

**Amending the language on Neighborhood Conservation Districts
Policy Order 11/35 (February 28, 2022)**

UPDATE: March 1, 2022 – On the City Council Meeting

Cambridge City Council voted on February 28, 2022, NOT to send the problematic Neighborhood Conservation District Policy Order # 11 (35) to the Ordinance Committee for quick action, but instead to forward it to the Neighborhood and Long-Term Planning (NLTP) Committee (chaired by Dennis Carlone) for further study and revision. We owe huge thanks to Dennis Carlone, Patty Nolan, Paul Toner, Quinton Zondervan. Let them know your appreciation and remember this critical vote!

[More on Policy Order 11/35 \(Neighborhood Conservation Districts\)](#)

The February 28, 2022 City Council discussion and voting on this issue carried quite a bit of drama. After some discussion regarding different versions of the P.O. Councillor Quinton Zondervan requested that it be forwarded to the Neighborhood and Long Term Planning Committee. Councillor Burhan Azeem opposed this, stating that instead it should go to the Housing Committee (e.g. reframing historic preservation as simply a question of shelter/need, four walls and a roof). The vote for Zondervan's proposal to send the Policy Order to the Neighborhood Committee was a nervous-making and quite dramatic one: Azeem – No; Carlone – Yes; Mallon – No; McGovern – No; Nolan – Yes; Simmons – No; Toner – Yes; Zondervan – Yes; and finally, the Mayor - Siddiqui – Yes. We did not know until the last vote announced whether we had been successful.

A HUGE THANKS to Councillor Toner and Mayor Siddiqui for joining with Councillors Carlone, Nolan, and Zondervan to send this problematic Policy Order to Carlone's NLTP committee with a 5 to 4 vote. This is where it belongs: architectural preservation is all about neighborhoods and long-term planning. Councillor Carlone, an architect who has worked closely with neighborhoods, will be able to get the kind of neighborhood and conservation district feedback needed and will help to make sure that the language of any revisions to the current NCD ordinance comports with state law.

[For those who want to read more on this: a bit more...](#)

Re-Presenting: Bites from the Same Apple, A Missing Memo and Words of Improvement

Councillor McGovern made a point in his commentary to voice concern over CCC's statement that returning this issue to City Council for a new vote, and possibly a second time to the Ordinance Committee, amounted to "a second bite of the apple." But several actions at this Council meeting seem to reflect that this was in fact in play. One issue was the fact that a red-lined version of the changes between the original citizen's petition and the new policy order under review was never presented to other Councillors and/or made public. McGovern indicated that such a document exists, and the Clerk said that it would now become part of the file.

Does the new Policy Order differ from the original petition? It is not clear. Attorney Wilson, the City Clerk, indicated that the two documents (the early and later versions) were the same; Councillor McGovern however stated that some changes had been made to the original petition based on feedback. Councillor Zondervan responded that he would need to see both documents and read them side by side before making any decision on what to do with the petition. He added that

complex issues such as this should be sent to one of the special Council committees prior to forwarding it to the Ordinance Committee for action, recommending the Neighborhood and Long-Term Planning Committee for this work. It remains unclear why the petition last year was sent directly to the Ordinance Committee since it did not involve zoning. Equally importantly at this meeting the petitioner was asked to work with the Cambridge Historical Commission to come up with viable language, but we have yet to learn whether or not that was done. In short, the question remains as to why this petition was allowed to be brought forward again to Council and resubmitted (or more accurately, *re-presented* – now by several City Councillors rather than by the petitioner himself).

There was also a degree *re-presenting* in how the original Ordinance Committee hearing on the petition last Fall was discussed at Council on February 28. While Councillor Mallon correctly noted that the CHC Executive Director, Charlie Sullivan, said at this Ordinance meeting that the current NCD language could benefit from some updating, what she declined to note was that the conclusion of this Ordinance Committee hearing was that the petitioner should himself meet with the CHC (Mr. Sullivan and others) to find better language. The outcome of such a discussion is not available; instead, the petitioner brought his petition back to Council, presumably seeking a better result, and it was this Councillor-submitted Policy Order #11/35 that served as the new (*re-presented*) vehicle for this. Significantly, at City Council, unlike what many anticipated, Policy Order 11/35 was NOT fast tracked again to the Ordinance Committee (another big “bite at the apple”) but rather was moved sideways into the Neighborhood and Long Term Planning Committee where presumably the critical work of gathering neighborhood, NCD and other input will be undertaken and needed amendments will be made that are thoughtful and conform with state law.

The legal issues around this NCD Policy Order**

During the February 28 Council meeting discussion on the NCD P.O., Councillor Paul Toner asked the City Solicitor to address the legal questions around this policy order, and whether our NCD ordinance was under state law 40(C.) The Solicitor responded narrowly, and without reference to this specific Policy Order, leaving the matter (intentionally? opaque and confusing. She noted that Cambridge’s NCD ordinance was created as part of a Home Rule Petition. This is indeed the process for large Mass. cities such as Cambridge. Unlike smaller towns and cities such as Brookline, large cities do not need state legal approval in crafting laws. The Solicitor, although stating that our NCD ordinance was not created under state law 40(C) - in short it was created by Cambridge independently - she did not address the fact that CHC Executive Director, Charlie Sullivan, in writing our NCD ordinance, included language specifically conforming with Mass. state 40(C) law, so that if a legal challenge arose later, Cambridge would have strong likelihood of surviving the challenge. In the recent Brookline preservation case, which also has been cited in Cambridge discussions, our Brookline neighbors had tried to weave zoning into its conservation district by-laws. This was overturned, because this language did not comply with state zoning amendments and the language did not comport with the process or requirements set forth in Mass State Law 40(C).

In another NCD case law example of importance here, this one also involving Mass State Law 40(C), we find a Cambridge NCD at the center of discussion. This example addresses a 2004 Cambridge NCD created in Avon Hill (*Bagalay v. Avon Hill Neighborhood Conservation Neighborhood Conservation District Commission - Mass. Superior.2004*). Here the Mass. Superior Court ruled in favor of the Cambridge NCD Commission stating also that the NCD language must be consistent with 40(C). Here, in part is the language: "...To the extent such section of the Municipal Code seeks to alter the statutory standard of review as set out in G.L.c. 40C, §12A, such section violates state supremacy, and is therefore void.”

What both cases make clear is that Cambridge NCD language needs to conform with state 40(C) law in terms of guidelines, review criteria, and other considerations. Since Policy Order 11/35 as currently written is seeking to alter the statutory review standards of Mass State 40(C), if, and when, a legal suit is brought, the City is more likely to lose the case if it is seen to violate the 40 (C) review standard and state supremacy on such matters. In short, while the Solicitor correctly stated that the City Council is allowed to change the NCD ordinance because we did not create it through 40 (C), if any court case arises from this new ordinance, existing case law will apply, and it will be important that the new language not violate state code.

**This section delimited after consultations with an attorney with knowledge in this area. We bring the legal matters up here because it has been suggested by the petition's author that CCC was incorrect in our statement that the proposed language of P.O. 11 does not conform with state law 40 (C). We stand by our statement.

Original February 27, 2022 - Letter to Council

The proposed amendments to the Conservation District language are a problem because they seek to eviscerate our well-functioning city-wide system of architectural preservation. This proposal not only makes a mockery of the historic purposes of Neighborhood Conservation Districts to enhance architectural preservation, but also upends the existing NCD system that follows state law to put in place another set of criteria that do not conform to these long-standing state requirements. Unlike the Brookline Conservation District policies that recently were struck down as unlawful, our NCDs are in conformity with state 40C requirements. P.O. 11/35 would take us out of state compliance and has no legal foundation in property law, land use law, zoning law, or preservation principles. This Policy Order seeks to change a well-functioning system that follows state law to put in place something that achieves none of this. The P.O. emerged from attempts to terminate mid-stream the process now underway addressing a possible NCD in East Cambridge (see below) rather than to improve a system that has worked well in making our very dense historic city a notably viable with a rich and variable building fabric.

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Rather than promoting diversity and inclusion as claimed, this P.O. removing requirements for professional criteria for NCD members, thereby eliminating an important diversity of experience, training, and views of the many members who are architects, real estate professionals, urban planners, historians and lawyers. In their place the P.O. has no professional requirements and removes even most neighborhood property owners from a decision-making role. This P.O. requires only that one (of five) of future NCD members be local property-owning residents, even though it is only these property owners who can bring their projects before an NCD. As stated in 2.78.160:

“at least three [of the five shall be] residents of the neighborhood, two of whom shall be tenants and one of whom shall be a homeowner; one neighborhood property owner (who may or may not be a neighborhood homeowner); and one person who owns and/or operates a business within the neighborhood.”

There is no mention of professional background (architects etc). Also missing is any rationale as to why this petitioner decided to so significantly limit the local neighborhood property owning residents' input in decisions involving their own property and neighborhood.

This P.O. if passed, also could bring to a standstill the work of the Historical Commission and the ability of residents living in historic homes to make modifications to their homes – even those outside NCDs. Not only does this P.O. require that the Executive Director serve as Secretary of each NCD meeting but it also puts CHC and CDD staff under ongoing and very difficult deadlines that will make it even more difficult for the city to function viably. The P.O. states that

“The person exercising the function of Executive Director of the Historical Commission shall serve as *secretary* of each neighborhood conservation district commission.” (2.78.160 - emphasis mine)

How is this possible in a city as large and dense as Cambridge, much less one that dates back to 1630 and has so important a legacy of architectural heritage that it is important to preserve for succeeding generations. The also represents a deeply pejorative view of the critically important role that Charles Sullivan fulfills for this city.

This P.O. also denigrates and strikingly limits the roles of CHC and NCD members. These individuals now will often make a number of design recommendations for improving a project. This kind of advice would be now forbidden.

“A Commission shall not make any recommendation or requirement *except for the purpose of rejecting proposals* incongruous to the historic aspects or the architectural significance of the landmark or neighborhood conservation district” (2.78.220 - emphasis mine).

Why would Cambridge choose to silence our professional commissioners? Does good design, architectural cohesiveness, and expertise matter so little that these volunteers are forbidden to take up anything outside a straight up or down votes?

Rather than advancing fairness and equity, this P.O. does just the opposite. According to P.O. 11 any 30 registered signatures can petition the Historical Commission and 100 signatures may petition to designate a Conservation District, but it takes 10 voters to dismantle one. In petitions for the rest of the city departments 10 registered voters are still able to initiate such actions.

P.O. 11 additionally creates far greater thresholds to creating an NCD and moves the initial decision making from the Historical Commission to City Council, politicizing this process in every procedure going forward. Is City Council so in need of extra work that they wish to have local neighborhood house preservation issues to their plate?

What also is important to note are the serious problems with process that are the basis for P.O. 11. And, this P.O. sets a very bad precedent, serving in essence as the equivalent of “three bites of the apple” as applied to the city’s rich architectural legacy and preservation processes. This P.O. conveys the look of “judge shopping.”

- Part 1 (*1st bite at the apple*): A group of individuals living in various parts of the city pushed hard to stop East Cambridge residents from creating a Neighborhood Conservation District (NCD) in honor of the Irish, Italian, Portuguese, and other émigrés who made their homes in this important and historic part of the City. This latter group filed a petition to create a NCD and have worked with the Cambridge Historical Commission (CHC) to continue this work; a formal study is now under way. An individual who opposes this effort and does not live in or near the NCD District in question, has attempted to stop the process.
- Part 2 (*2nd bite at the apple*) : a petition (the basis of the current Policy Order 11) was submitted by this same individual to bring a halt to the East Cambridge NCD process and further to eviscerate citywide our successful NCD system, under the false flag of greater equity. This individual’s petition was taken up by City Council last year who forwarded it to the Ordinance Committee, as if it were a zoning petition, despite the fact (as was pointed out at the time), that this petition lacks support in state law and city ordinance. The Ordinance Committee met, discussed the petition, and decided that the petitioner should meet with the executive director of the Cambridge Historical Commission as well as one of the Commissioners to work out a compromise. Apparently, no consensus was reached. Instead, this individual has now brought another version of this same petition back before City Council.
- Part 3 (*3rd bite at the apple*): Having failed to stop the East Cambridge NCD study committee, and having further failed to get City Council’s Ordinance Committee to support his earlier petition, this same individual has come back, now with the help of three Councillors, we are seeing again a version of this same petition that seeks to diminish the city’s historic preservation efforts pertaining to neighborhood conservation districts under the guise of better preservation and more local input.
- Going Forward: Since the Ordinance Committee has already met on this, and had requested that the petitioner work out a compromise with the Historical Commission, it makes no sense to send this back to the Ordinance Committee since their decision has already been made.

- Also note that this was NOT a zoning petition, so there is no legal basis for that to be done. At best, this should be sent to the Neighborhood and Long-Term Planning Committee where at least the lacking outreach to neighborhood groups and NCD inhabitants might be sought.

There remain other serious problems with this Policy Order revealing how broken this process was.

1. No consultation was done with the City Solicitor with regard to city and state law conformity.
2. No consultation was undertaken with neighborhood groups, those who live and work in current NCDs, or members of the CHC before submitting this Policy Order.
3. No evaluation was done regarding current Cambridge NCD examples in the framing of this P.O. Development and Change are indeed allowed. Just look at Harvard Square (a Conservation District), and the adjacent Marsh-Half Crown NCD where regular change has been undertaken with approval (including a demolishing one small residential structure to build a larger multi-family one). Here neighbors regularly meet to discuss plans for proposed changes to their homes so that everyone is on board before the NCD meeting.
4. No examination of the **City's Envision Final Report** was undertaken. Nowhere in the **Envision Report** document is this kind of NCD change proposed. Indeed, one of the Urban Form goals requests MORE preservation of local buildings, not less.
5. No wider exploration of the implications of this P.O. has been pursued. To require as this P.O. does, that renters comprise a large majority on NCD members is highly strange since only property owners can bring a project to an NCD. The city is roughly divided 40% non-student renters, 40% homeowners, but renters cannot bring a property they do not own to an NCD for review. Nor can renters stop building owners from effectuating needed repairs.
6. We need to follow thoughtful policies and plans. This effort, which was initiated as part of a vindictive attack, is NOT the way a viable city can and should be managed.

Conclusions:

This is not anything that our City Council should be supporting. Is petition refiling after a decision has been made a good thing for us to be doing (three bites at the apple)? The Ordinance Committee has already decided that the petitioner should work with the CHC. It is time to move on. As to membership criteria please look at State law.

And please also consider the precedent this P.O. sets re. the makeup for other petitions and the makeup of other City committees.

Common sense, planning, and more neighborhood involvement (not less) is the way forward.