

35.7.6 Historic Landmark Preservation and Historic Districts Generally

35.7.6.1 Declaration of policy

—The city council hereby finds and declares as a matter of public policy that the protection enhancement, preservation and use of historic landmarks is a public necessity and is required in the interest of culture, prosperity, education and general welfare of the people. The purposes of this article are to:

- A. Protect, enhance and perpetuate historic landmarks which represent or reflect distinctive and important elements of the city's and state's architectural, archeological, cultural, social, economic, ethnic and political history and to develop appropriate settings for such places.
- B. Safeguard the city's historic and cultural heritage, as embodied and reflected in such historic landmarks by appropriate regulations;
- C. Stabilize and improve property values in such locations;
- D. Foster civic pride in the beauty and accomplishments of the past;
- E. Protect and enhance the city's attractions to tourists and visitors and provide incidental support and stimulus to business and industry;
- F. Strengthen the economy of the city;
- G. Promote the use of historic landmarks for the culture, prosperity, education, and general welfare of the people of the city and visitors of the city.

35.7.6.2 Penalty

A. It shall be unlawful to construct, reconstruct, structurally alter, remodel, renovate, restore, demolish, raze or maintain any building, structure or land in an historic landmark designation in violation of the provisions of this Subchapter, and the city in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful construction, restoration, demolition, razing or maintenance to restrain, correct or abate such violation to prevent any illegal act, business or maintenance in an about such premises.

B. Any person violating any provision of this article shall be guilty of a misdemeanor and shall be punished as provided in Section 35.1.10.4 of this Chapter.

35.7.6.3 Notices

—Any notice required to be given under this Subchapter, if not actually delivered, shall be given by depositing the notice in the United States mail, postage prepaid, addressed to the person or entity to whom such notice is to be given at his last known address. When notice is required to be given to an owner of property, such notice, delivered or mailed by certified or registered mail, may be addressed to such owner who has rendered his property for city taxes as the ownership appears on the last approved city tax roll.

35.7.6.4 Designation of landmarks

A. The city council may designate buildings, structures, sites, districts, areas and lands in the city as historic landmarks and define, amend and delineate the boundaries thereof. The suffix "H" shall indicate the zoning designation of those buildings, structures, sites, districts, areas and lands which the city council designates as historic landmarks. Such designation shall be in addition to any other use designation established in this chapter. The zoning map shall reflect the designation of an historic landmark by the letter "H" as a suffix to any other use designation established by this chapter.

B. In making the designations as set forth in subsection A of this section, the city council shall consider but shall not be limited to one (1) or more of the following criteria:

1. Character, interest or value as part of the development, heritage or cultural characteristics of the city, state or the United States;
2. Recognition as a recorded state historic landmark, a national historic landmark or entered into the National Register of Historic Places;
3. Embodiment of distinguishing characteristics of an architectural type or specimen;
4. Identification as the work of an architect or master builder whose individual work has influenced the development of the city;
5. Embodiment of elements of architectural design, detail, material or craftsmanship which represent a significant architectural innovation;
6. Relationship to other distinctive buildings, sites or areas which are eligible for preservation according to a plan based on architectural, historic or cultural motif;
7. Portrayal of the environment of a group of people in an area of history characterized by a distinctive architectural style;

8. Archeological value in that it has produced or can be expected to produce data affecting theories of historic or prehistoric interest;
9. Exemplification of the cultural, economic, social, ethnic or historical heritage of the city, state, or United States;
10. Location as the site of a significant historic event;
11. Identification with a person who significantly contributed to the culture and development of the city, state or United States;
12. A building or structure that because of its location has become of value to a neighborhood, community area or the city;
13. Value as an aspect of community sentiment or public pride.

35.7.6.5 Hearings

- A. The city planning and zoning commission shall hold public hearings as provided for in V.T.C.A., Local Government Code § 211.007 to consider any historic landmark designation ordinance after receiving a recommendation from the historic landmark commission. The notices provided for in V.T.C.A., Local Government Code § 211.007 shall be sent to all owners of property which is proposed for “H” designation as well as to the adjoining property owners specified in such article.
- B. Within thirty (30) days after the hearing, the city planning and zoning commission shall set forth in writing its recommendation, including the findings of fact that constitute the basis for its decision, and shall transmit its recommendation concerning the proposed ordinance to the city council along with the recommendation of the landmark commission.

35.7.6.6 Recording of decision

—Upon passage of an historic landmark designation ordinance by the city council, the city secretary shall file a copy of the ordinance with the city and county tax assessors, together with a notice briefly stating the fact of the designation, and shall send a copy of such notice to the owner of the affected property by certified mail.

35.7.6.7 Amendments

—The regulations, restrictions and boundaries of this section may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a written protest against such change signed by the owners of twenty (20) percent or more either of the area of the lots or land included in such proposed change or of the lots or land immediately adjoining the change and extending two hundred (200) feet therefrom, such amendment shall not become effective except by the favorable vote of three-fourths of all members on the city council.

35.7.6.8 Exterior alterations and changes; minor exterior alteration, ordinary maintenance; appeals

A. **Certificate of appropriateness.** No person shall alter, change, construct, reconstruct, expand, restore, remove or demolish any exterior architectural feature of a designated historic landmark or allow the results of such action to be maintained unless application is made in compliance with this section for a certificate of appropriateness and such a certificate is granted. As used in this Subchapter, the term “exterior architectural feature” shall include but not be limited to architectural style and general arrangement of such portion of the exterior of a structure as is designed to be open to view from a public way. A certificate of appropriateness shall be obtained prior to the issuance of any building permit, although the certificate of appropriateness review and building permit and other required permit review processes may be conducted simultaneously. A certificate of appropriateness may also be required for work not otherwise requiring a building permit. The certificate of appropriateness shall be required in addition to, and not in lieu of, any required building permit.

1. **Application.** Prior to commencement of any work, the owner shall file an application for a certificate of appropriateness with the city preservation officer. The application shall contain such information as is requested from a form prepared by the preservation officer, the provisions of which have been approved by the city attorney.

2. **Determination of procedure.** Upon receipt of an application for a certificate of appropriateness, the preservation officer shall determine whether the application is to be reviewed under the ordinary

maintenance review procedure, the minor exterior alteration procedure or the standard procedure for certificate of appropriateness review.

B. Ordinary maintenance. Ordinary maintenance shall be defined as the process of stabilizing deteriorated or damaged architectural feature (including but not limited to roofing, windows, columns, and siding), and will include any work that does not constitute a change in design, material, color or outward appearance, and include in-kind replacement or repair.

1. If the applicant is seeking a certificate of appropriateness to authorize only ordinary maintenance, the preservation officer shall review the application to determine whether the proposed work complies with the regulations contained in this Subchapter and all applicable ordinances and approve or deny the application within five (5) days of its receipt.

2. If no action is taken within five (5) working days, a certificate of appropriateness is deemed to be approved. The applicant may appeal the preservation officer's decision to deny by submitting to the preservation officer a written request for appeal within ten (10) days of the decision. The written request for appeal starts the standard certificate of appropriateness review procedure by the historic landmark commission.

C. Minor exterior alteration. Minor exterior alteration shall be defined as the installation of or alteration to awnings, fences, gutters and downspouts; incandescent lighting fixtures; hardscaping comprising more than twenty-five (25) percent of the front or side yard; restoration of original architectural features that constitute a change from existing condition; painting of wood or other appropriate elements that constitutes a change in color from existing color; and additions and changes not visible from any street to the rear of the main structure or to an accessory structure.

1. If the applicant is seeking a certificate of appropriateness to authorize only minor exterior alterations, as defined in this section, the executive director of planning and development shall review the application to determine whether the proposed work complies with the regulations contained in this Subchapter and all applicable ordinances and approve or deny the application within five (5) working days of its receipt.

2. If no action is taken within five (5) working days of its receipt, a certificate of appropriateness is deemed to be approved. The applicant may appeal the decision to deny by submitting to the executive director of planning and development a written request for appeal within ten (10) days of the decision. The written request for appeal starts the standard procedure certificate of appropriateness review by the historic landmark commission.

D. Standard procedure for certificate of appropriateness review.

1. If the applicant is seeking a certificate of appropriateness to authorize work that is not ordinary maintenance or a minor exterior alteration, the preservation officer shall forward the application to the historic landmark commission for review. The commission shall deny, approve, or approve with conditions any certificate of appropriateness application within thirty-five (35) days of receipt of a completed application. The historic landmark commission shall conduct a public hearing on the applications to allow applicants and interested persons to present their views.

2. All decisions of the commission shall be in writing, stating its approval or the specific reasons for denying or modifying any applications. A copy of the certificate shall be sent to the applicant and a copy filed with planning and development department.

3. If a certificate of appropriateness has been approved by the historic landmark commission:

a. It shall issue the certificate to the applicant; and

b. If a building permit is required for the proposed work, a copy of the certificate of appropriateness shall be forwarded to the building official.

4. If a certificate of appropriateness has been denied, the applicant may appeal the decision in writing to the city council by filing a written notice with the city secretary within ten (10) days of receiving notice of the denial.

5. After a final decision is reached denying a certificate of appropriateness, no further applications may be considered for the subject matter of the denied certificate for one (1) year from the date of the final decision unless:

a. The historic landmark commission waives the time limitation because the historic landmark commission finds that there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple majority vote by the historic landmark commission is required to grant the request for a waiver of the time limitation. If the historic landmark commission denies the request the applicant may appeal in writing to the city council by filing written notice with the city secretary within ten (10) days of receiving the notice of the denial.

6. If final action has not been taken by the landmark commission within sixty (60) days of the preservation officer's receipt of the application:

- a. The preservation officer shall issue a certificate of appropriateness to the applicant for the proposed work; and
- b. If all other requirements of the city code are met and a building permit is required for the proposed work, the building official shall issue a building permit to the applicant for the proposed work.

E. Criteria for denial of certificate of appropriateness. A certificate of appropriateness must be denied if there is a final decision that the proposed work will have an adverse effect on:

1. The external architectural features of the historic landmark;
 2. The external architectural features of the properties in the block or in the historic district as a whole;
- or
3. The future preservation, maintenance and use of the historic landmark and the historic district.

F. Amendments to a certificate of appropriateness. A certificate of appropriateness may be amended by submitting an application for amendment to the preservation officer. The application shall then be subject to the standard certificate of appropriateness review procedure.

G. Emergency procedure. If a landmark is damaged and the building official determines that the landmark will suffer additional damage without immediate repair, the building official may allow the property owner to temporarily protect the landmark. In such a case, the property owner shall apply for a certificate of appropriateness within ten (10) days of the occurrence which caused the damage. The protection authorized under this section must not permanently alter the architectural features of the landmark.

35.7.6.9 Demolition or removal of historic landmarks

A. If an application is received for demolition or removal of a designated historic landmark, the building official shall immediately forward the application to the historic landmark commission. The landmark commission shall hold a public hearing on the application within thirty (30) days after the application is initially filed with the building official. The applicant shall be given ten (10) days' written notice of the hearing. The landmark commission shall consider the state of repair of the building, the reasonableness of the cost of restoration or repair, the existing and/or potential usefulness, including economic usefulness of the building, the purposes behind preserving the structure as an historic landmark, the character of the neighborhood and all other factors it finds appropriate. If the landmark commission determines that in the interest of preserving historical values the structure should not be demolished or removed, it shall notify the building official that the application has been disapproved, and the building official shall so advise the applicant within five (5) days therefrom. If the landmark commission determines that the interest of preserving historical values will not be adversely affected by such demolition or removal or that the interest of preserving historical values can best be served by the removal of a structure to an other specified location, it shall issue its certificate of demolition or its certificate of removal, as may be appropriate, to the building official, and the building official shall so advise the applicant within five (5) days therefrom.

B. If no action has been taken by the landmark commission within sixty (60) days of original receipt by the landmark commission of the application, a certificate of demolition or certificate of removal shall be deemed issued by the landmark commission and the building official shall so advise the applicant.

C. After a decision is reached by the landmark commission denying an application for a certificate of demolition or a certificate of removal, a resubmittal of an application for such a certificate will not be accepted for additional hearing within a twelve-month period from the date of the final decision.

D. Any applicant or the owner of any property located within three hundred (300) feet of any landmark who is aggrieved by a ruling of the landmark commission concerning the landmark under the provisions of this Subchapter may, within sixty (60) days after the ruling of the landmark commission, appeal to the city council. Following a public hearing to be held within thirty (30) days of the filing of a notice of such appeal with the city secretary, the city council may, by a simple majority vote, uphold or overturn any ruling of the landmark commission made pursuant to this section.

35.7.6.10 Procedures for obtaining permits pending designation as historic landmark

A. From and after the date on which the question of whether or not a building, structure, or site within the city should be designated as an historic landmark is placed upon the agenda for any special or regular

meeting of the historic landmark commission or from and after the date on which such agenda is posted in accordance with the provision of Vernon's Ann. Civ. St. art. 6252-17, as amended, or from and after the date that the historic landmark commission approves or recommends a preservation plan or any amendment of any existing preservation plan which embraces or include the building, structure or site within the city, whichever date first occurs, no building permit allowing the construction, reconstruction, alteration, change, restoration, removal or demolition of any exterior architectural feature of any building or structure then existing included or embraced in whole or in part within the scope of such agenda consideration or such preservation plan or such amendment thereof, as the case may be, and no permit allowing the demolition or removal of all or any part of any such building or structure may be issued by any official of the city nor, if no such permit is required, may any person or entity construct, reconstruct, alter, change, restore, remove or demolish any exterior architectural feature of any such building or structure until the earliest of the following conditions have been met:

1. A final and binding certificate of appropriateness, removal or demolition, as may be appropriate, has been issued by the historic landmark commission;
2. The landmark commission fails to make a recommendation that some part or all of any such building or structure be designated an historic landmark or be included within an historic landmark or within a preservation plan or an amendment thereof within sixty (60) days following the earliest of the dates described in subsection A of this section activating this section, under the circumstances; or
3. A final and binding decision has been made by the city council that no part of any such building or structure shall be designated an historic landmark or shall be included within any designated historic landmark. However, should the city council fail to act within ninety (90) days from the date an appeal is filed, the requested permit shall be granted. The ninety-day time limitation may be waived by the appellant to allow the city council an additional thirty (30) days in which to act.

B. It shall be the duty of the landmark commission to furnish the building official with a copy or written notice of each such written order or such agenda or such preservation plan or amendment thereof, as the case may be, as promptly after the preparation thereof as is practicable. The failure to so furnish the building official with a copy or written notice thereof however, shall not have the effect of validating any building permit, removal permit or demolition permit issued in ignorance of any such written order or agenda. In any instance in which any such permit may not be required, it shall be the duty of the landmark commission to give notice of any such written order or such agenda or such preservation plan or amendment thereof to the owner of any building or structure included within the scope thereof, which notice shall be deemed complete when actually given, orally, or in writing, to such owner or when written notice there is deposited in the United States mail, postage prepaid, certified or registered, with return receipt requested, addressed to such owner, whichever event first occurs.

C. Any permit issued to any person from or after the date of any such written order or such agenda or the approval or recommendation of such preservation plan or amendment thereof, as the case may be, shall be null, void and of no force or effect until the earliest of the events described in subsections A.1, A.2 and A.3 of this section occur.

D. Notwithstanding any other provision of this article, no building permit, removal permit or demolition permit shall be issued by the building official for any structure located in a national register except as authorized by this subsection. The building official shall notify the landmark commission immediately of any application requesting a building permit, removal permit or demolition permit for a structure located in a national register district. No such permit shall be issued by the building official before the landmark commission has made a recommendation or scheduled the structure on its agenda or before the expiration of forty (40) calendar days, whichever is sooner. If a structure is made an agenda item it shall be scheduled for a public hearing as soon as adjacent property owners are notified. For purposes of this subsection, "national register district" is defined as a designated area possessing a significant concentration, linkage or continuity of sites, building structures or object which may be considered a national register district for purposes of this subsection unless it has been amended, prior to the effective date of the ordinance from which this section is derived and until maps depicting such area are made available for inspection by the public in the office of the building inspection department. Notwithstanding any provision hereof, this section shall not apply to geographical areas designated as historic districts under the provisions of this article.

35.7.6.11 Maintenance; omission of repairs

A. The exterior of a designated historic landmark shall be maintained to ensure the structural soundness of such landmark.

B. If the landmark commission finds that there are reasonable grounds to believe that a designated historic landmark is structurally unsound or in imminent danger of becoming structurally unsound, the historic landmark commission shall notify in writing the owner of record of the designated historic landmark of such fact.

C. Upon the giving of ten (10) day's written notice to the owner of record of such designated historic landmark, the landmark commission shall hold a public hearing to determine if the designated historic building is structurally unsound or in imminent danger of becoming structurally unsound. The landmark commission's report may include evidence of economic hardship or willful neglect.

D. At the conclusion of the hearing, if the landmark commission finds that the designated historic building is structurally unsound or in danger of becoming structurally unsound and that no valid reason exists as to why the owner cannot or should not undertake to safeguard the structural soundness of the building, it shall in writing notify the owner of record of the finding.

E. The owner of record of a designated historic landmark who has been notified by the landmark commission that such landmark is structurally unsound or in danger of so becoming shall within ninety (90) days of receipt of such notice, satisfy the historic landmark commission that reasonably necessary repairs to safeguard the structural soundness of the landmark have been effected.

F. If the landmark commission determines that the building is structurally unsound but there are valid reasons why the owner cannot or should not undertake to safeguard the structural soundness of the building, it shall forward to the city council its recommendation as to what action, if any, should be taken on the structure.

G. Any applicant or interested person aggrieved by a ruling of the landmark commission under the provisions of this section may, within thirty (30) days after the date of such ruling, appeal to the city council.

35.7.6.12 Effect of zoning district use classification

___Use classifications as to all property which may be included in an historic landmark designation shall continue to be governed by this Subchapter and the procedures herein established.