of demolition or removal a statement of the proposed condition and appearance of the property thereafter, as may be reasonably deemed necessary by the Commission to enable it to make a determination on the application.

C. No building permit for alteration of an exterior architectural feature of a landmark or construction of a structure or for alteration of an exterior architectural feature within a neighborhood conservation district and no demolition permit for demolition or removal of a landmark or of a structure within a neighborhood conservation district shall be issued by the City or any department thereof until the certificate required by this article has been issued by the Historical Commission or neighborhood conservation district commission having jurisdiction.

(Ord. 1166 §§11, 12, 1995; Ord. 1002 (part), 1983: prior code § 2-147(k)(7))

#### **2.78.220 - Factors considered by Commissions.**

A. In passing upon matters before it, the Historical Commission or neighborhood conservation district commission shall consider, among other things, the historic and architectural value and significance of the site or structure, the general design, arrangement, texture and material of the features involved, and the relation of such features to similar features of structures in the surrounding area. In the case of new construction or additions to existing structures a commission shall consider the appropriateness of the size and shape of the structure both in relation to the land area upon which the structure is situated and to structures in the vicinity, and a Commission may in appropriate cases impose dimensional and setback requirements in addition to those required by applicable provision of the zoning ordinance. A Commission shall not consider interior arrangements or architectural features not subject to public view.

B. A Commission shall not make any recommendation or requirement except for the purpose of preventing developments incongruous to the historic aspects, architectural significance or the distinctive character of the landmark or neighborhood conservation district.

C. In passing upon matters before it, the Historical Commission or neighborhood conservation district commission shall also consider community goals as may from time to time be expressed by the City Council, including the need for additional housing, affordable and otherwise, and to promote the sustainable use of energy and capacity for climate resilience.

(Ord. 1002 (part), 1983: prior code § 2-147(k)(8))

#### **2.78.230 - Public meetings and hearings.**

The Historical Commission and each neighborhood conservation district commission shall adopt rules for the reasonable conduct of its meetings and public hearings, which rules shall not be inconsistent with the procedures provided for meetings of and hearings by historic district commissions under Section 11 of Chapter 40C of the General Laws; and in the absence of the adoption of any such rules, meetings and public hearings of the Historical Commission and of each neighborhood conservation district commission shall be in conformity with the provisions of Section 11 of Chapter 40C applicable to historic district commissions.

(Ord. 1002 (part), 1983: prior code § 2-147(k)(10))

#### **2.78.240 - Appeal procedure.**

Any person aggrieved by a designation of a landmark or district may appeal to the superior court within thirty days after such designation. Any applicant aggrieved by a determination of a neighborhood conservation district commission or ten registered voters of the City opposing a determination under this article may appeal to the Historical Commission within twenty days after the filing of the notice of such determination with the City Clerk. The Historical Commission may overrule the determination and return it for reconsideration consistent with that finding. If the applicant is aggrieved by the determination of the Historical Commission, or if action is not taken by the Historical Commission within thirty days of filing for review, the applicant may appeal to the superior court. Appeal from a Historical Commission determination shall be taken within thirty days of the formal decision; appeal from a failure to act shall be taken within sixty days after the filing for review. The superior court may reverse a determination if it is not supported by substantial evidence in the record. In all other respects, the appeal shall be made in the same manner as provided under Section 12A of Chapter 40C of the General Laws.

(Ord. 1166 §13, 1995; Ord. 1002 (part), 1983: prior code § 2-147(k)(11))



**2.78.250 - Historical Commission authority not limited.**

No provisions of this article shall alter or diminish the duties and functions of the Historical Commission under the authority of Chapter 40, Section 8D and Chapter 40C of the General Laws, or apply to any historic district currently administered by such commission, or restrict the establishment of any future historic district under Chapter 40C of the General Laws.

(Ord. 1002 (part), 1983: prior code § 2-147(k)(13))

**2.78.260 - Limitation on applicability.**

The provisions of Article II of this chapter (relative to procedures for demolition permits for significant buildings) shall not be applicable with respect to the demolition of any structure within a neighborhood conservation district if the appropriate neighborhood conservation district commission has issued a certificate of appropriateness or a certificate of hardship permitting the demolition of such structure.

(Ord. 1002 (part), 1983: prior code § 2-147(k)(14))

**2.78.270 - Enforcement and remedies.**

The Historical Commission and any neighborhood conservation district commission are each specifically authorized to institute any and all actions, proceedings in law and in equity, as they deem necessary and appropriate to obtain compliance with the requirements of this article or to prevent a threatened violation thereof. Any violation of any provision of this article may be punished to the like extent provided in Section 13 of Chapter 40C of the General Laws for a violation of said Chapter 40C. In addition to the foregoing, no building permit shall be issued, with respect to any premises upon which a landmark or a structure within any neighborhood conservation district has been voluntarily demolished otherwise than pursuant to a certificate granted after compliance with the provisions of this article, for a period of two years after the date of the completion of such demolition (the word "premises" for the purposes of this sentence referring to the parcel of land upon which the demolished structure was located and all adjoining parcels of land under common ownership or control.)

(Ord. 1002 (part), 1983: prior code § 2-147(k)(12))

Cambridge Historical Commission  
March 17, 2023



## CAMBRIDGE HISTORICAL COMMISSION

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 Gavin W. Kleespies, Paula A. Paris, Kyle Sheffield, *Alternates*

March 17, 2023

To: Yi-An Huang, City Manager

From: Charles Sullivan, Executive Director

Re: Revised Response to Proposed Amendments to Ch. 2.78, Art. III

I am submitting the following proposed amendments for discussion at the April 26 hearing of the Ordinance Committee. This memo replaces an earlier version dated March 6, 2023.

This memo discusses the proposed amendments to Ch. 2.78, Art. III that were released just before the March 7 meeting of the Ordinance Committee. In the following commentary each section begins with a discussion of the Ordinance, followed by the petitioners' proposed amendments and a response. Proposed alternative amendments will be described in a separate memo.

### 1. Purpose (2.78.140)

The purpose statement establishes goals for the exercise of authority by the NCD commission.

The City Council finds it necessary to enact this article under Section 6 of the Home Rule Amendment in order to preserve, conserve and protect the beauty and heritage of the City and to improve the quality of its built environment through identification, conservation and maintenance of neighborhoods, areas, sites and structures which constitute or reflect distinctive features of the architectural, cultural, political, economic or social history of the City; ~~to resist and restrain environmental influences adverse to this purpose;~~ in balance with allowing housing growth in all City neighborhoods to welcome a diverse set of residents; to foster appropriate use and wider public knowledge and appreciation of such neighborhoods, areas or structures; and by furthering these purposes to promote the public welfare by making the City a more attractive, ~~and~~ desirable, affordable, diverse, equitable, accessible, and inclusive place in which to live and work. To achieve these purposes, the City may designate neighborhood conservation districts and landmarks to be administered as set forth in this article.

#### *Response:*

NCD commissions are regulatory bodies. The phrase “to resist and restrain environmental influences adverse to this purpose” reflects their mission and should not be deleted.

### 2. Definitions (2.78.150.B and I)

The enabling ordinance was amended in 2020 to include architectural lighting. The amendments were enacted in response to a citizens' petition and extended discussion before the Council.

B. "Exterior architectural features" means and includes such portion of the exterior of a structure as is open to view from a public street, way, park or body of water, including but not limited to the architectural style and general arrangement, and setting, ~~and illumination~~ thereof, the kind, material and texture of exterior building materials, and the type and style of windows, doors, lights, signs and other appurtenant exterior fixtures.

~~1. "Architectural Lighting" means any manner of artificially and intentionally illuminating an exterior architectural feature or features for the purpose of enhancing the design and the human experience of the physical structure.~~

*Response:*

Architectural lighting is commonly seen on large buildings that may be designated landmarks. Some residential site lighting installations can be intrusive. This jurisdiction has not been exercised since it was adopted, but is potentially useful and should be retained.

### **3. NCD membership requirements (2.78.160A)**

NCD commissions presently consist of five members and three alternates allocated among homeowners, residents, property owners, and a member of the Cambridge Historical Commission. The mix of representation is intended to offer flexibility to respond to neighborhood conditions, as defined in the Order for each district. The total number of members and alternates reflects the small size of some districts.

A. Upon designation as provided in Section 2.78.180 of this article of any neighborhood conservation district, and unless the designation provides that the Historical Commission itself shall exercise authority with respect thereto, the City Manager shall appoint a neighborhood conservation district commission to consist of ~~five~~ six members and three alternates whose composition fairly represents the diversity of the neighborhood itself in terms of age, race, ethnicity, sex, gender, and sexual and gender minority status. The City Manager shall at all times endeavor to achieve and maintain a balance on commissions that fairly represents the community within and surrounding the district. The members shall include ~~three~~ at least four residents of the neighborhood, ~~not less than two of whom shall be homeowners including at least one~~ neighborhood homeowner; one neighborhood property owner (who may or may not be a neighborhood homeowner); one person who resides in a rented home in the neighborhood; and, ~~one member or alternate of the Cambridge Historical Commission. One member and/or one alternate of a neighborhood conservation district commission, in addition to the mandated member of the Cambridge Historical Commission, may be a Cambridge resident who lives outside the district. The remaining alternates shall be neighborhood property owners. The neighborhood conservation district commission shall act solely in the exercise of those functions described in this article which are applicable to the district under its administration, when a district includes commercial properties, one person who owns or operates a business within the neighborhood, preferably one that employs no more than 50 full-time equivalent employees, preferably in a retail, local service, or restaurant setting, and is not a formula business as defined in Article 2.000. One member and/or one alternate of a~~ A neighborhood conservation district commission may be a Cambridge resident who lives outside the district. The City Manager shall at all times endeavor to ensure commission membership achieves a balance between residents with a diversity of recent housing experiences in the City and members with professional credentials relevant to the work of the commission's work. Commissions shall have at least one member who possesses technical knowledge in one or more of the following fields: Historical preservation, civic planning, architecture, or a similar field. The ~~A neighborhood conservation district commission shall act solely in the exercise of those functions described in this article which are applicable to the district under its administration. A member of the Historical Commission staff should be assigned to provide ongoing administrative and operational assistance to the~~ A neighborhood conservation district commission.

The following table compares the current and proposed minimum requirements: <sup>1</sup>

Current		Citizen Proposal	
Members - 5	2 homeowners 1 other resident (may be a tenant) 1 owner of other property in the district (residency not required) 1 CHC member	Members – 6 4 members must be district residents	1 homeowner 1 occupant of a rented home 1 owner of other property in the district (residency not required) 1 business owner/operator
Alternates - 3	2 or 3 property owners (1 alternate may be a Cambridge resident living outside the district)	Alternates – 3	No requirements (1 alternate may be a Cambridge resident living outside the district)

*Response:*

**The proposed amendments would reduce the representation of resident homeowners in favor of tenants and businesspeople.** There could potentially be only one resident homeowner on an NCD commission.

- While tenants outnumber owners in almost all NCDs, the burdens and responsibilities of conservation districts fall most heavily on property owners, especially resident homeowners.
- The Ordinance already allows for tenant appointments. The Mid Cambridge NCD Order requires a tenant representative, but over many years it has proved almost impossible to recruit candidates for this slot. The Avon Hill commission currently has a tenant, but this neighborhood and Half Crown-Marsh are mostly single-family residential districts with small numbers of tenants.
- The Avon Hill, Half Crown-Marsh, and Mid Cambridge NCDs contain very few or no business-occupied buildings. When a district involves many properties occupied by businesses the City Manager will appoint members “with regard to diverse viewpoints” or interests.
- Some provisions are unclear (especially with regard to the nested “including” phrases) and contain redundant language. The proposed text includes a version of member qualifications deleted from 2.78.060.B.
- The amendments call for the appointment of a business owner or operator when the district includes “commercial properties.” The latter phrase is not defined, and the person is not required to own property in the district.
- Residents are supposed to have “a diversity of recent housing experiences.” The meaning of this phrase is unclear.
- The proposed amendment laudably calls for commission members to represent the diversity of the neighborhood. However, such language should track the City Manager’s published guidelines for appointments.
- All NCDs are supported by CHC staff. This provision is unnecessary.

<sup>1</sup> Unless otherwise noted, property ownership and residency requirements refer to property or residency in the NCD.

#### 4. NCD member qualifications and terms (2.78.160.B)

Appointments are currently to be made “with regard to diverse viewpoints expressed in the creation of the district.” Members and alternates should have “demonstrable knowledge and concern for improvement, conservation and enhancement of the district,” and at least two should have “professional qualifications related to real estate or architecture or historic preservation.” Members serve until replaced or reappointed.

B. ~~Any member or alternate of the Historical Commission may be appointed to a neighborhood conservation district commission for a term coterminous with such person's term as a member or alternate of the Historical Commission. Members and alternates of a neighborhood conservation district commission who are not members of the Historical Commission shall by reason of experience or education have demonstrable knowledge and concern for improvement, conservation and enhancement of the district, and at least two of the members or alternates shall have professional qualifications related to real estate or architecture or historic preservation.~~ The members of the neighborhood conservation district commission shall be appointed by the City Manager with regard to the ~~diverse viewpoints expressed in the creation~~ diversity of residents within ~~of~~ the district. Such members shall serve for a term of three years, except that the initial appointments shall be for one member to serve one year and one member to serve two years, and vacancies shall be filled for the unexpired term of office. Each member and alternate shall continue in office for up to six months after expiration of his or her term until a successor is duly appointed and qualified, except that no member shall serve more than two consecutive terms.

*Response:*

**The current language serves the purposes and functioning of NCD commissions.**

- The proposed amendments would strike the current requirement that members and alternates represent the “the diverse viewpoints expressed in the creation of the district” and “have demonstrable knowledge and concern for improvement, conservation, and enhancement of the district” and instead require a “diversity of residents.”
- The current requirement that two members or alternates have professional qualifications related to real estate, architecture, or historic preservation would be replaced by a provision in 2.78.160.B that one member have “technical knowledge (not professional qualifications) in one or more of the following fields: Historical preservation, civic planning, architecture, or a similar field.” Amending this provision would degrade the ability of NCD commissions to deal with complex architectural and development issues.
- The six-month limitation on additional service introduces term limits in a manner that will threaten institutional knowledge and endanger the ability of commissions to gather a quorum. Recruitment for public boards and commissions can be difficult. Members who continue to demonstrate competence and concern should be allowed to continue to serve until replaced.



## 5. Powers and Duties; Certificates (2.78.170.B)

Neighborhood conservation districts potentially have broad authority to regulate issuance of building permits similar to that of the Historical Commission in historic districts (except exterior color). The actual authority of an NCD commission is limited by the Order establishing the district. In existing NCDs, proposed AHO projects are subject to the same review as any other.

B. The Historical Commission and ~~Each~~ ~~n~~Neighborhood ~~C~~onservation ~~D~~istrict ~~C~~ommission shall have no powers, functions, or duties with respect to, or jurisdiction over, affordable housing projects that are either developed under the Affordable Housing Overlay, as defined in Section 11.207 of the Zoning Ordinance, or have a majority of their units permanently reserved for households at or below 100% of area median income.

*Response:*

**The proposed amendments would eliminate the authority of neighborhood conservation district commissions to review projects developed under the affordable housing overlay.**

- If the Council desires to prioritize affordable housing projects, NCD review could be made non-binding. The Historical Commission and the various NCD commissions have a long history of constructively balancing community goals with their stated purpose of restraining adverse influences on the city's built environment. Non-binding reviews allow NCD commission to make advisory recommendations and allow community input without hindering project development.

## 6. Designation Procedures (2.78.180)

Section 2.78.180.C requires that a study committee consist of three Historical Commission members and four other neighborhood property owners and residents. Preliminary Reports study alternative approaches to regulation along with other pros and cons of NCD proposals. Mandatory building permit approvals are required during studies. New districts are required to undergo a sunset review.

### A. Study Committee membership (2.78.180C)

C. In the case of a landmark, the report shall be prepared by the Historical Commission. In the case of a neighborhood conservation district, the report shall be prepared by a study committee consisting of three members or alternates of the Historical Commission and ~~four~~six persons appointed by the City Manager, whose composition fairly represents the diversity of the neighborhood itself in terms of age, race, ethnicity, sex, gender, and sexual and gender minority status. The City Manager shall at all times endeavor to achieve and maintain a balance on study committees -that fairly represents the community within and surrounding the district, including at least one person who resides in the district under consideration, ~~at least~~ one person who owns property in the district under consideration, one person who resides in a rented home in the neighborhood, ~~and~~ one person who owns property or resides ~~elsewhere~~ in the City and has demonstrated knowledge and concern for conservation and enhancement of those exterior features of the City which are important to its distinctive character, and, when a district includes commercial properties, at least one person who owns or operates a business within the neighborhood, preferably one that employs no more than 50 full-time equivalent employees, preferably in a retail, local service, or restaurant setting, and is not a formula business as defined in Article 2.000. The City Manager shall at all times endeavor to ensure study committee membership achieves a balance between residents with a diversity of recent housing experiences in the City and members with professional credentials relevant to the ~~C~~ommission's work.

*Response:*

As with 2.78.160A,

- The amendments envision the possibility of an eight-person study committee with only two residents: one homeowner and one tenant. Another member (the only one who must have demonstrated knowledge and concern for conservation and enhancement) can live elsewhere in Cambridge.
- The amendments call for the appointment of a business owner or operator when the district includes “commercial properties.” The latter phrase is not defined, and the person is not required to own property in the district.
- Residents are supposed to have “a diversity of recent housing experiences;” the meaning of this phrase is unclear.
- The proposed amendment laudably calls for commission members to represent the diversity of the neighborhood. However, such language should track the City Manager’s published guidelines for appointments.

B. Petitions and initiation of NCD studies (2.78.180.D)

NCD studies may be initiated by the Commission on its own motion or by a ten-citizen petition, and City Council approval of an NCD study is not required. The ten-citizen petition tracks the provisions of MGL Chapter 40A, Section 5.

D. Any ~~ten-thirty~~ registered voters of the City may petition that the Historical Commission initiate, or the Historical Commission on its own may initiate, the process of designating a landmark or amending or rescinding any such designation theretofore made. Any one hundred registered voters of the City may petition that the Historical Commission initiate the process of designating a neighborhood conservation district or amending or rescinding any such designation theretofore made. The Commission shall within forty-five days following the filing of such request or petition hold a preliminary hearing and arrange for the preparation of a report and, if required, request the appointment of a study committee. In the event the Historical Commission requests the appointment of a study committee, the approval of the formation of such committee shall be by order of the City Council. If a petition for a landmark designation is not accepted by the Historical Commission or a request to initiate a study of a neighborhood conservation district is not recommended by the Historical Commission or approved by the City Council, the Historical Commission shall not reconsider a proposed designation, amendment or rescission of designation within ~~one-ten~~ years of its previous hearing thereon, ~~unless two-thirds of all its members vote to do so~~. No later than forty-five days after the transmittal of a report to the Commission pertaining to a proposed designation, the Commission shall hold a public hearing. The Commission shall give not less than ~~fourteen-thirty~~ days notice of such public hearing by publication in a newspaper of general circulation in the City and by mailing notice thereof to the owner of the proposed landmark and to every owner and resident abutting the proposed landmark or within the proposed neighborhood conservation district, each such owner and resident to be determined from the then current records of the Assessing Department or other City staff, and to the City Manager, the Planning Board and the City Clerk.

*Response:*

**The proposed amendments would raise the number of petitioners to 30 (for landmarks) and 100 (for NCDs), require City Council approval before an NCD study can be initiated, prevent reconsideration of a denied landmark designation or request for an NCD study for ten years, extend the notice period for a public hearing on a recommendation, and require notices to every resident.**

- Eliminating the ten-citizen petition route to an NCD study would deny citizens an important current right.
- Zoning amendments introduced by ten-citizen petition are considered to be of immediate effect until they time out or fail to be adopted. The Historical Commission has several times exercised its ability to decline frivolous or inappropriate petitions.
- Prior Council approval of an NCD study should not be necessary. The Historical Commission should be trusted to exercise its judgement on this topic. The study itself is necessary to develop arguments for and against a proposed district.
- In a rapidly changing urban environment preventing reconsideration of a denial for ten years could be counter-productive.
- There is no mechanism for identifying every Cambridge resident. The Election Commission's annual non-mandatory census lists respondents 17 years or older. The Postal Service can deliver bulk mail to every residential address. Neither approach will find every resident.
- The requirement for notifying all owners and residents of a study area at least 30 days in advance of a hearing that must occur within 45 days after transmitting a report would be difficult to achieve at current staffing levels.

C. Recommendations to City Manager and Council; adoption (2.78.180.F)

The current ordinance requires the preparation of a designation study or report for proposed landmarks and NCDs, the contents of which is described in 2.78.180.B.

F. The recommendation of the Historical Commission with regard to any designation, amendment or rescission shall be transmitted to the City Manager and to the City Clerk with a copy of the approved designation report. Along with its recommendation, the Historical Commission shall include a report on the impact of the designation on housing and renovation costs in the district and a letter from each business association within, or within 500 yards of, the proposed district setting out their views on the proposed district, and the Historical Commission shall identify opponents to the proposed district and allow them to submit a letter setting out their views on the proposed district and a counter-proposal to the ~~CH~~Historical Commission's recommendation. The Historical Commission shall base its cost impact estimate on a review of current, available academic and industry research on the price effects of historical preservation districting and landmark designation (defined to include Historic Districts, Neighborhood Conservation Districts, and similar area historic preservation districting and landmark designation), and shall provide a written summary of the current research consensus along with the Commission's estimates. That summary shall include a list of citations as well as working hyperlinks to or physical versions of complete copies of all works cited. Designation of a landmark or a neighborhood conservation district or amendment or rescission of designation shall be by order of the City Council. In the case of a designation, the order shall include a statement of the reasons for such designation and a statement of standards which the Historical Commission or neighborhood conservation district commission is to apply under Sections 2.78.170 and 2.78.190 through 2.78.220 of this article.

*Response:*

**The proposed amendments to this section mandate onerous impact studies not required for similar measures such as zoning amendments and require the Historical Commission to “identify the opponents of the proposed district and allow them to submit a letter setting out their views ... and a counter-proposal.”**

- Designation reports are currently required to include an evaluation of the “historical, architectural and other relevant significance of the proposed landmark or NCD,



boundaries of the proposed designation, and “general and/or specific standards and appropriate criteria” intended to guide the administration of the designated properties (2.78.180.B). During the recent East Cambridge NCD study a senior information specialist from another city department assisted CHC staff with an analysis of property values and rents in neighborhood conservation districts in Cambridge, while a review of literature discussed the NCD experience nationally.

- NCD study procedures are designed to elicit a range of views. Property owners, active voters, and households are repeatedly notified of meetings and other opportunities to participate. No person is denied a right to be heard or submit opposing views. Requiring the Historical Commission to specifically identify all the opponents of a proposed district would be an impossibility.

#### D. Interim jurisdiction during studies (2.78.080.I and new Paragraph J)

The current ordinance establishes Historical Commission jurisdiction over building permits for proposed landmarks or NCDs during a one-year study period. The Commission must issue a Certificate of Appropriateness, Non-Applicability, or Hardship before ISD may approve a building permit.

I. Following acceptance of a designation petition for a landmark by the Historical Commission, no application for a building permit for new construction or alterations on the premises of a property being considered for designation shall be granted until reviewed by the Commission as though the property were designated as a landmark ~~or a neighborhood conservation district~~ under this Article III. ~~Beginning Following initiation of a Nneighborhood Cconservation Ddistrict study by the City Council -with the acceptance of a designation petition~~ and until (a) the Historical Commission makes a negative recommendation on a proposed designation, (b) the City Council determines not to enact the proposed designation, or (c) one year has elapsed, whichever is less, the Commission shall conduct a non-binding review of all proposed construction, demolition, or alteration that affects the exterior architectural features, other than color, ADA compliance features, accessibility features, climate resiliency features, or renewable energy features, of the structures on the premises of a proposed landmark or within a proposed neighborhood conservation district.

J. The period during which these rules and procedures apply may not be extended other than due to a declared emergency.

*Response:*

**The temporary jurisdiction exercised by the Historical Commission in NCD study areas is acknowledged to be burdensome. A currently proposed amendment would eliminate this jurisdiction entirely for NCDs but maintain it for landmarks during study periods.**

- New paragraph J should define “emergency.”

#### E. Sunset Reviews (New section 2.78.180.L)

Paragraph 2.180.J of the current Ordinance requires inclusion of a sunset clause in the Order establishing each district.

L. Every ten years beginning in 2024, the City Council shall review each existing neighborhood conservation district and adopt an order (1) to renew the neighborhood conservation district unchanged; (2) to renew the neighborhood conservation district with more limited boundaries; (3) to renew the neighborhood conservation district with less restrictive rules and/or guidance; or (4) to discontinue the neighborhood conservation district. In the review process, the City Council shall revise the rules and/or guidance to conform with the current version of this ordinance, including setting a schedule for conformance of neighborhood conservation district commissions, upon vacancies, to the current membership requirements. In the absence of a City Council order renewing a neighborhood conservation district, the neighborhood conservation district shall be discontinued. The Harvard Square Conservation District shall be exempt from the initial review in 2024, due to its recently completed review, and subject to subsequent reviews on the same decadal schedule as the other neighborhood conservation districts.

*Response:*

**Requiring a decennial sunset review would be excessively burdensome. The Avon Hill, Mid Cambridge, and Harvard Square NCDs all had sunset reviews after establishment. The Harvard Square Order was readopted in 2021.**

- The revisions sought by the petitioners would only allow the City Council to maintain the status quo, subtract from or weaken the existing ordinance with regard to boundaries, rules/guidance, or abolish a district all together. Both the Mid Cambridge and Half Crown districts were later amended to enlarge their jurisdictions; this would not be possible during a decennial review.
- A future City Council could abolish a district without a hearing or without taking any action whatsoever, simply by declining to take action on a proposal.

#### 7. Review Procedures (2.78.190.A)

This section sets out the parameters of jurisdiction over a landmark or NCD.

A. Except as the order designating or amending a landmark or neighborhood conservation district may otherwise provide in accordance with this article, the Historical Commission or neighborhood conservation district commission having jurisdiction shall review all construction, demolition or alteration that affects the exterior architectural features, other than color, ADA compliance features, accessibility features, climate resiliency features, or renewable energy features of any landmark or within any neighborhood conservation district.

*Response:*

**The existing jurisdiction of NCD commissions over these potentially significant features should be maintained. Approvals of such features can be prioritized in other ways.** For example, MGL Ch. 40C provides, with regard to historic districts, that “When ruling on applications for certificates of appropriateness for solar energy systems ... the commission shall also consider the policy of the commonwealth to encourage the use of solar energy systems and to protect solar access.”

- Neither the Historical Commission nor any NCD Commission has ever denied an application for accessibility or ADA compliance; most are granted administratively by staff. However, some accessibility features can be deleterious, and a more-appropriate code-compliant alternative can always be found.
- No commission is known to have denied installation of solar panels, heat pumps, or other alternative energy features. Features like solar panels have the potential to be destructive to historical character and should continue to be regulated.

## 8. Certificates (2.78.210.D)

This section describes procedures for issuance of Certificates of Appropriateness, Non-Applicability and Hardship

D. This provision does not apply to proposals for, or existing, affordable housing projects that either are developed under the Affordable Housing Overlay, as defined in Section 11.207 of the Zoning Ordinance, or have a majority of their units permanently reserved for households at or below 100% of Area Median Income, over which neither the Historical Commission nor any neighborhood conservation district commission has jurisdiction.

*Response:*

**This proposed amendment duplicates the amendment proposed as paragraph 2.78.170.B, which is discussed above.**

## 9. Factors considered by commissions (2.78.220)

NCD commissions are currently authorized to “impose dimensional and setback requirements in addition to those required by applicable provision of the zoning ordinance.”

A. In passing upon matters before it, the Historical Commission or neighborhood conservation district commission shall consider, among other things, the historic and architectural value and significance of the site or structure, the general design, arrangement, texture and material of the features involved, and the relation of such features to similar features of structures in the surrounding area. In the case of new construction or additions to existing structures a commission shall not consider the appropriateness of the size and shape of the structure ~~both in relation to the land area upon which the structure is situated and to structures in the vicinity,~~ and a Commission ~~may shall not in appropriate cases~~ impose dimensional and setback requirements in addition to those required by applicable provision of the zoning ordinance. A Commission shall not consider interior arrangements or architectural features not subject to public view.

B. A Commission shall not make any recommendation or requirement except for the purpose of ~~preventing developments~~ rejecting proposals incongruous to the historic aspects, architectural significance ~~or the distinctive character~~ of the landmark or neighborhood conservation district.

*Response:*

**The proposed amendments to 2.78.220.A would eliminate the authority of an NCD commission over “dimensions, setbacks, size or massing” of new construction or additions. Elimination of these provisions would seriously weaken the authority of NCD commissions.**

**The proposed amendments to 2.78.220.B are unnecessary and ineffective.**

cc: Nancy E. Glowa, City Solicitor