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Demolition by Neglect: Repairing Buildings by Repairing
Legislation

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Demolition by Neglect: Repairing Buildings by Repairing Legislation

I. INTRODUCTION

One of the biggest problems today facing communities with historic preservation ordinances is delinquent owners who don't have the will or the finances to maintain their historic properties and landmarks. Historic preservation law plays an important role in building a sense of patriotism and community togetherness, fostering education and providing incentives for aesthetically pleasing architecture.¹ When residents can identify with a community, this creates a dialogue and sense of belonging. There are also environmental and psychological impacts of preserving old buildings, since human beings are positively affected by their surroundings when they feel a "sense of place."² When buildings in a historic district fall prey to 'demolition by neglect,' meaning that the owners allow their property to reach a state of deterioration, the entire sense of community can be lost.

In light of the neglect that often takes place, many cities, in their historic preservation ordinances and regulations, have introduced provisions defining demolition by neglect and placing upon owners an affirmative duty to maintain their property. These are crucial for several reasons: to maintain the beauty and functionality of the buildings; to make owners responsible for their properties; and to maintain the cohesion of the neighborhood as a whole. It is also a way to prevent property owners who intentionally

¹ Carol Rose, *Preservation and Community*, 33 STAN. L. REV. 473, 479-80 (1981).

² *Id.* at 480.

allow their building to deteriorate to circumvent historic preservation regulations.³ Often owners who want to build new developments in place of a historic building will allow it to become severely deteriorated and then request a demolition permit.⁴ They then might argue that the enormous cost of repair creates an economic hardship. Affirmative maintenance provisions must therefore be enacted with specific language about required repairs and remedies with adequate means to enforce them.⁵ Owners should not have the ability to let their property fall apart and then claim it has such little market value that spending more money than it is worth would constitute a taking or an economic hardship. Therefore, Preservation Commissions must look beyond a simple comparison of the cost of repairs versus the asking price of the property when considering these demolition requests.⁶ This should include considering the historic attributes of the building and its contribution to the district as a whole. This will make it more difficult for owners to attempt this type of neglect in hopes of demolition.

II. DEMOLITION BY NEGLECT COMPARED

Washington D.C., the focus of this paper, is a city with a demolition by neglect ordinance that has never been used to its capacity because the city lacks regulations with specific procedures, and of equal importance, it lacks the money to enact repairs on its own. This paper looks at the demolition by neglect provisions in New Orleans, Philadelphia, and New York City and focuses on what does and does not work, based on

³ Preservation Law Reporter, *Educational Materials: Demolition by Neglect*, National Trust for Historic Preservation, 2005.

⁴ See, e.g., Jad Davenport, *Nick of Time*, Preservation Online (Aug. 29, 2003) available at http://www.nationaltrust.org/magazine/archives/arch_story/082903.htm (explaining the near demolition by neglect of historic cottages in La Jolla, California because the owner wanted to build a multi-story hotel).

⁵ Preservation Law Reporter, *Educational Materials: Demolition by Neglect*, National Trust for Historic Preservation, 2005.

⁶ *Id.*

the language of the ordinance and the history and practice of its enforcement. By borrowing the positive and being alert to the negative aspect of each, this paper proposes steps for D.C. to take and regulations for it to enact in order to achieve greater success in forcing homeowners to maintain and repair their buildings.

A. WASHINGTON, D.C.

DC's statute introduces the responsibility of owners to maintain their property against decay and deterioration, with an inconclusive list of examples of defects that should be promptly corrected.⁷ It then sets out remedial provisions for those who violate this section. If the mayor determines that a historic landmark or building is threatened by neglect, upon obtaining an order from the Superior Court, the Mayor may require the owner to repair all conditions contributing to the neglect. In the alternative, the city can enter the property on its own and make the repairs necessary to correct the problem, charging all costs to the owner by levying a lien against the property.⁸ There is an additional provision for criminal penalties for violation of any provision of the act; and an alternative option for civil fines or penalties.⁹ It does not specify which is the preferred method or the process for instilling the fines or imprisonment. The regulations enacted in 2002 merely repeat the power of the Mayor's Agent to determine if buildings are threatened by neglect; and if so, to take appropriate measure to remedy the situation.¹⁰

There are several limitations of this provision, namely the lack of day-to-day procedure in order to identify and repair deteriorating buildings. First, there are no

⁷ D.C. CODE ANN. § 6-1109.02 (2001).

⁸ *Id.* § 6-1109.03.

⁹ *Id.* § 6-1110.

¹⁰ 10 D.C. Mun. Regs. 104.5

specific procedures for notification to homeowners, time limits for corrections, hearings and follow-up assessments. The Mayor is given the power to require the owner to repair neglected conditions, but is not provided with any mechanism for fulfilling this obligation. What kind of notice must he give the owner and within how many days must the owner respond? When can further action be taken when an owner refuses to respond to a notice or submit a plan of repair? Who and when follows up on the status of the owner's repairs? These are all details that, if specified in regulations, would make it easier and more feasible for the city to enforce demolition by neglect provisions.

Another major problem not adequately addressed is how to accommodate indigent owners who can not afford to make repairs on their house. There is no exception in the code for an owner who doesn't have the money to repair his property, regardless of whether or not his neglect was intentional. This must be addressed in some form because it is often in weak market neighborhoods that buildings are abandoned and demolished by neglect.¹¹ Although this paper focuses on steps needed to force owners to act, one must always keep in mind that some owners do not have the financial means to take action. If there is no option for economic relief, these owners will be forced to sell their homes and move out if they can not afford to make repairs, something that goes against the community enhancement purpose of historic preservation. The city recently enacted a Historic Housing Grant Program which entitles homeowners of historic properties to receive a grant valued at 35% of applicable D.C. income taxes toward the expenses of rehabilitating their homes.¹² There are some restrictions based on the owner's income and

¹¹ See <http://www.nationaltrust.org/housing/housingstatement.html>.

¹² D.C. Historic Housing Grant Program, *available at* http://www.planning.dc.gov/planning/frames.asp?doc=/planning/lib/planning/DC_Historic_Housing_Grant_Program.12.06._pdf.pdf.

amount of repairs, but it is noteworthy that the city realizes something must be done to encourage the maintenance of properties in historic districts for those who can not afford to themselves.

Although there is a provision in the Code for the Mayor to enter the property and maintain it himself, he generally does not have adequate funding to initiate the repairs. If and when a building becomes a nuisance, the Department of Regulatory and Consumer Affairs handles the demolition under its budget from the city. Yet forced demolition repairs are to come from the budget of the Historic Preservation Officer, which is not large enough to initiate substantial repairs. The lack of use of this provision is demonstrated by the limited case law on the subject. In fact, there is only one reference to demolition by neglect in an adjudication held by the Department of Consumer and Regulatory Affairs.¹³ The problems the city faces are also highlighted by the Comprehensive Plan of DC, which points out that many buildings are threatened by demolition by neglect.¹⁴ One of the goals is to prevent “demolition of historic buildings by neglect or active intent through enforcement of effective regulations, imposition of substantial civil fines, and when necessary, criminal enforcement proceedings against those responsible.”¹⁵ Part of this process must and should look to other cities for inspiration and guidance.

¹³ See In the Matter of: 1230, 1232, 1234, and 1236 Pleasant Street., S.E. HPA No. #98-150; 98-151; 98-152; & 98-153 (mentioning yet subsequently dismissing idea that buildings had been demolished by neglect).

¹⁴ District of Columbia Comprehensive plan, Dec. 19, 2006, *available at* <http://planning.dc.gov/planning/lib/planning/CitywideElements-122006.pdf>.

¹⁵ *Id.*

B. NEW ORLEANS, LOUISIANA

The enabling legislation of the City of New Orleans has a demolition by neglect provision supplemented with detailed guidelines.¹⁶ If the Commission determines that a building is being neglected, it must notify the owner, by certified mail or by attaching the notice to the building, that specific, recommended repairs must be commenced within 30 days.¹⁷ If the owner (applicant) does not begin work, he shall be notified to appear at the next public hearing of the Commission; whereby he can rebut any of the reasons for the issuance of the original notice.¹⁸ If demolition by neglect is determined, the Commission can bring charges against the owner for violation of the ordinance. It also has the authority to commence repairs at its own expense as a lien and privilege against the property.¹⁹ Under the enforcement powers, the Commission has the authority to fine, initiate a civil action for injunctive relief, or implement any other appropriate remedy against violators of the ordinance or any of the rules and procedures.²⁰ Still further, the guidelines to the ordinance specifically list the types of deficiencies that constitute neglect, as well as the specific criteria for the determination of neglect.²¹ It outlines an eight-step process by which a building is officially cited for neglect; the final option being an action by the City in Civil District Court. The last section has a list of types of demolition by neglect and recommended corrective measures.²² Although the New Orleans ordinance is extensive and specific on its face, due to limit personnel and funding, the eight stages for official citation are not always followed or completed.

¹⁶ See New Orleans Guidelines attached as APPENDIX A.

¹⁷ See City of New Orleans Ordinance Section XII (1976), available at <http://www.cityofno.com/Portals/Portal99/portal.aspx?portal=99&tabid=2>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at Section XIII.

²¹ See *Id.* at Guidelines for Demolition by Neglect (see also attached APPENDIX A).

²² See *Id.*

The first two steps, inspection and citation of a neglected building, are done by the building inspector. His inspection generally focuses on whether or not the building is open to the weather or to vandals.²³ Because there are so many blighted buildings in New Orleans, there simply isn't enough time to inspect and cite properties with more minor problems of neglect. The inspector will first issue a one-day, preliminary citation. This is done via certified mail, but if there is no registered mailing address, a notice will be put on the building itself. If there is no response from the owner and since the process has already begun, he will follow up with a formal, five-day citation, meaning that the property is cited five days in a row. If there is still no response, the Commission will notify the parties that an adjudication will be held. At the hearing, the parties must work with the administrative law judge to come up with a repair plan that should be put into action as soon as possible. If the owner does not appear at the hearing, then an automatic fine is levied against the property.²⁴

Before Hurricane Katrina, about five to ten citations of demolition by neglect were issued on a weekly basis. This included new citations and follow-up citations. Now that the city has other issues occupying its time and energy, only about 2 or 3 citations are issued on average each week. According to the building inspector, there are only so many times the Commission can continue to cite a building, and only so many fines they can levy against it.²⁵ According to the Commission, one of the city's main problems is the follow-up process after citations are made. After several inspections are done, photographs are taken, and a case synopsis written, the Commission must appear before

²³ Telephone Interview with Eldon Hunter, Building Inspector of New Orleans Historic District Landmarks Commission (March 29, 2007).

²⁴ *See Id.*

²⁵ Telephone Interview with Eldon Hunter, Building Inspector of New Orleans Historic District Landmarks Commission (April 5, 2007).

the hearing officer and the property owner to make its case. This time-consuming process is conducted by only one individual.²⁶ Because adjudication hearings are usually only held once a month, and because the senior architectural historian is the only one working on them, she must limit herself to 15 cases per hearing (and this includes all violations not just demolition by neglect). If she submitted every case that needed to be heard, she would not have time to focus on any of her other job responsibilities.²⁷

The success rate for demolition by neglect cases is not very high. Often the owners do not cooperate and the case is continually submitted for additional fines. This occurs because the Commission has not been able to implement an efficient and successful follow-up process, mostly due to a lack of manpower. In the event that a case is reset because the owner agrees to make the corrections, then the Commission will re-inspect and close the case if the work has begun. If the work hasn't been done, the case is usually reset for the next month while the Commission tries to have the owner fined. Unfortunately, there is currently no good tracking process for bringing the cases back in a timely manner. The Commission generally tries to bring back the case with new charges at least once a year, cases often fall through the cracks.²⁸ Additionally, it has recently come to the attention of the Commission that the process of fining the owner as a lien against the property might not actually be happening, and therefore there are no properties being sold for taxes and liens with the Sheriff's Department. (The Commission is currently looking into the situation and has not yet determined the outcome.) Still

²⁶ Email correspondence with Tracy St. Julien, Senior Architectural Historian, New Orleans Historic District Landmarks Commission (March 30, 2007).

²⁷ *Id.*

²⁸ *Id.*

further, budgetary constraints prevent the city from making use of its power to initiate the work itself and charge this amount against the property.²⁹

There have been some success stories, however. Most recently, a property located near the French Quarter was taken off the demolition by neglect list.³⁰ In 2002, the original owners had allowed the property to deteriorate and so the Commission cited the building. However, the listed owner was deceased and his children had inherited the property. They would not spend any money to repair the property, but they also did not want to sell it because of its sentimental value. The Architectural Historian eventually took the family to adjudication in 2003 where, when faced with serious fines, they decided to sell the building to a young couple. The new owners spent years rehabilitating the property, both before and after Hurricane Katrina. As of March 2007, the building was no longer listed as demolition by neglect.³¹ As long as the Commission can see the owners making an effort to work on and repair the property, like these new owners, then they will not issue citations. Here, when old and new owners are willing to cooperate and expend resources on a building, demolition by neglect can be avoided.

New Orleans currently faces new challenges in light of the extensive damage incurred by Hurricane Katrina. Many property owners that were flooded are waiting for government money to repair their property, so in these instances the citation process has been suspended for them.³² As one New Orleanian noted, in light of the current housing crisis, “[I]t is appalling that . . . the Mayor and the City are incapable of stirring

²⁹ Email conversations with Camille Strachan, attorney and former trustee of the National Trust for Historic Preservation and former member of the Preservation Resource Center of New Orleans (Mar. 20 and 21, 2007).

³⁰ Email Conversation with Tracy St. Julien, Senior Architectural Historian, New Orleans Historic District Landmarks Commission (April 17, 2007).

³¹ *See Id.*

³² *See* Phone conversation with Eldon Hunter, *supra* note 23.

themselves to serve immediate notice on the owners of these properties that have received prior citations that if they don't begin repairing them within 30 days, the property will be seized and auctioned for repair and immediate occupancy. An enormous proportion of the entire housing shortage of the city could be resolved simply by finally addressing a problem that has been neglected by one administration after another stretching back for decades.”³³ One noteworthy architect suggests a “parking-ticket-style ‘quality of life’ citation with such violations as illegal demolition by neglect in order to enforce existing code violations.”³⁴ This of course would involve extensive city-wide coordination among the police department, the landmark commission and other agencies, a task that seems unlikely in the city’s current state of affairs.

New Orleans is a city with an extensive ordinance and regulation with enforcement mechanisms in place. Its notice, inspection and citation process, with its strict time limits, are helpful details that Washington D.C. could learn from. Of course, as demonstrated by the current plethora of blighted houses, there is a large amount of responsibility and work being placed on a few people with limited time and resources. Additionally, enforcement, when utilized, is not always complied with, seemingly because of faulty follow-up mechanisms. If owners know that fines will continued to be levied, fines that they won't be responsible for, then there is not much incentive to make the repairs; especially if they have no intention of selling the home. However, one must keep in mind that Hurricane Katrina had a devastating effect on the already lacking resources and manpower of the city. Therefore, in looking to New Orleans’ Ordinance and Guidelines as inspiration for detailed processes, one must keep in mind that current

³³ Louisiana Cultural Vistas magazine, editorial by Michael Sartisky, *Housing Divided: A Study in Failure* (Fall 2006).

³⁴ MacCash, Doug, *The Visionaries*, 2006 WLNR 21305886. New Orleans Times Picayune, Dec. 10, 2006.

lack of enforcement, although a problem before, has become more prevalent since the storm.

C. PHILADELPHIA, PENNSYLVANIA

Philadelphia, Pennsylvania is another city with a rich architectural history and beautiful buildings that are protected from neglect by a preservation ordinance and regulations promulgated thereupon. The Department of Licenses and Inspections is given the authority to examine the buildings and report on their physical condition.³⁵ Owners have an obligation to keep the exterior and interior of buildings in “good repair” in order to prevent decay and deterioration. The Department can issue orders directing compliance with the Act, and failure to do so will result in a fine of \$300 per day.³⁶ Pursuant to its authority under the Act, the Philadelphia Historical Commission promulgated Rules and Regulations to better fulfill its mission. Under these, the Commission can request that the department examine, and if necessary, issue an order to repair a neglected building.³⁷ Otherwise, the regulations merely reiterate the Commission and Department’s authority to work together to enforce the obligations and responsibilities of homeowners pursuant to the Code.

In practice, the major “teeth” of the ordinance is found with the Department of Licensing and Inspection. Unlike in other cities, Philadelphia’s Department is also responsible for the issuance of violations and subsequent follow-up. If the Commission learns that a building has fallen into a state of disrepair, it will first go out and inspect the

³⁵ PHILADELPHIA CODE §14-2007(8)(a)-(c) (2004).

³⁶ *Id.* at §14-2007(9)(a)-(d).

³⁷ Philadelphia Rules and Regulations, Section 11.2 (Aug. 1990).

building itself for corrosion, rotting or other severe conditions.³⁸ The Landmarks Commission will then write a memo to the Department requesting that it issue a violation. The process then follows the Department's Regulations. Generally the owner has 30 days to get a permit to correct the building. If he fails to do so, he will receive a court summons.³⁹ The judicial process, 90% of the time, is resolved before the judge enters the courtroom. Usually, in the presence of a hearing officer working under the judge and a representative from the Department, the owner will agree to make changes by signing a settlement paper. Although the judge is generally not present at this point, this is a very formal process with all of the usual court documents.⁴⁰ The settlement will often name the repairs and demand that the owner return in 90 days to report on his progress. If the building has not been fixed, the conditional fine previously levied becomes an actual fine of \$300 per day. The owner must also pay all of the court fees. Many times owners will be taken to court several times before work is actually completed.⁴¹

The Philadelphia Commission's protocol is to seek a violation as its first step of action, rather than first attempting to contact the parties and work on some sort of negotiation or agreement. Another tool the city has at its disposal is to, by working with the Contractual Services Department, contract with a company to repair a severely neglected building and charge the cost as a lien against the property. This is not used frequently because the city's annual budget is limited. However, the Assistant Historic Preservation Officer remembers two successful cases in the past ten years, one of an old church and one of an old residence, where deteriorating roofs were repaired using this

³⁸ Telephone Conversation with Randal Baron, Assistant Historic Preservation Officer, City of Philadelphia Historical Commission (Apr. 10, 2007).

³⁹ *See Id.*

⁴⁰ *See Id.*

⁴¹ *See Id.*

method. In general, however, this is a costly process and raises potential liability issues if the city's repair is faulty.⁴²

In general, not many demolition by neglect violations are issued for two reasons. First, often a building will become a mere neglected shell when the heirs to it are fighting over how to maintain it. Usually they can't agree on who will pay to fix it up. Frequently the market will heat up and then it becomes financially feasible for the owners to make the extensive repairs. In these instances, the Commission allows the market to do the enforcement. For example, in 2006, a building had fallen into neglect when the owner, who ran a doctor's office there, passed away. Because the buildings were beautiful and historic, the community development corporation raised \$4 million to build the "Winston Commons," a retail and condominium space. The building retained many of its historic attributes in the process.⁴³ Other times, there is a risk that issuing a violation will lead to a full inspection which will reveal that the building is too dangerous and has to be torn down.⁴⁴ In other words, the Commission doesn't want to push too hard because it then risks the complete loss of the building. However, this would seem to be a minimal consideration since the alternative is to have the building collapse from neglect in situations where the owner is completely negligent. As can be seen, there are many different considerations and factors for the Commission to consider when using and implement its preservation ordinance. However, after downsizing its staff, the Department of Licenses and Inspections has not had as much man power to take many cases to adjudication.

⁴² *See Id.*

⁴³ *Philadelphia Action News*, 2006 WLNR 19083771 (Nov. 1, 2006).

⁴⁴ *See* Conversation with Randal Baron, *supra* note 38.

Another method for identification of endangered properties involves citizen's involvement in listing the building under the Preservation Alliance's Endangered List. The Preservation Alliance is a nonprofit membership organization that "promotes the appreciation, protection, and revitalization of the Philadelphia region's historic buildings, communities, and landscapes."⁴⁵ It seeks suggestions from members, residents and professionals from the area of buildings that are being threatened by neglect and demolition.⁴⁶ This, of course, is a limited resource for the City because it involves very pro-active citizens, and naming a building on the list does not mean that it will be repaired, it merely means the organization will spend greater efforts to nurse it back to health. Some frustrated homeowners blame the continued neglect in the city on the fact that civic associations, which review plans with developers, are private, nonprofit corporations and therefore have no enforcement authority over delinquent landowners. The only thing they can do is discuss the blight with the owner and try to shame them into repairing and improving their properties.⁴⁷ One suggestion would be to increase the Department of Licenses and Inspections budget so that it has more resources with which to inspect buildings and issue code violation citations.⁴⁸

The lack of enforcement in Philadelphia can be demonstrated by a case involving repair of a building based on economic hardship. In 1999, a joint venture that owned historic townhouses in Philadelphia applied to the Department of Licenses and Inspections for approval to reconstruct marble cornices of one of its houses in

⁴⁵ See Preservation Alliance, *available at* <http://www.preservationalliance.com/about.php>.

⁴⁶ *See Id.*

⁴⁷ See <http://www.phillyblog.com/philly/showthread.php?t=30974>

⁴⁸ *See Id.*

fiberglass.⁴⁹ After an Appeal, the court held that the owners could not do this because they did not fall under the economic hardship exception of the statute. The case was decided based on the statute's Standards for Preservation. The plaintiff failed to provide enough evidence to warrant an economic hardship excuse for the reconstruction of historic cornices in a material other than one compatible with the original marble. This case is significant for demolition by neglect, however, because the original deterioration of the cornices was due to demolition by neglect.⁵⁰ Even though the owners brought the neglect onto themselves, the Commission had originally approved the Company's request to re-build the cornices with fiberglass because it was a cheaper material and had been used as a replacement in other buildings.⁵¹ Luckily the Society Hill Civic Association intervened because any type of repair to a building based on owner neglect should not allow these same owners to circumvent using better quality materials because they claim they are too expensive.

D. NEW YORK, NEW YORK

New York City has a preservation ordinance whose demolition by neglect provisions had one of the most successful enforcement histories. Not only is the act effectively administered by the Landmarks Preservation Committee, but also, and fortunately, the high market value for property in New York City makes the abandonment and negligence of buildings rare and ill-suited for any property owner. The city's administrative code requires owners to keep the interior and exterior of their buildings in

⁴⁹ See *Society Hill Civic Association v. Philadelphia Board of License & Inspection Review*, 905 A.2d 579, 582 (Commonwealth Court of Pa. 2006).

⁵⁰ See *Id.*

⁵¹ *Id.* at 583.

“good repair” to prevent deterioration or decay.⁵² Any violation of this requirement can lead to punishment by a fine (not more than \$1000 but not less than \$500) or by imprisonment (not more than thirty days). Each day that the violation exists constitutes a separate offense.⁵³ Violators may also be subject to a civil penalty which may be recovered in a civil action in any competent court or by an administrative hearing. The defendant may be liable for either: the fair market value of the property (with or without improvement); double the cost of replicating the features that were demolished; or an amount not more than \$5000.⁵⁴

Although there are no rules that define or outline the specific process for inspection, notification, citations and follow-up, the New York Landmarks Commission has developed a successful system for dealing with negligent owners. The goal of the Commission is to restore the buildings to a repaired state, rather than penalize the owners for negligent behavior. Therefore, the Commission tries its hardest to work with the owners before even mentioning the threat of a lawsuit in court.⁵⁵ During the first 35 years of the Commission existence, only one demolition by neglect case was brought because lawsuits are such a time-consuming process, and so its time was better spent working with owners to repair. In the past 5 years, the Commission has become much more active and is, in fact, filing 3 lawsuits in the Supreme Court of New York this year.⁵⁶ This can

⁵² NEW YORK, N.Y., CODE § 25-311(a) (2001).

⁵³ See § 25-317(b) & (d).

⁵⁴ See § 25-318(a) & (b)

⁵⁵ Telephone Conversation with John Weiss, New York Landmarks Preservation Commission Deputy Counsel (Apr. 4, 2007).

⁵⁶ See *Id.*

be attributed to an increase in staff members and the accomplishment of other Commission goals, thereby freeing up the staff to focus on demolition by neglect.⁵⁷

Once a building is identified as threatened, either by a city agency or a concerned citizen, the deputy counsel of the Commission, an in-house lawyer, will visit and photograph it for evidence of its neglect. There is no initial citation process or issuance of violations for major neglect cases, versus lower-level neglect which is determined under the City Rules and dealt with via warning letters. Good repair, as defined in the statute, has come to mean a building that is structurally sound, watertight, and whose significant architectural features are secure and not at risk. This is determined on a case-by-case basis.⁵⁸ If the building is in fact a case of demolition by neglect, the Commission will generally spend up to one year working with the owner to make improvements. The owner is contacted, usually via telephone, about his legal obligation to make repairs, and communications continue between the owner and commission via telephone, personal meetings and letters.⁵⁹ As noted, the Commission is extremely flexible in this procedure because its ultimate goal is to have the building repaired without filing a lawsuit. Sometimes, however, the damage is so obvious and extreme, and the owner so unresponsive, that it will take the case to court within eight or nine weeks.⁶⁰

When the damage is extreme, sometimes another city agency will be called in to make emergency repairs. The cost for this, supplied by the Agency making the repairs, will be charged as a lien against the property and added to the list of violations when the

⁵⁷ Email from John Weiss, New York Landmarks Preservation Commission Deputy Counsel, (Apr. 20, 2007).

⁵⁸ Email from John Weiss, New York Landmarks Preservation Commission Deputy Counsel, (Apr. 6, 2007).

⁵⁹ See Conversation with John Weiss, *supra* note 55.

⁶⁰ See *Id.*

claim is taken to court. Although the Landmarks Commission does 90% of the work involved in preparing a court action, such as compiling affidavits and complaints, the City's Legal Department actually takes the case to court. There is sometimes an issue of contention between the two groups over the extent of the penalties that should be sought. The Law Department often thinks harsh penalties are effective, but the Commission does not see these as an effective deterrent in most cases.⁶¹ When buildings are investigated, the Commission will not close the case until the repairs are done. The average time-frame owners are given to make repairs after promising to do so is six months. If work has been done, the case will be dismissed.

A specific example of the successful process that New York follows can be found in a 2005 draft complaint on file with the Commission. The complaint first states the exact disrepair, such as damaged front windows, missing front steps and a rotted front porch.⁶² It then highlights the attempts the Commission made to notify and meet with the owners to discuss and negotiate repairs from 1997 until 2005. Because the owners were so negligent in their response, and attempted to drag the case on for years, the Commission resorted to a lawsuit. There were phone calls, letters and meetings which gave the owner plenty of opportunity to legally comply with the Landmarks Act. After an inspection of the house in 2005 revealed that it was not sealed or water tight, the Deputy Counsel sent the owner a letter naming three companies that seal historic buildings and provide ventilation to prevent the buildup of mold.⁶³ The Commission went out of its way to try to come up with a solution. Because the owner still did not apply for repairs,

⁶¹ *Id.*

⁶² Draft Complaint, *City of New York v. Alfred Palmer* at Paragraph 14 (Supreme Court of the State of NY, County of Kings 2005), on file with John Weiss, New York Landmarks Preservation Commission Deputy Counsel.

⁶³ *Id.* at Paragraphs 15-33.

the city sued the owners under Section 25-317.2.d of the Administrative Code, which applies to historic buildings and landmarks, enjoining them to restore the premises to a lawful condition. The plaintiffs did not specifically request fines, but included in its request “such other and further relief as the Court may deem just, proper and equitable.”⁶⁴

The recent enforcement of the New York Administrative Code relating to maintenance of historic buildings has continued to be extremely successful. For example, after a neglected building in Brooklyn was partially destroyed by a fire, the deputy counsel met with the owner to discuss the situation. Because the owner was an elderly man and had accidentally let the building fall into disrepair due to his deteriorating physical state, the Commission did not think levying a \$5000 fine would be appropriate. Instead, after approaching and discussing the situation with the man, he sold the building and it has now been restored.⁶⁵

There are, of course, those owners who intentionally want to neglect their buildings in the hopes of getting it demolished. Currently, the Commission is about to file suit against the owner of a large building in Manhattan. In addition to requiring the building to be repaired, the Commission will request a \$5000 per day penalty because of the intentional nature of the neglect. The owner is a large corporation that has the resources to fix the building up, but would rather have it torn down.⁶⁶ This case could end up costing the owners a lot of money, not only in penalties, but also in litigation costs

⁶⁴ *Id* at Paragraph 49.

⁶⁵ Telephone Conversation with John Weiss, New York Landmarks Preservation Commission Deputy Counsel (Apr. 4, 2007).

⁶⁶ *See Id.*

because cases can take years to be decided. The Deputy Counsel is optimistic that the Commission has the resources to successfully fight this negligent owner.⁶⁷

One of the few published opinions about demolition by neglect occurred in New York City. The Skidmore house, a Greek revival row house, had fallen into disrepair because the owners wanted it torn down. The New York Landmarks Preservation Commission sued the owners directing them to repair and restore the exterior building.⁶⁸ The court held that there was enough evidence to show that the building had fallen into a state of disrepair. The plaintiffs testified about the efforts made to compel the defendants to repair the building which included the issuance of numerous permits.⁶⁹ The court looked at the extent to which the defendants may be compelled to undertake the repair to an exterior and interior of a building. It held that the Report submitted by the Commission spelling out the exterior repairs was rational and reasonable, and that the Commission should also be given access to the interior in order to survey whether or not further repairs are needed.⁷⁰

This was the first time a court had enforced the “keep in good repair” requirement of the city’s landmark preservation law.⁷¹ It is an excellent example of demolition by neglect being enforced. However, the Commission had to go through a lot to get the owners to act. In fact, according to the Chair, the Commission tried for years to get the owners to do the right thing.⁷² Inspections reporting the decay began in 1995, the court

⁶⁷ *See Id.*

⁶⁸ *See City of New York v. 10-12 Cooper Square*, 7 Misc.3d 253 (2004 N.Y. Slip Op. 24548).

⁶⁹ *Id.* at 256.

⁷⁰ *Id.* at 258-59.

⁷¹ *See* Press Release of New York City Law Department (Dec. 22, 2004), *available at* <http://home2.nyc.gov/html/law/downloads/pdf/pr122204.pdf>.

⁷² *Id.*

action was commenced in 2002 and decided in 2004.⁷³ This was an arduous process which is definitely a disincentive for Landmark Commissions in any city to bring an action in Court. One positive thing for New York, however, is that “the decision will not only save the Skidmore House but will assist the City in its efforts to maintain other landmark properties.”⁷⁴ Ideally this type of court enforcement will send a signal to other property owners that demolition by neglect is not a crime to be taken lightly.

E. EMINENT DOMAIN

Demolition by neglect ordinances are essentially an outgrowth of the city’s eminent domain power. Since the infamous Penn Central case,⁷⁵ it has been widely accepted that governments have the power to prevent owners from destroying historic properties because these properties benefit the public good. Eminent domain, defined as “the inherent power of a governmental entity to take privately owned property, esp. land, and convert it to public use, subject to reasonable compensation for the taking”⁷⁶ should be used in exigent circumstances only,⁷⁷ and just compensation is required. Hence, it is undisputed that the city has the power to keep the city aesthetically pleasing, economically viable and physically vibrant. An interesting case in Tacoma, Washington leads one to wonder whether eminent domain could and should be used to prevent demolition by neglect.

⁷³ See *Cooper Square* at 256-59.

⁷⁴ See Press Release (quoting Senior Assistant Corporation Counsel Paula Van Meter of the Law Department’s Administrative Law Division).

⁷⁵ See *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104 (1978) (holding that a taking has not occurred when the owners can still retain some use and value of the property).

⁷⁶ *Black’s Law Dictionary* (8th ed. 2004).

⁷⁷ See *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 416 (1922).

This case relates to a city's ability to make owners take charge, or else take charge themselves. In Tacoma, the city council used its power of eminent domain to preserve a historic building that had fallen into disrepair.⁷⁸ The building at issue was the Old Elks Temple which, although not listed on any historic register, was considered a pivotal structure in the Old City Hall Historic District.⁷⁹ Upon inspection of the building, it was found to be derelict. The city wrote the owners letters informing them of their requirement to make repairs, and when these when unanswered, the city issued civil citations. According to Tacoma's Code, the city can issue a Certificate of Complaint if the owner does not respond to the notice that it has a blighted building, and penalties have accumulated to an amount over \$1000. A copy of the Complaint is sent to the owner notifying him that the city now has two options with how to deal with the blighted building: it can "Procure the Property through Eminent Domain" or "Start Dangerous Building Proceedings."⁸⁰

The owners then sought a demolition permit because they foresaw an enormous economic burden in repairing the building. The Landmarks Commission denied this permit and the City Council subsequently passed an Ordinance authorizing the City to acquire the property, under both the blighted property statute and ordinance as necessary for the public use in alleviating the blighted properties of Tacoma.⁸¹ The City planned to fix the roof and the exterior in order to prevent further deterioration, and then put the building into the hands of a successful bidder based on proposals to restore the building. The city cited its Minimum Building and Structures Code which has the purpose of

⁷⁸ See *City of Takoma v. Zimmerman*, 119 Wash.App. 738 (2004).

⁷⁹ *Id.* at 740.

⁸⁰ *Id.* at 740-41 (citing Tacoma Municipal Code § 2.01.060.E.8).

⁸¹ See *Id.* at 742.

rehabilitating buildings until an economically workable remedy is found; namely one that appeals to a prospective developer.⁸² The intent of the city’s court order determining that the acquisition of the property was for a public use is to “maintain the fabric of the community.”⁸³ Not only do blighted buildings cause a health and safety threat to the community, but they also threaten the existence of historically and culturally valuable buildings. These buildings “maintain continuity of the community” by attracting tourists and locals to the area and hence enhancing the overall fluidity of the city.⁸⁴ Therefore, prevention of owner neglect is a public good for which eminent domain can be used.

The City’s decision whether to acquire the property or try to seek demolition is based on an assessment of the blighted property’s economic value, which is similar to an economic hardship exception under historic preservation ordinances. Here the owners presented evidence that the building had little economic value and should be demolished. However, according to the court, accepting their argument “creates a self-fulfilling phenomenon identified . . . as ‘demolition by neglect’.”⁸⁵ The city highlighted the historic and cultural value of the building, as well as its value in relationship to the district as a whole, when it decided to give the owners this somewhat extreme ultimatum. In other words, because the building has an effect on the neighborhood as a whole, the court looked at the entire district’s view of the value rather than just the value to the individual owner. “A landowner who allows his property to fall into disrepair endangering the

⁸² *See Id.*

⁸³ *See Id.* at 743.

⁸⁴ *See Id.* at 743-44.

⁸⁵ *See Id.* at 745-46 (quoting Video Transcript, Tacoma City Council, Ordinance 26863, First Reading October 9, 2001 and Final Reading October 16, 2001).

community thus transfers decision-making authority over the property to the elected representatives of that community.”⁸⁶

This case has important lessons not only for Washington, D.C., but also for any city concerned about demolition by neglect. A problem that many cities face is the lack of owner response and cooperation, and sometimes even the inability to locate a property owner. Having the power to take control of the building in these instances could help save many buildings from ultimate demolition. If the District of Columbia is serious about preventing neglect, it should consider amending its statute to give the City this additional power. Obviously, this kind of action will involve a high level of funding, manpower and determination. However, it will ensure that each and every historic building or landmark is taken care of. Because a negligent owner can also be disheartening for the surrounding owners, this power will be an added incentive to motivate neighbors to push for the auctioning of a building to a more responsible individual. This will inevitably lead to greater stability and maintenance of buildings and neighborhoods.

F. FEDERAL HISTORIC PRESERVATION

Although this paper focuses on local ordinances and regulations enacted in several cities, it is always relevant to keep federal law in mind, since federal law was the original source of historic preservation protection. Additionally, because the maintenance of landmarks and contributing buildings in historic districts is important all over the country, it is useful to mention one of the few published cases involving an owner’s responsibilities to maintain a building in light of the federal statute. Washington D.C.

⁸⁶ *Id.* at 747-48.

needs to focus on implementing specific rules and regulations, but it must always keep the general purpose of historic preservation in mind.

In this case, the National Trust sued the Army to compel it to expend a substantial amount of money on long-term preservation activities to preserve historic districts under its control.⁸⁷ The court held that the Army's neglect and failure to spend resources on the preservation of the historic district violated the National Historic Preservation Act. However, the court lacked authority to compel the Army to spend more money on preservation because the Act is merely procedural. "Historic preservation by its very nature demands action to stem the otherwise inevitable wear and tear of time itself Historical knowledge . . . is the life's blood of a people."⁸⁸ This case recognizes the importance of maintaining historic buildings; and since the federal statute could not require a government agency to take substantive actions to repair, it is even more important that city ordinances and regulations provide for these types of measures. After looking at several specific local ordinances, it is important to keep in mind the general, national goals of historic preservation.

III. STEPS FOR WASHINGTON D.C.; THE FUTURE OF DEMOLITION BY NEGLECT

Taking various aspects of enforcement successes and failures found in New Orleans, Philadelphia and New York, D.C. must promulgate new and extensive regulations. The success and failure of enforcement does not always directly correlate with the specificity of a regulation or ordinance, yet good law combined with serious efforts by city officials can be an effective and successful combination. If there are no

⁸⁷ See *National Trust for Historic Preservation v. Blanck*, 938 F.Supp. 908, 909 (D. D.C. 1996).

⁸⁸ *Id.* at 926.

specific deadlines and procedures, it is easy for a Commission staff to let things slide, particularly when they are short-staffed. A back-log of citations, adjudications and their follow-ups is hard to overcome. Detailed rules can provide a positive starting point for enforcement, but is definitely merely a starting point.

This disconnect between rules and actual implementation can be seen in New Orleans. Although the city has a detailed ordinance with guidelines, there is little to no enforcement (even before the additional Katrina problems burdened the city). One reason is clearly the backlog of cases in an understaffed agency. If regulations are taken seriously from day 1, it will be easier for commissions to maintain effective enforcement. On the other hand, consider New York, which does not have detailed regulations, but nonetheless has established a system that gives serious bite to the ordinance through attentive staff members and organized inspections, citations and follow-ups. Because relying on a staff to come up with its own efficient system that will last with changing employees is risky, it is recommended that D.C. promulgate new extensive guidelines giving the Commission additional enforcement powers.

Keeping in mind that there are many positive aspects of New York's system, it is advised that the D.C. Commission train each of its employees with a course of recommended actions to take in fulfillment of its obligations. Some of the most important changes and additions that should be implemented are as follows: specific inspection processes by neighborhood and date; immediate citation listing the minimum repairs and scheduling an initial meeting with a Commission staff member; follow-up visit within 30 days; if still no compliance, second round citation with fines and visit; after second follow-up, hearing notice; a formal and specific adjudication process with all relevant

documentation present and an opportunity for the owner to be heard; final follow-up process; last resort: court litigation with threat of serious fines and litigation costs.⁸⁹

There are always other factors to consider when looking at demolition by neglect, such as the character of the city itself. Some cities have a ‘tradition’ of neglect whereby old, abandoned buildings are considered to be part of its charm. This, however, is no excuse for allowing historic buildings to deteriorate, particularly in light of the negative impact it can have on surrounding buildings and hence neighborhoods. Other cities are fortunate to have a thriving market that economically does not allow for buildings in high income neighborhoods to become neglected. Washington, D.C. seems to be a combination of both of these. To successfully enforce and promote the importance of preventing demolition by neglect, it is necessary to enact new regulations to be taken seriously in all neighborhoods at all times. The number of historic buildings, although always growing with time, is nevertheless limited; and once a building has been demolished through neglect, there is nothing to be done to get it back. With new regulations and publicity to local historic groups who can notify the Commission to act, preventing demolition by neglect will become an even more important tool of preservation.

⁸⁹ See attached APPENDIX B: Proposed Regulations.

APPENDIX A

New Orleans Demolition by Neglect Guidelines

"Demolition by Neglect" is one of the most serious problems affecting the fabric of our historic neighborhoods. The term "Demolition by Neglect" refers to the gradual deterioration of a building when routine or major maintenance is not performed. The ordinances which created both Historic District Landmarks Commissions entrust the Commissions with insuring that structures located within the local historic districts and landmarks designated by the Commissions are not allowed to be demolished through the neglect of the owners. A Demolition by Neglect citation issued by the Commission is against the owner of the property for failure to properly maintain the property as per the specific criteria stated in the following paragraphs.

The types of deficiencies identified as "Demolition by Neglect" include any structural deficiency or a deficiency in a building part which left unrepaired could lead to deterioration of the building's structural frame. A building is also identified as "Demolition by Neglect" if it is open to entry by vandals or vagrants.

Specific criteria for the determination of Demolition by Neglect are as follows:

- The deterioration of a building to the extent that it creates or permits a hazardous or unsafe condition as determined by the Department of Safety and Permits.
- The deterioration of a building(s) characterized by one or more of the following:
 - a.** Those buildings which have parts thereof which are so attached that they may fall and injure members of the public or property;
 - b.** Deteriorated or inadequate foundation;
 - c.** Defective or deteriorated floor supports or floor supports insufficient to carry imposed loads with safety;
 - d.** Members of walls, or other vertical supports that split, lean, list, or buckle due to defective material or deterioration;
 - e.** Members of walls or other vertical supports that are insufficient to carry imposed loads with safety;
 - f.** Members of ceiling, roofs, ceiling and roof supports, or other horizontal members which sag, split, or buckle due to defective material or deterioration;
 - g.** Members of ceiling, roofs, ceiling and roof supports, or other horizontal members that are insufficient to carry imposed loads with safety;
 - h.** Fireplaces or chimneys which list, bulge, or settle due to defective material or deterioration;
 - i.** Any fault, defect, or condition in the building which renders the same structurally unsafe or not properly watertight.
- Action by the City, the State Fire Marshall, or the Department of Safety and Permits relative to the safety or physical condition of any building.

The process by which a building is officially cited for Demolition by Neglect involves several stages. They are as follows:

1. Identification by the staff that a building's condition falls under the Commission's criteria of Demolition by Neglect. This initial identification may be made by a staff inspection of the neighborhood or by referral from someone in the area.
2. The staff presents the building to the Commission at a public hearing with a report detailing the defects which, in the staff's opinion, qualifies the structure for Demolition by Neglect. To proceed with the citation process the Commission must vote by a majority to make a preliminary finding of Demolition by Neglect.
3. If a preliminary determination is made by the Commission, the owner is notified by certified mail of the defects in the building. The owner is given thirty (30) days in which to respond to the preliminary determination by obtaining a Certificate of Appropriateness for the corrective work. If a Certificate of Appropriateness is issued at this point, it will detail the specific work which is necessary to correct the Demolition by Neglect conditions, and a time limit for work to begin and be completed is set.
4. If the owner of the property receives the letter regarding the preliminary determination, but fails to respond, the matter is referred to the Commission for a citation hearing. If the owner fails to receive the letter regarding the preliminary determination after two attempts, the building is posted with a notice of the violation in accordance with the provisions of the Ordinance, and a public hearing on the citation is scheduled.
5. At the public hearing the Commission may issue a citation to the owner of the property for failure to correct the Demolition by Neglect conditions. The citation is made by a vote of the majority of the Commission on a motion recognizing the condition of the building and the owner's failure to correct the defects. The owner is invited to the public hearing to address the Commission's concerns and to show cause why a citation should not be issued. The Commission may also defer the matter to give the owner more time either to correct the deficiencies, make a proposal for repairs, or perhaps sell the property-
6. If the owner is cited for the condition of Demolition by Neglect of the property, he is given ten (10) days to respond with a proposal to correct the defects.
7. If a Certificate of Appropriateness is issued at this point, it is often worded to place specific constraints on the owner for initiating and completing the work.
8. If the owner fails to respond after the ten-day grace period following the citation, he is given an additional five (5) days to respond. After that additional period passes with no response, the matter is turned over to the City Attorney's office for action in Civil District Court.

Types of Demolition by Neglect and Recommended Corrective Measures.

Structural Failure.

Defects involving the structural failure of a building or a portion of a building are the most difficult to correct. For certain types of building failure, it is necessary to seek the

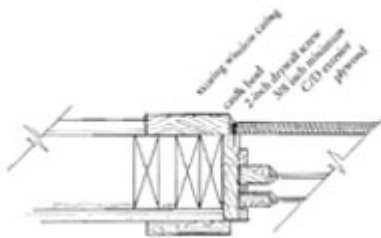
advice of a structural engineer to determine the measures necessary to correct them. If the condition of the building has deteriorated to the point the building or a portion of the building can not be saved, it is sometimes reasonable to propose demolition as a means of "correcting" the structural failure. See "Demolition Application."

Missing Exterior Finish Material.

Exterior finish material such as weatherboards, trim, fascia, soffits and window casings serve the important function of protecting the basic structure of the building as well as protecting the interior finishes. These building elements also often carry important information about the style and age of the building. When repairing loose or missing exterior finish material, care must be taken not to remove any important historic fabric. Where replacement material is necessary, it must match the original in material and detail. All replacement wood should be primed and painted after installation to insure that the work will not have to be repeated. If defects include failure of masonry, construction repairs must be made using masonry units (bricks) and mortar which match the existing in material, composition, size and density.

Broken or Missing Glazing, and Open or Missing Windows or Doors.

Missing windows, doors or glazing can allow the entry of water into the building. If left unchecked, water can lead to the deterioration of the structural fabric of the building and damage to both the interior and exterior finishes. An open building is also an invitation to vandals and vagrants to enter and possibly damage the building. The method used to correct this type of defect varies according to the seriousness of the problem. If the matter involves simply the need to replace glazing in existing frames, the work can be easily accomplished. If a building is missing doors or windows, or is abandoned, the Commission recommends that the building be boarded up.



In either case, a minimum of 3/8" plywood should be cut to fit tightly inside the frame of the window or door on the exterior of the building. In the first method of attachment, 2" drywall screws spaced no more than 12" on center are used to attach the plywood to the frame of the opening. In the second method of attachment, 3/8" carriage head bolts with 2" washers are used to attach the plywood to 2 x 4 wood bars mounted on the interior of the building. When the bolts are tightened, the wall is "sandwiched" between the plywood and the 2 x 4 bars, holding the entire assembly in place. In both examples, the plywood must be placed on the outside of the window opening. The Commission recommends that the plywood be primed and painted before installation to improve the general appearance of the building and to make it durable against the weather.

Roof, Gutters, Downspouts, and Flashing.

The roof surface and associated construction are the most important areas in protecting a building from water damage. If a Demolition by Neglect notice results from a fault in the roof or associated construction, the Commission recommends that repairs be made to match the original in material and detail. Sometimes if the damage to a roof surface is extensive or if other structural repairs are required, it is necessary to replace the entire roof surface.

The preceding suggestions for correcting Demolition by Neglect conditions are general. Specific situations may require different solutions. The staff of the Commission is willing to consider any suggestion so long as it adequately addresses the building fault which created the condition of Demolition by Neglect.

APPENDIX B

The following is an outline of proposed regulations for Washington D.C. These ideas come from the ordinances and regulations of New Orleans, Philadelphia and New York, as well as from conversations with members of those historic preservation Commissions based on what occurs in practice.

The most controversial and difficult to enforce provisions will probably be part 5 and part 7 which are the eminent domain and economic hardship provisions. These will be difficult to enact and enforce mainly due to the funding that will be required to make them effective.

Proposed Regulations:

The city of Washington, D.C., through its Landmarks Commission, shall have the power to:

Once a month, the Building Inspector of the Landmark's Commission shall survey the historic districts and Landmarks looking for any signs of demolition by neglect. It can also survey buildings that have been identified by concerned citizens, neighbors, or professionals. Once a determination that a building is being demolished by neglect is made, as defined in the Maintenance of Buildings section of the Code, the Commission shall act as follows:

A "case file" will be opened with name of the property owner, the building address, and the specific neglect.

1. The Commission will contact the property owner via telephone to notify the owner of the neglected property and discuss possible solutions.
 - a. If a solution is negotiated, the Commission shall document the discussion and send a copy of the discussion to the owner specifying the time frame for the repairs to be initiated.
 - i. In the document, the property owner will be notified that he must begin work within 30 days, and the completion date.
 1. Completion date will be determined on a case-by-case basis
 - ii. The property owner is also required to submit in writing his proposed changes within 7 days.
 - b. If a solution is not negotiated, the Commission will give the property owner 30 days to decide what course of action he will take concerning the property and schedule a meeting with the owner.

- c. After these 30 days, the Commission shall meet with the owner to once again discuss a solution. If a solution is reached, the same process of documenting the discussion and submitting a repair schedule shall be followed.
 - d. In the event that a solution can still not be reached with the owner, the Commission shall issue a citation (see below).
- 2. If the Commission can not contact the owner because he is unreachable, he shall send a letter notifying the owner of the neglect and giving him 30 days to contact the Commission to discuss repairs.
 - a. If, after 30 days, there is still no response, the Commission shall issue a citation, both via registered mail and placed on the property.
- 3. The Citation shall indicate:
 - a. A fine of \$500 is being levied on the property if no response is heard within 30 days.
 - b. After 30 days, an additional citation will be issued for an additional \$500.
- 4. After 2 citations and 60 days, if there is still no response, the Commission is authorize to begin proceedings of a Final Citation. The Final Citation shall indicate that the property is being taken by the city's power of eminent domain, and a hearing will be held to determine the validity of this action.
- 5. The Commission shall submit to an administrative law judge a statement indicating the state of the property, the actions taken, and the City's future plans for the building: either repair and auction or demolition.
 - a. The administrative law judge, at the hearing, must determine if the City's eminent domain power is warranted based on the Commission's submissions.
 - i. If the eminent domain is warranted, the City shall be granted appropriate funding to proceed; upon issuance of funding, the City must submit a proposed plan of action with specific deadlines.
 - 1. The administrative law judge is responsible for ensuring that the Commission abide by the timeline.
- 6. At any point in the proceedings, and before the issuance of the Final Citation, the owner can request an administrative hearing to take place within 30 days. At the hearing, the owner can contest the state of neglect or the amount of repairs required.
- 7. At any point, an owner can submit to the Commission an application of economic hardship, meaning that he is unable to complete the requested repairs because of insufficient funds. Upon a determination that the owner falls below a minimum income (to be determined by Commission on a case-by-case basis), the Commission shall:
 - a. Authorize the city to conduct the repairs and levy cost as lien against property.
 - b. Recommend that the owner auction or sell the building.
 - i. If the owner refuses to sell the building, he must negotiate with the city a schedule of repairs, to be paid by loans from the city, along with a schedule of repayment.

8. The issuance of a Final Citation, after review by an administrative law judge, can be appealed to Civil District Court.
9. The case will not be 'closed' until the Commission determines that the repairs have been completed to a satisfactory level.
10. At any point, if the Commission determines that the owner is not conducting the repairs he submitted, the Commission shall issue a citation, documenting what must be done and within what time period.
11. All correspondence with the owner shall be documented and reported in the case file.