



The City of Fitchburg Massachusetts

Fitchburg Historical Commission

RULES AND REGULATIONS AND GENERAL INFORMATION

As adopted April 28, 2022

A. GENERAL

Section 1. Introduction

The Fitchburg Historical Commission (Commission) of the City of Fitchburg, Massachusetts, hereby adopts the following rules for the conduct of its business. A copy of these Rules and Regulations, and all amendments thereto, shall be filed with the City Clerk.

Section 2. Powers, Functions and Duties of the Commission

The Commission without limitation has the following powers, functions, and duties:

- a) To investigate the desirability of establishing Local Historic Districts in accordance with MGL 40C (Historic Districts) in the City; to propose changes in the boundaries of Historic Districts as it deems appropriate; to report on the historical and architectural significance of the buildings, structures or sites to be included in any proposed Historic District or any existing Historic District whose boundaries it proposes to change; to hold public hearings on any such reports; to submit final reports with its recommendations, and maps of the proposed district or districts or boundary changes to City Council; all in accordance with MGL Chapter 40C and Article XXX of the General Ordinances of the City of Fitchburg (the Historic Districts By-law).
- b) To serve as the City's Historical Commission under Chapter 40, Section 8d, and, in that capacity, participate in research, advocacy, survey, and public education programs designed to preserve the City's cultural assets.
- c) To participate in environmental review and compliance projects that affect properties listed on the National and State Registers of Historic Places and receive federal or State funding in accordance with Section 106 of the National Historic Preservation Act, 36 CFR, Part 800, M.G.L. c. 9, §§26-27C, as amended by chapter 254 of the Acts of 1988, and 950 CMR 70.00 – 73.00.

d) To participate in the design review of properties listed on the National Register that receive CDBG or HOME funds, in accordance with a Programmatic Agreement with Advisory Council on Historic Preservation.

h) Subject to appropriation, to employ consultants and incur other expenses appropriate to the carrying on of its work in consultation with the Executive Director of Community Development and Planning; to accept money gifts and expend the same for such purposes; and to charge filing fees for applications.

i) To administer on behalf of the City any properties or easements, restrictions, or other interests in real property that the City may have or may accept as gifts or otherwise and that the City may designate the Commission as the administrator thereof.

B. COMMISSION ORGANIZATION

Section 1. Commission Membership

a) Seven Commission Members (Commissioners) are appointed by the Mayor, subject to the approval of the City Council, and to serve in staggered terms.

b) Appointments to the Commission are regulated by the City Ordinance Chapter 3 Article XXX

c) Upon any vacancy or failure to seek reappointment the Chairperson shall communicate to the Mayor any recommendations they may have, taking into account all Commissioners and candidates.

d) In accordance with M.G.L. c.40c and City Code, Section 3, Article XX, § 3-250 Establishment; membership.

A. There is hereby established under the provisions of the Historic Districts Act, General Laws, Chapter 40C, as amended by Chapter 359 of the Acts of 1971, Chapter 282 of the Acts of 1974 and MGL c. 40, § 8D, a Fitchburg Historical Commission consisting of seven members appointed by the Mayor, subject to the approval of the City Council.

B. Membership.

(1) Required membership will include, where possible:

(a) One member chosen from two nominees submitted by the local Historical Society.

(b) One member from two nominees submitted by the chapter of the American Institute of Architects covering the area.

(c) One from two nominees of the Board of Realtors covering the area.

(2) In addition, the Commission will include four other members so that it will represent a variety of organizations and individuals whose interests are allied with historic preservation. If possible, this should include:

(a) A lawyer who can be of help to the Commission in interpreting the Historic Districts Act.

(b) A professional historian or architectural historian who can supervise continuing research on the Historic District and can provide statements on the significance of individual buildings when necessary.

(c) A member from the Planning Board who can ensure cooperation between planning and the Historic District.

(d) A resident or owner of property in the district. This can be waived and a substitute made if the number of residents or individual owners within a district or districts is small.

Section 2. Tenure.

Commissioners serve three-year terms. Commissioners continue to serve to the end of their terms and into the following term until reappointed or replaced.

Section 3. Resignation.

a) Any Commissioner may resign by delivering his or her written resignation to the Mayor. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

b) The Chairperson may request the resignation or non-reappointment of any Commissioner who repeatedly fails to attend meetings, including site visits and/or sub-committee meetings, or repeatedly arrives late and/or leaves early without notification and/or satisfactory reason.

Section 4. Officers

a) The Officers of the Commission shall consist of a Chairperson and a Secretary.

b) The Commission shall elect the Officers annually, at its first regularly scheduled meeting in a new calendar year.

c) Only a Commissioner may serve as Chair. The office of Secretary may be held by any person, including a City employee.

d) Except as otherwise provided by law or by these Rules and Regulations, the officers of the Commission shall hold office until their successors are chosen.

Section 5. Power and Duties of Chairperson

The Chairperson shall preside over all meetings and hearings of the Commission. Subject to the rules as stated herein, the Chairperson shall: determine the procedures of the meeting and decide all points of order, unless overruled by a majority of the Commission in session at the time; appoint the members and chairpersons of Subcommittees; supervise the work of the

Commission; arrange for necessary help; sign and date each certificate issued by the Commission; and appoint subcommittees and representatives.

Section 6. Secretary:

The duties of the Secretary shall include, without limitation, the following that the Secretary shall perform or cause to be performed: Provide public notice of meetings; compile minutes of all meetings of the Commission; Maintain a permanent record of its resolutions, transactions, and determinations and of the vote of each member participating therein; Receive and process, on behalf of the Commission, all petitions, applications for certificates and other official correspondence; Prepare agendas for all Commission meetings; Perform such other duties and assume such other responsibilities as the Chairperson and the Commission may from time to time direct.

Section 7. Compensation.

All Commissioners shall serve without compensation.

Section 8. Staff.

The Commission has staff from the Community Development and Planning Department of the City of Fitchburg.

C. PUBLIC MEETINGS AND HEARINGS

Section 1. Quorum

- a) A quorum for all Commission activities shall consist of any four Commissioners- A quorum for a subcommittee shall be a majority.
- b) Commissioners shall inform the Chairperson if they are unable to attend a meeting or there is a conflict of interest on a given case.

Section 2. Meetings

- a) All meetings shall be open to the public and duly noticed in accordance with MGL c. 39, §§23A-23C and 24, commonly referred to as the Open Meeting Law.
- b) Regular meetings of the Commission shall be held on the last Thursday of each month at 3:00 p.m., at City Hall, or at such time, date or place as set forth in the notice for the meeting/hearing. Special meetings and hearings may be called by the Chairperson or at the request of two Commissioners.
- c) In the event that the absence or departure of Commissioners from a meeting of the Commission or of one of its subcommittees causes a lack of quorum, or that the business before the Commission or subcommittee cannot be completed at one sitting, the presiding officer may adjourn the meeting and subsequently reschedule another or may continue the

meeting by announcing a time and place, consistent with statutory deadlines, for resumption at such meeting. Motions for adjournment or continuance shall require concurrence of a numerical majority of members present and voting.

Section 3. Vote

- a) The Chair may propose to entertain a specific motion on an issue or may entertain such motions from the voting members.
- b) Motions need not be framed in the affirmative.
- c) Each member's vote shall be recorded in the minutes. The Chairperson shall normally participate in all votes.
- d) The concurring vote of a majority of the Commissioners, i.e., not fewer than four (4), shall be necessary to issue a Certificate of Appropriateness or a Certificate of Hardship. A valid vote on all other matters shall be a simple majority of the Commissioners present, as long as there is a quorum. A tie vote shall be recorded as such. In case of a tie, the motion is not approved.
- e) Members may abstain from any vote at their own discretion.

Section 4. Public Meetings

- a) Public meetings shall be conducted in accordance with the Commonwealth of Massachusetts Open Meeting Law, MGL 30A, §§ 18-25. Notice for each meeting shall be filed with the City Clerk and publicly posted on the City's website at least 48 hours prior to the meeting, excluding Saturdays, Sundays, and legal holidays.
- b) Public meetings, while open to the public, are not public hearings. Applications for Certificates of Appropriateness are heard in public hearings described in Section 5.
- c) Business conducted at public meetings shall include:
 - Review of changes in approved site plans, elevations, etc. to determine whether such changes are substantially in accordance with plans, etc. approved by the Commission in approving the issuance of a Certificate of Appropriateness.
 - Administrative meetings of the Commission.

Section 5. Hearing Notices & Agendas

- a) Pursuant to MGL 40C, §11, at least fourteen (14) days before a **hearing** on any application for a **Certificate of Appropriateness, a Certificate of Non-Applicability or a Certificate of Hardship**, the Commission shall give public notice of the time, place, and purposes thereof in such manner

as it may determine, and by mailing, a copy of said notice to the applicant, the owner of record if different from the applicant, to abutters and abutters of abutters and the owners of other property deemed by the Commission to be materially affected thereby as they appear on the most recent real estate tax list of the Board of Assessors, to the Fitchburg Planning Board, to any person filing written request for notice of hearings, such request to be renewed yearly in December, and to such other persons as the Commission shall deem entitled to notice.

b) Meeting agendas containing notice of the individual hearings shall be posted at the City Clerk's Office and on the City Website at least one week prior to the hearing. Agendas shall also be sent to applicants and interested parties at that time. Items may be called up to 30 minutes prior to the time shown on the agenda. Items for the agenda must be filed with the Commission by noontime eight (8) days prior to the next scheduled hearing, in order to appear on the agenda.

d) If the date, time, and place for resuming a Commission meeting or public hearing or committee meeting is announced during a meeting or public hearing, then no additional notice shall be required for the continued meeting or public hearing provided that notice of the initial meeting or public hearing was adequately posted. The time and location of any such continued meeting or public hearing may be subsequently changed only with proper notification.

Section 6. Recusals

a) Should a member miss a presentation and discussion at a public meeting related to an application, that member shall recuse him/herself from the discussion and the vote on that application at that meeting. If said presentation is substantially recapitulated in the member's presence prior to a discussion and vote at a subsequent meeting, the member may participate in that subsequent discussion and vote.

b) Should a member be an abutter with respect to a matter before the Commission, regardless of whether or not recusal is required by the conflict-of-interest law, it is preferred, as a matter of Commission policy, that said member recuse him or herself with respect to that matter.

D. GENERAL REGULATIONS

Section 1. Conflict of Interest

All Commissioners shall abide by the MGL c. 268A, and other conflict of interest and ethics laws and guidelines.

Section 2. Official Opinion

No Commissioner or staff member shall purport to express the official position or opinion of the Commission, except in accordance with a specific vote of the Commission. Personal opinions or beliefs shall be clearly identified as such.

Section 3. Amending these Rules and Regulations

Proposed amendments to any portion of these Rules and Regulations, including the design guidelines, shall be in writing and shall be made available to all members of the Commission at such time as notice is given for the regular or special meeting at which they are to be considered. A majority of the Commissioners shall be required to amend these Rules and Regulations.

Section 4. Historic District Design Guidelines.

The Local Historic District Design Guidelines are incorporated herein by reference.

E. LOCAL HISTORIC DISTRICT

Section 1. Design Guidelines.

a) The Commission shall publish Design Guidelines, which, among other things, shall include: i) the scope of its review authority, ii) any specific limitations on its review authority, iii) its guidelines for determining the appropriateness of any proposed alterations, construction, and/or demolition, and iv) the procedures for the application process for any required Certificate.

b) While the Design Guidelines shall establish norms and parameters for the decisions of the Commission during design reviews, exceptions due to specific characteristics of a particular property or its context shall be recognized and allowed at the Commission's discretion. Such discretionary latitude is not to be confused with any consideration related to "Hardship."

c) The fact that the Design Guidelines may be mute on a specific issue shall not preclude the Commission from ruling with respect to that issue within the limits allowed by the Ordinance and MGL Chapter 40C.

Section 2. Non-conforming conditions

a) The Commission shall accept the "grandfathered" condition of any building at the time of the creation of an Historic District even if said building may incorporate work inconsistent with its Design Guidelines for which no Building Permit can be documented.

b) In the event that an allegation is made that work requiring a Certificate of Appropriateness has been done at an unknown time without such Certificate, the Commission shall endeavor to

document by whatever means may be available whether the work existed at the date the Historic District came into existence. If the Commission determines that said work post-dates the creation of the Historic District, it may require an application for a retroactive Certificate of Applicability. The transfer of ownership or of control of a property since the date when such work was completed shall not constitute “grandfathering” of said work.

c) If an existing violation or violations are present on a property that is the subject of an application for a certificate of appropriateness, the Commission may deny the application on that basis, if the property owner fails to modify the application to include acceptable curative action, or the Commission may approve the application subject to a condition requiring the property owner to cure any existing violations. Such conditional approval may: (i) require the property owner to cure any such violations before a building permit is issued for the work requested in the application, (ii) allow the curing work to proceed contemporaneously with the application work, or (iii) provide for some combination of (i) and (ii). The Building Commissioner may issue a stop work order should they believe that the curing work is not occurring in the approved manner or if so requested by the Commission upon it making a similar determination. As used herein, "existing violation" means a previous change to the exterior architectural features of a structure that was affected without a certificate of appropriateness from the Commission under circumstances that required such a certificate to be issued, as determined by the Commission.

Section 3. Hearing and Design Review Process

a) An applicant may appear in person or be represented by an agent at the Commission meeting.

1. i) The Chair shall convene a Public Hearing;
2. ii) The Chair or Staff shall give a preliminary statement concerning the application;
3. iii) The applicant or agent shall present his or her application;
4. iv) The Commission members may discuss the application, followed by public comments from anyone else with an interest in the proposal.
5. v) Commission members may ask clarifying questions after each speaker;
6. vi) The Public Hearing shall be closed.

The Commission may then deliberate and make a determination but need not do so at that time.

b) If upon examination by the Commission, it determines that the application is not sufficiently complete, for whatever reason, for the Commission to make an informed determination (regardless of any preliminary determination by staff), it must inform the applicant as to what additional materials are required and may continue the case with the applicant’s written concurrence until they have been provided.

c) In cases where more information is needed or when the Commission determines that revisions to the proposed designs are necessary, and with the written concurrence of the applicant, the case may be continued and may be referred to a subcommittee appointed by the Chair, which will meet with the applicant as often as necessary to review and comment on revisions or on more fully developed plans. The subcommittee will make a recommendation to the Commission at a subsequent public hearing. In some cases where only minor revisions to the plans are necessary, the subcommittee may be charged with making a final approval of the application.

d) A subcommittee Chair may determine that drawings or other required information submitted less than seven days before a meeting of the Commission have not been submitted in a timely manner if the subcommittee does not reasonably have time to schedule and post a meeting to consider them and may defer consideration of the matter to the next following Commission meeting.

e) The Commission and its Subcommittees will make every effort to suggest ways in which an application can be amended so that it will be consistent with the Design Guidelines. Discussion among members and the applicant shall focus on arriving at a solution satisfying all concerned. However, Commission or Subcommittee members may not undertake to impose a specific design upon a project in whole or in part beyond referring to the Design Guidelines and suggesting ideas or architectural precedents for consideration and the applicant should always consult with his or her architect or contractor about any such considered idea or detail.

f) No decision of the Commission shall be deemed to have set a "Precedent" in contradiction to the Design Guidelines.

g) The Commission may approve a portion, or portions, of an application with the issued certificate specifically indicating which portions are applicable. The remainder of the application must be voted on within sixty (60) days of the original application date, unless further extended by the applicant in writing.

h) A decision by the Commission on an application may be accompanied by binding written conditions and/or by recommendations. Any recommendations made by the Commission, beyond those imposed as conditions and/or limitations on the Certificate and/or beyond the approved drawings, are not binding on the applicant.

i) Where an applicant requires a special permit from the Planning Board and/or variance from the Zoning Board of Appeals and also requires approval from the Historic District Commission, they should meet with the Community Development and Planning Director or designee to discuss the needed relief and coordination of the approval process. In most cases, if variance relief is needed, the applicant will be advised to go through the Zoning Board of Appeals approval process before applying to the Historical Commission; if, however, special permit, rather than variance relief is needed, the applicant will be encouraged to seek approval from the Historic District Commission before being heard by the Planning Board.

Section 4. Disapproved Applications.

a) If an applicant claims financial hardship, they may be required to submit such personal financial records as the Commission deems necessary to make a determination.

b) It may be determined by the Commission that an asserted hardship is specific to the circumstances of an individual and the mitigation allowed by the Certificate may reasonably be limited in duration to the tenure of occupancy or ownership of the property by that individual in which case the Commission's decision may include a requirement that the changes it allows shall be reversed at the end of said tenure and that the decision shall be recorded with the deed.

Section 5. Issuance and Duration of Certificates

a) Any Certificate for work to be done is valid for work commenced within a period of one year from the date on which it is stamped by the City Clerk and shall remain in effect until such work is completed. If by the end of one year the authorized work has not been commenced and prosecuted with due diligence, or if such work is suspended in significant part for a period of one year after the time the work is begun, the Certificate shall expire. However, the applicant may request an extension or renewal of the Certificate, and at its discretion the Commission may grant, in writing, an extension or renewal of the Certificate for a period not to exceed one year. If the Commission does not grant an extension, any new application will need to fulfill all requirements and guidelines that may be in force at that time; there will be no grandfathering of previously approved plans that have not been completed.

b) Certificates shall expire when the applicant no longer possesses an ownership interest in the property. Any previously approved work not yet completed at the time of the sale or transfer must be resubmitted to the Commission for approval.

Section 6. Final drawings and design development

a) For projects requiring working drawings or similar detailed technical information, approval based on design documents that are less detailed than working drawings shall be contingent upon continuing review and approval by staff and/or a subcommittee of details and of any proposed changes.

b) The Commission may approve applications "subject to review and approval of details by a subcommittee or staff." Unless specified otherwise, such review and approval should be limited to details, dimensions, and materials decisions whose effect would not materially change the appearance of the project, as depicted in the design presentation drawings that were reviewed and approved by the Commission. Staff shall consult with the Chair if clarifications are required regarding the Commission's intent.

c) The Commission may approve applications, particularly for larger projects such as new buildings, “subject to review and approval of details by a subcommittee and staff,” in which case the subcommittee may approve minor changes that would be apparent if shown on the approved drawings, as long as the subcommittee believes that the changes are reasonably justified, minor in character, and in keeping with the Commission’s intentions in approving the design. The subcommittee may consult with the Chair, or with the Commission at its next regular meeting, if in doubt.

d) After approval at a public hearing and further development of the plans, if required, each page of two copies of the approved building drawings shall be stamped as “Approved” signed and dated by the Chair. One copy of the approved and signed plans shall be delivered by staff to the Building Commissioner and the second, along with any supporting material presented for the Commission’s consideration, shall be placed in the Commission files.

e) If the Commission or staff in consultation with the Chair determines that a proposed change to an already issued Certificate of Appropriateness or Certificate of Hardship project is substantial, then a new public hearing and a new Certificate are required. Applicants may anticipate this requirement by applying for such a Certificate in a timely manner.

Section 7. Construction, Inspection, and verification of work performed

a) A Commissioner or Staff shall periodically make site visits to projects under construction including a final visit before a certificate of occupancy is issued and, in cooperation with the building inspector, verify that they appear to be in conformity with the approved design. If any condition at variance with the approved design is observed, the Commission or Staff will request that the Certificate of Occupancy be withheld until the project is in conformity with the approved design. Any unauthorized work done outside the scope of the Certificate of Appropriateness and not promptly corrected renders the Certificate of Appropriateness null and void.

b) For alterations, construction, or demolitions subject to Commission review and that require a building permit, the Building Commissioner is the *de facto* next line of enforcement of Commission rules and regulations, design guidelines, and decisions. Just as the Building Commissioner cooperates with and coordinates with the Board of Health and the Conservation Commission to ensure that proposed documents are acceptable to those City bodies, the Building Commissioner is to ensure that no building permit is issued in an Historic District for plans that have not received a Certificate from the Commission. In addition, the Building Commissioner must be attentive to the approved design and must notify the Commission in the event of any variations observed between the approved design and the as-built project.

c) In the event of differing views or uncertainties about what was approved by the Commission or possible conflicts between Building Code requirements and parameters established in the Certificate issued by the Commission or the plans as stamped and signed by the Commission, the Staff and Chair will consult with the Building Commissioner to establish a mutually

agreeable process to reach a solution on an expedited basis. The Chair will inform the Commission members of any such occasions, and the Commission will meet, on an emergency basis if needed, to decide how to proceed.

Section 8. Enforcement and penalties

a) The Commission shall determine whether a particular activity not authorized by any certificate is in violation of the terms of the Historic District Ordinance. Upon a written complaint of any City resident or property owner, or upon its own initiative, the Commission may initiate any appropriate action or proceedings in the name of the City to prevent, correct, restrain, or abate violation of the Ordinance.

b) If an owner of a property in an Historic District either: i) fails to obtain a Certificate for alterations, construction, or demolition under the Commission's purview, or ii) fails to observe the conditions of a Certificate, the Commission shall first notify the owner in writing that the requirements of the Ordinance and/or Certificate are not being met. The owner will be given one week to respond to this notification with a plan to correct the situation. The owner will be requested to present the proposed plan at the next Commission meeting. If there is no satisfactory response from the owner within that time period or if the proposed plan (as it may be modified during the discussion at the Commission meeting) is found inadequate, the Commission may declare the situation on the site to be illegal under MGL. 40C §6 and request that the City apply the available remedies under MGL. 40C §13. The Commission may also refer the matter to the Building Commissioner for enforcement of the conditions of the building permit or to remedy the absence of a permit if that is the case.

c) As provided by §1-9 of the City Ordinances, as may be amended from time to time, whoever violates the provisions of Ch 3 Art. XXX, may be punished by a fine not exceeding three hundred dollars (\$300). As provided by M.G.L. c. 40C, section 13, as may be amended from time to time, whoever violates to any of the provisions of M.G.L. c. 40C, may be punished by a fine of not less than ten dollars (\$10) nor more than five hundred dollars (\$500). Each day any violation continues shall be deemed a separate offense.

d) The Commission may exercise the procedures provided pursuant to MGL. 40 §21D for non-criminal disposition of violations of these rules and Ch 3 Art. XXX City of Fitchburg General Ordinances in District Court.

Section 9. Filing.

The Commission shall file with the City Clerk and with the Building Commissioner a copy or notice of all certificates and determinations of disapproval issued by it.

F. ADVISORY DESIGN REVIEW AND DETERMINATION OF WHETHER A BUILDING IS "HISTORIC" UNDER THE CITY'S ZONING BYLAW

Section 1. Determination of whether a building is “Historic”

If the design of a proposed modification of an existing building that is believed to be “Historic” is referred to the Commission for review either by direction of the Zoning Board of Appeals (ZBA) or Planning Board, the Commission shall first determine by vote that said building is “Historic” with respect to the purposes of the Zoning Bylaw by applying such standards of historical significance as the Commission might use with respect to sustaining an initial determination of Significance of the City’s Bylaws and the Commission shall report such determination.

Section 2. Design review of modifications to such an “Historic” building

Immediately following such determination that such a building is “Historic” with respect to the purposes of the Zoning Ordinance the Commission shall undertake design review of the proposed modifications applying, to the extent allowed by the circumstances, the design standards and guidelines used for design review in the City’s Local Historic Districts while following as needed the applicable administrative and calendar requirements of the Zoning Ordinance and MGL c.40A. Except when final design approval by the Commission has been made mandatory by the ZBA, if for any reason the Commission and the applicant are not able to arrive at a mutually acceptable design at the conclusion of the review process, the Commission’s report to the ZBA shall describe all concerns which the Commission has with the final design and shall recommend to the ZBA whether or not the design should be approved.

G. CAPTIONS and SEVERABILITY

- a) Any captions contained herein are for identification purposes only and shall not be deemed to effect, modify, or amend in any way the meaning of these Rules and Regulations.
- b) The provisions of these Rules and Regulations are severable; if any such provision or provisions shall be held invalid or unconstitutional by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provisions of these Rules and Regulations.

END