

## **Ordinance Historic Landmark Preservation Ordinance**

### **For The City of Aurora, Texas**

**WHEREAS**, CH. 211 TEXAS LOCAL GOVERNMENT CODE, the Municipal Zoning Authority, specifically authorizes zoning functions and procedures for municipalities; and

**WHEREAS**, CH. 211 TEXAS LOCAL GOVERNMENT CODE, Section 211.003(b) provides that in the case of designated places and areas of historical, cultural, or architectural importance and significance, the governing body of a municipality may regulate the construction, reconstruction, alteration, or razing of buildings and other structures; and,

**WHEREAS**, CH. 211 TEXAS LOCAL GOVERNMENT CODE, Section 211.005(a) authorizes the governing body of a municipality to divide the municipality into districts, within which the governing body may regulate the erection, construction, reconstruction, alteration, repair, or use of buildings, other structures, or land and within which zoning regulation must be uniform for each class or kind of building in a district; however, zoning regulations may vary from district to district; and,

**WHEREAS**, CH. 214 TEXAS LOCAL GOVERNMENT CODE, Section 214.00111 provides additional authority to preserve substandard buildings as historic property which applies only to a municipality that is designated as a certified local government by the state historic preservation officer as provided by 16 U.S.C.A. Section 470 et seq; and,

**WHEREAS**, the City of Aurora hereby recognizes the C1-MS Commercial Main Street District as a Historic Overlay District; and,

**WHEREAS**, the City of Aurora hereby recognizes important historical structures and occurrences during the fifty year time period of 1870 to 1920.

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, TEXAS:**

#### **Section 1. Purpose**

The City Council of Aurora hereby declares that as a matter of public policy the protection, enhancement, and perpetuation of landmarks and districts of historical and cultural importance and significance is necessary to promote the economic, cultural, educational, and general welfare of the public. This act is intended to:

- a) protect and enhance the landmarks and districts which represent distinctive elements of Aurora's historic, architectural, and cultural heritage; and,
- b) foster civic pride in the accomplishments of the past; and,
- c) protect and enhance Aurora's attractiveness to visitors and the support and stimulus to the economy thereby provided; and,
- d) insure the harmonious, orderly, and efficient growth and development of the city that is sensitive to its historic resources; and,
- e) promote economic prosperity and welfare of the community by encouraging the most appropriate use of historic properties within the city; and,
- f) encourage stabilization, restoration, and improvements of such properties and their values by offering incentives for rehabilitation; and

- g) Require any new construction along the Commercial Main Street – C1MS district comply with strict historical architectural attributes from the period of 1870 to 1920; and
- h) Encourage the redevelopment of historic overlay design along the 114 corridor and original town square.

## Section 2. Definitions.

**Architectural Details** shall mean the small details like moldings, carved woodwork, etc. that add character to a building.

**Alteration** shall mean any act or process that changes one or more historic, architectural, or physical features of an area, site, place, and/or structure including, but not limited to the erection, construction, reconstruction or removal of any structure.

**Applicant** means a person seeking a designation or authorization under this Chapter or the person's designated and duly authorized agent or representative. This term may include the property owner, occupant of the site, the Historic Preservation Commission ("HPC") or City Commission.

**Appurtenant features** means the features that define the design of a building or property including but not limited to porches, railings, columns, shutters, steps, fences, attic vents, sidewalks, driveways, garages, carports, outbuildings, gazebos, and arbors.

**Archeological property/site** means any locale where there is physical evidence of past human activity that is either prehistoric or historic in age.

**Building** shall refer to a dwelling, such as a house, barn, church, hotel, or similar structure created to shelter any form of human activity. The term may also be used to refer to a historically and functionally related unit, such as a courthouse and jail or a house and barn. The term also includes mobile homes, manufactured homes, and industrial housing.

**Certificate of Appropriateness** shall mean an order issued by the Heritage Preservation Board indicating approval of plans for alteration, construction, or removal affecting a designated landmark or property within a designated district.

**Certified Local Government** shall mean a local government certified or approved by the State Historic Preservation Office (SHPO), which has an appointed commission to oversee the survey and inventory of historic resources, to review areas for historically significant structures, and to develop and maintain community planning and education programs.

**Contributing building** shall mean a historic building that is at least 50 years old or older that retains a significant amount of its physical integrity and character defining features including location, setting, design, construction, workmanship, and/or association with historical persons or events.

**Design Guidelines** shall mean guidelines of appropriateness or compatibility of building design within a community or historic district. Often in the form of a handbook, design guidelines contain drawings accompanying "do's and don't's" for the property owner. The Historic Preservation Commission has authority to administer design guidelines.

**Design review** shall refer to the decision making process conducted by the heritage preservation board or an appointed heritage preservation officer that is guided by established terms

**Demolition by Neglect** shall mean allowing a building to fall into such a state of disrepair that it becomes necessary or desirable to demolish it.

**Exterior Architectural Feature** shall mean 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 the view from a public way.

**Façade** shall mean the entire building front including the parapet.

**Historic Preservation Commission (HPC)** shall mean the five member Board established under this ordinance and appointed by City Council.

**Historic designations** means an official recognition of the significance of a building, property or district. Designation can occur on three different levels:

- **Federal - The National Register of Historic Places** (for both individual buildings and entire districts);
- **State - Recorded Texas Historic landmarks** (only for individual buildings) and State Archeological Landmarks; or
- **Local** - designated under a municipal historic ordinance either individually as a landmark or as a locally designated district.

**Historic Districts** shall mean any neighborhood or region designated by City Council as a historic district.

**Historic Landmarks** shall mean a building, structure object or site designated by City Council as a historic landmark.

**Historic Preservation** means the protection, reconstruction, rehabilitation, repair and restoration of places and structures of historic, architectural, or archeological Significance.

**Historic Rehabilitation** shall mean the process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural, and cultural values.

**Historic Resource** shall mean any building, structure, object or site that is 50 years or older or any resource that has been identified as a high or medium priority because of its unique history or architectural characteristics.

**Historic Resources Survey** means a systematic, detailed examination of an area designed to gather information about historic properties sufficient to evaluate them against predetermined criteria of significance.

**Integrity** means the authenticity of a property's historic identity, evidenced by survival of physical characteristics that existed during the property's historic or prehistoric period.

**Inventory** means a list of historic properties that have been identified and evaluated as meeting specified criteria of significance.

**Local Historic District** means a geographically and locally defined area that possesses a significant concentration, linkage, or continuity of buildings, objects, sites, structures, or landscapes united by past events, periods, or styles of architecture, and that, by reason of such factors, constitute a distinct section of the City. Historic sites within a local district need not be contiguous for an area to constitute a district. All sites, buildings, and structures within a local historic district, whether individually contributing or not are subject to the regulations of the district.

**Local Historic Landmark** means any site, building, structure, or landscape of historic significance that receives designation by the City pursuant to this Chapter.

**Minor alterations** shall mean the installation or alteration to awnings, fences, gutters, downspouts, and incandescent lighting fixtures; restoration of original architectural features that constitute a change from the existing condition; alterations to signs; and additions and changes not visible from any street to the rear of the main structure or to an accessory structure.

**National Register of Historic Places** shall mean the nation's official list of buildings, districts, and sites (including structures and objects) significant in American history and culture, architecture, archeology, and engineering maintained by the National Park Service and administered on a state-wide basis by the Texas Historical Commission. Restrictions on these properties exist only when there is an undertaking that uses federal funds or that requires a federal permit or license.

**Object** means a physical item associated with a specific setting or environment that is movable by nature or design, such as statuary in a designed landscape. The term object is used to distinguish from buildings and structures those constructions that are primarily artistic in nature or are relatively small in scale and simply constructed.

**Order of Demolition** shall mean an order issued by the Heritage Preservation Board indicating approval of plans for demolition of a designated landmark or property within a designated district.

**Ordinary Maintenance** shall mean repair of any exterior or architectural feature of a landmark or property within a historic district which does not involve a change to the architectural or historic value, style or general design. In-kind replacement or repair is included in this definition of ordinary maintenance.

**Overlay District** shall mean zoning, applied over one or more other districts, creates a second, mapped zone that is superimposed over the conventional zoning districts. Overlay district typically provide for a higher level of regulations in certain areas such as transit station areas, downtown areas, and historic districts, but may also be used to permit exceptions or less restrictive standards (fewer parking spaces in a downtown or transit station area, or more density in an economic development area).

**Owner** shall mean the individual, corporation, partnership, or other legal entity in whom is vested the ownership, dominion, or title of property and who is responsible for payment of ad

valorem taxes on that property; including a Lessor or Lessee if responsible for payment of ad valorem taxes.

**Preservation** shall mean the stabilization of an historic building, its materials and features in their present condition to prevent future deterioration. Preservation focuses on the maintenance and repair of existing historic materials and retention of a property's form as it has evolved over time. (Protection and Stabilization have now been consolidated under this treatment.)

**Preservationist** shall mean someone with experience, education or training in the field of preservation.

**Reconstruction** shall mean the act or process of reproducing by new construction the exact form and detail of a vanished building as it appeared at a specific period of time. A technique used earlier in the 20th century, reconstruction is rarely used today because of the preference to use limited financial resources to preserve existing historic buildings.

**Recorded Texas Historical Landmark** shall mean a state designation for buildings important for their historical associations and which have retained a high degree of their original historic fabric. They must be at least 50 years of age and retain their original exterior appearance. State historical landmarks receive greater legal protection than National Register of Historic Places designations.

**Rehabilitation** means the act or process of returning a property to a state of utility through repair or alteration that makes possible an efficient contemporary use while preserving those portions or features of the property that are significant to its historical, architectural, and cultural values.

**Restoration** shall mean returning a property to a state indicative of a particular period of time in its history, while removing evidence of other periods.

**Secretary of the Interior Standards for Rehabilitation** shall mean the standards established by the Secretary of the Interior for advising federal agencies on the preservation/rehabilitation of historic properties listed or eligible for listing on the National Register of Historic Places.

**Site** means the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historical, cultural, or archeological value regardless of the value of any existing structure.

**State Archeological Landmark** shall mean a designation made by the Texas Historical Commission and, in the case of privately owned property, with the landowner's permission. Although called "archeological" landmarks, this designation can include buildings as well as archeological sites. For a building to be designated as a State Archeological Landmark, it must first be listed on the National Register of Historic Places. Damage to a State Archeological Landmark is subject to criminal, not civil, penalties.

**State Historic Preservation Office (SHPO)** shall mean the State Office responsible for administering federal historic preservation programs as defined in the National Historic Preservation Act of 1966 as amended and subsequent legislation. The Executive Director of the Texas Historical Commission serves as SHPO for the State of Texas.

**Site** is the location of a significant event a prehistoric or historic occupation or activity or a building or structure whether standing ruined or vanished where the location itself possesses historical cultural or archeological value regardless of the value of any existing structure

**Structure** is a term used to distinguish specific types of functional constructions from buildings that are usually made for purposes other than creating shelter

**Zoning** means a police power measure, enacted by a municipality, including the City, in which the community is divided into districts or zones within which permitted and special uses are established as are regulations governing lot size, building bulk, placement, and other development standards.

### **Section 3. Aurora Historic Preservation Commission**

The Aurora Historic Board shall be hereby known as the Aurora Historic Preservation Commission, hereafter referred to as the "HPC."

- 1) The HPC shall consist of seven (7) members to be appointed, upon application and demonstration of their qualifications to the extent available among the residents of the community, by the City Council with primary consideration given to professional members from the disciplines of architecture, history, urban planning, real estate, legal, archeology, or other disciplines related to historic preservation. When a professional in the fields of history, architecture, architectural history, planning, or archaeology is not represented in the membership of the HPC, then the city shall seek and provide outside expertise in the appropriate discipline when considering National Register nominations and all federal undertakings that will affect historic properties which are normally evaluated by a professional in such disciplines.
  - a. The HPC, regardless of professional background, all members shall be residents of the city and at least two (2) members shall reside or own property within a District.
  - b. All HPC members must have a known and demonstrated interest, competence, or knowledge in historic preservation within the city and/or the county.
  - c. The HPC as a whole shall represent the ethnic makeup of the city.
  - d. HPC members shall be identified by place numbers 1 through 7 and the terms of office serve be staggered. The initial term for even-numbered Places shall serve for two years and odd-numbered Places shall serve for three years. The City Council may re-appoint HPC members as their terms expire. The Mayor shall fill any vacancies that may occur before a term has expired, only for the remainder of the term.
  - e. Any member may resign by submitting a letter of intent to the HPO that has been read into the official HPC minutes and forwarded to the Mayor. The City Council may terminate any HPC member upon cause of an appropriate hearing or upon the absence of over 50% of the scheduled HPC meetings within a calendar year.
  - f. The Chairperson and Vice Chairperson of the HPC shall be elected by and from its membership.
  - g. A quorum for the transaction of business shall consist of not less than four (4) members the HPC.

- h. The HPC shall meet at least monthly, if business is at hand. Special meetings may be called at any time by the HPC Chairperson, Vice Chairperson or at the written request of at least five HPC members. All meetings shall be held in conformance with the Texas Open Meetings Act, Chapter 552 of the Texas Government Code as Annotated.
- 2) The HPC shall be empowered to:
- a. Make recommendations to the city for the employment of staff and professional consultants as necessary to carry out the duties of the HPC.
  - b. Adopt parliamentary rules and procedures necessary to carry out the business of the HPC, which shall be ratified by the City Council.
  - c. Review and take action on the designation of Landmarks and the delineation of Districts, which shall be presented to the Planning and Zoning Commission for subsequent ratification by the City Council.
  - d. Recommend and confer recognition upon the owners of Landmarks or properties within Districts by means of certificates, plaques, or markers.
  - e. Review and recommend to the Planning and Zoning Commission for subsequent ratification by City Council and other applicable city boards and commissions all proposed changes to the zoning ordinance, building code, general plan or other adopted policies of the city than may affect the purpose of the Article.
  - f. Conduct public hearings and provide comment on buildings, objects, sites, structures, and districts for nomination to the National Register of Historic Places to the Texas Historic Commission. Such recommendations shall be guided by the criteria established in the National Historic Preservation Act of 1966, as amended.
  - g. Implement and maintain a system of survey or inventory of significant historic, architectural, and cultural landmarks and all properties located within designated Districts located in the city. Such information shall be maintained securely, made accessible to the public and should be updated at least every ten (10) years.
  - h. Monitor and report to the Texas Historical Commission all actions affecting any Recorded Texas Historic Landmark, State Archaeological Landmark, National Register property and any locally designated Landmark, as deemed necessary.
  - i. Create sub-committees from among its membership and delegate to these committees' responsibilities to carry out the purposes of this Article.
  - j. Maintain written meeting minutes which are recorded by staff and demonstrate all actions taken by the HPC and the reasons for taking such actions.
  - k. Increase public awareness of the value of historic, cultural, and architectural preservation by developing and participating in public education programs.
  - l. Review and take action on all Certificates of Appropriateness applications for compliance with adopted Design Guidelines pursuant to this Article.
  - m. Review and take action on all appeals on action taken by the HPO regarding the administrative review of Certificates of Appropriateness applications for compliance with adopted Design Guidelines pursuant to this Article.
  - n. Develop, prepare and adopt specific Design Guidelines which shall be ratified by the City Council, for use in the review of all Certificates of Appropriateness applications.

- o. Prepare and submit annually to the City Council a report summarizing budget costs, goals and objectives and work completed during the previous year, as well as anticipated budgetary requests.
- p. Make recommendations to the city concerning the utilization of state, federal, or private funds to promote the preservation of Landmarks and Districts within the city.
- q. Recommend to City Council the acquisition of endangered Landmarks by demolition where its preservation is essential to the purpose of this Article and where private preservation is not feasible.
- r. Propose incentive program(s) to City Council for local property owners of historic Landmarks or within local Districts.
- s. Review and take action on all city preservation-related incentive program applications involving work on Landmarks and Districts for compliance with adopted Design Guidelines pursuant to this Article.
- t. Accept on behalf of the city government donations of preservation easements and development rights as well as any other gift of value for the purpose of historic preservation, subject to the approval of City Council
- u. Provide comment to the Texas Historical Commission on any federal undertakings (projects utilizing federal funds or requiring a federal permit) pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended

#### **Section 4. Appointment of Historic Preservation Officer**

The City Manager or its designee shall appoint a qualified city official, or staff person to serve as Historic Preservation Officer (HPO). The HPO must have an interest, knowledge and a demonstrated background in the disciplines of architecture, history, urban planning, real estate, legal, archeology, or other disciplines related to historic preservation. In the absence of a qualified official or staff person of the municipality, a volunteer resident of the city may be appointed by City Council as HPO. The HPO shall be empowered to:

- a) Administer this ordinance and advise the HPC on matters submitted to it.
- b) To maintain and hold open for public inspection all documents and records pertaining to the provisions of this Article.
- c) Receive and review all applications pursuant to this Article to ensure their completeness.
- d) Review and take action on all Certificates of Appropriateness applications subject to administrative review pursuant to this Article.
- e) Review and forward with any recommendations all applications for Certificates of Appropriateness subject to review by the HPC pursuant to this Article.
- f) Ensure proper posting and noticing of all HPC meetings, schedule applications for HPC review, provide packets to its members prior to the meetings, record meeting minutes and facilitate all HPC meetings.
- g) Review and help coordinate the city's preservation and urban design activities with those of local, state and federal agencies and with local, state, and national preservation organizations in the private sector.

## **Section 5. Criteria for Designation of Local Historic Landmarks and Districts**

Properties that are listed as a Recorded Texas Historic Landmark (RTHL), State Archeological Landmark (SAL) or listed on the National Register of Historic Places (NR) shall be considered as recognized local Landmarks.

- 1) An individual Landmark may be designated if it is at least fifty (50) years old and it substantially complies with two or more of the following:
  - a. Possesses significance in history, architecture, archeology, and culture.
  - b. Is associated with events that have made a significant contribution to the broad patterns of local, regional, state, or national history.
  - c. Is associated with events that have made a significant impact in our past.
  - d. Represents the work of a master designer, builder, or craftsman.
  - e. Embodies the distinctive characteristics of a type, period, or method of construction.
  - f. Represents an established and familiar visual feature of the city.
- 2) A District may be designated if it substantially complies with both of the following:
  - a. Contains properties and an environmental setting which meet two or more of the criteria for designation of a landmark, and;
  - b. Constitutes a distinct section of the city.

## **Section 6. Designation of Local Historic Landmarks and Districts**

- a) These provisions pertaining to the designation of historic landmarks constitutes a part of the comprehensive zoning plan of the City of Aurora.
- b) The procedure for designating a historic Landmark or to establish or amend a historic District may be initiated by the city, or by the individual property owner(s), or by at least 20% of the residents of the potential District. An application for Determination of Significance shall be made on forms as prescribed by the city and shall be filed with the HPO along with fees in accordance with the municipal fee schedule. Buildings, structures, sites or areas located within the city which substantially complies with the criteria found in Section 5 may be recommended to the City Council as Landmarks or Districts by the HPC. The application shall contain:
  - i. Name, address, telephone number of applicant, and physical address of the individual property, or
  - ii. Name, address, telephone number of applicant, and signed petition of at least 20% of the proposed area.
  - iii. Site plan of the individual property or map indicating the geographic boundaries of the proposed area showing all affected buildings and/or structures.
  - iv. Detailed historic description and background on the property or area.
  - v. Current photographs of the overall property or area along with any historical photographs, if available.
  - vi. Any other information which the HPO or HPC may deem necessary.
- c) Upon receipt of a completed for a Determination of Significance application, the HPO shall schedule a hearing at the next available regularly scheduled HPC meeting. Notice of the application shall be mailed to the property owner(s) and posted on the property by the city for a minimum period of fourteen (14) days prior to the scheduled hearing. A published notice of the scheduled hearing shall also be made in accordance with the

Texas Open Meeting Act. Notice of applications for proposed Districts shall be mailed to each affected property owner and posted at least four (4) separate locations that are visible from the public right-of-way at its external boundaries for a minimum period of fourteen (14) days prior to the scheduled hearing. A published notice of the scheduled hearing shall also be made in accordance with the Texas Open Meeting Act.

- d) An individual property or area that is under review by the city for a formal Determination of Significance shall be protected by and subject to all of the provisions of this Article governing demolition, minimum maintenance standards and penalties until a final decision by the City Council becomes effective.
- e) At the hearing, the applicant shall have an opportunity to present testimony and evidence to demonstrate the historical Significance, or insignificance of the subject property or area. Other interested parties and technical experts may also present testimony or documentary evidence which will become part of a record. The burden of proof shall be upon the applicant.
- f) The HPC may take action to approve, postpone requesting additional information or deny the application. The HPO shall forward any final recommendation to the Planning and Zoning Commission within thirty (30) days of the hearing. Denials may be appealed directly to City Council.
- g) The Planning and Zoning Commission shall give notice and conduct its hearing upon receipt of the recommendation from the HPC. Notice for such hearing shall be in the same manner and the hearing held according to the same procedures as specifically provided in the general zoning ordinance of the City of Aurora. The Planning and Zoning Commission shall review the application to ensure that the recommended designation will not pose a conflict with the underlying land use zoning and shall forward its recommendation to the City Council within thirty (30) days after taking action on the application.
- h) Upon receipt of the joint recommendation on the application from the HPC and the Planning and Zoning Commission, the City Council shall schedule a hearing on the application within within thirty (30) days. Notice for such hearing shall be in the same manner and the hearing held according to the same procedures as specifically provided in the general zoning ordinance of the City of Aurora. Significance shall be considered only on the record made before the HPC and the Planning and Zoning Commission.
- i) Upon designation of a Landmark or District by the city council, the designation shall be recorded by legal description on the city's official zoning maps, in the records of real property of Anderson County, and with the tax appraisal office.
- j) The applicant or any persons adversely affected by any determination of the HPC may appeal the decision to city council. Appeal requests shall be on forms as prescribed by the city and shall be filed with the HPO within seven (7) days of the HPC's decision and scheduled for the next available regularly scheduled city council meeting. Notice for such hearing shall be in the same manner and the hearing held according to the same procedures as specifically provided in the general zoning ordinance of the City of Aurora. Appeals to the City Council shall be considered only on the record made before the HPC, and may only allege that the HPC's decision was arbitrary, capricious, or illegal.

### **Section 7. Minimum Maintenance Standards**

No owner or person with an interest in real property designated as a Landmark or a property located within a District shall permit the property to fall into a serious state of disrepair so as to

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result in the significant deterioration of any exterior architectural feature which would, in the judgment of the HPC, create a detrimental effect upon the historic character of the Landmark or District.

- 1) Examples of serious disrepair or significant deterioration include:
  - a. Deterioration of exterior walls, foundations, or other vertical support that causes leaning, sagging, splitting, listing, or buckling.
  - b. Deterioration of external chimneys that causes leaning, sagging, splitting, listing, or buckling.
  - c. Deterioration or crumbling of exterior plaster finishes, surfaces or mortars.
  - d. Ineffective waterproofing of exterior walls, roofs, and foundations, including broken windows or doors.
  - e. Defective protection or lack of weather protection for exterior wall and roof coverings, including lack of paint, or weathering due to lack of paint or other protective covering.
  - f. Rotting, holes, and other forms of material decay.
  - g. Deterioration of exterior stairs, porches, handrails, window and door frames, cornices, entablatures, wall facings, and architectural details that causes delamination, instability, loss of shape and form, or crumbling.
  - h. Deterioration that has a detrimental effect upon the special character of the district as a whole or the unique attributes and character of the contributing structure.
  - i. Deterioration of any exterior feature so as to create or permit the creation of any hazardous or unsafe conditions to life, health, or other property.

#### **Section 8. Procedure to mitigate Demolition by Neglect**

Demolition by Neglect refers to the gradual deterioration of a property when routine or minimum maintenance is not performed. The HPO and the Development Services Department staff shall work together in an effort to reduce Demolition by Neglect involving Landmarks or properties located within Districts within the city. A Demolition by Neglect citation as determined by the HPC may be issued against the owner of the property for failure to comply with the minimum maintenance standards by permitting the subject property to exhibit serious disrepair or significant deterioration as outlined in Section 40-107 herein.

- 1) Due to the time consuming nature of pursuing enforcement under this section, no more than one property will be under consideration during each of the following quarters (January- March, April-June, July-September, and October- December).
- 2) While the HPO will act as the point of contact, the Development Services Department staff shall, when needed, assist with inspections. If there is a dispute between the HPO and Development Services Department staff, the City Manager may be consulted as a mitigating party.
- 3) The procedure for citing a property for Demolition by Neglect shall be as follows:
  - a. Initial identification is made by visual inspection of the area by the HPO or an HPC member or by referral from someone in the area. All referrals shall be made in writing and shall be submitted to the HPO.
  - b. Once the initial identification is made, followed by a preliminary determination by the HPO, the property owner shall be notified by US mail of the defects of the

building and informed of various incentive programs that may be available for repair. The owner is given thirty (30) days in which to respond to the preliminary determination by submitting a stabilization proposal to HPO. The stabilization proposal will be presented to the HPC at the next available meeting. If the HPC approves the proposal, a Certificate of Appropriateness (if necessary) may be issued administratively by the HPO. The approval will detail the specific work which is necessary to correct the Demolition by Neglect conditions, as well as a time period to begin and complete the work. The HPO shall update the HPC on the status of the property every thirty (30) days once work begins on the property.

- c. If the property owner receives the letter regarding the preliminary determination, but fails to respond, a second notice shall be sent in the same manner as described above.
- d. If the property owner fails to receive and/or respond to the letter regarding the preliminary determination after two (2) attempts, the matter returns to the HPC for a citation hearing. The HPO shall send a third notice via certified mail informing the owner of the hearing, the property is posted with a notice of the violation in accordance with the provisions of this Article, and a public hearing on the citation is scheduled.
- e. At the public hearing the owner is invited to address the HPC's concerns and to show cause why a citation should not be issued. The HPC may take action to approve any proposed work, defer the matter to give the owner more time either to correct the deficiencies or make a proposal for stabilization, or issue a citation to the owner of the property for failure to correct the Demolition by Neglect conditions.
- f. If the owner is cited for the condition of Demolition by Neglect of the property, he is given fourteen (14) days to submit a stabilization proposal to the HPO, and at the discretion of the HPC, up to one (1) year to correct the defects. The HPO shall update the HPC on the status of the property every thirty (30) days once work begins on the property.
- g. If the owner does respond with a stabilization proposal, the matter is turned over to the City Attorney's office for action in Municipal Court.

### **Section 9. Ordinary Maintenance**

Nothing in this ordinance shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of a landmark or property within a historic district which does not involve a change in design, material, or outward appearance that require the issuance of a building permit. In-kind repair/replacement and repainting is included in this definition of ordinary maintenance unless painting involves an exterior masonry surface that was not previously painted. The HPO shall be in charge of making the decisions as to what is "ordinary maintenance."

### **Section 10. Certificates of Appropriateness for Alterations or New Construction Affecting Landmarks or Historic Districts**

No person shall carry out any construction, reconstruction, alteration, restoration, rehabilitation, or relocation of any Landmark or any property within a District, nor shall any person make any

material change in the light fixtures, signs, sidewalks, fences, steps, paving, or other exterior elements visible from a public right-of-way which affect the appearance and cohesiveness of any Landmark or any property within a District without a Certificate of Appropriateness application. The application must be reviewed and approved by the HPO or the HPC prior to the issuance of any building permit involving any Landmark or property located within a District. The application shall be required in addition to, and not in lieu of, any required building permit.

#### **Section 11. Review Criteria for Certificates of Appropriateness for Alterations or New Construction Affecting Landmarks or Historic Districts**

In considering an application for a Certificate of Appropriateness, the HPO and the HPC shall review it for compliance with The Secretary of the Interior's Standards for Rehabilitation and any applicable adopted Design Guidelines previously ratified by the City Council. The Standards and any applicable adopted Design Guidelines shall apply in all zones within the city bearing the suffix "HD" or individual properties bearing the suffix "HL."

All review criteria shall be made available to the applicant, property owners of Landmarks and properties located within Districts. The HPC shall promulgate and make recommendations to update the adopted Design Guidelines as necessary, provided that the changes do not pose a conflict with underlying land-use zoning and the changes do not take effect until ratified by the City Council.

#### **Section 12. Procedure for Certificates of Appropriateness for Alterations or New Construction Affecting Landmarks or Historic Districts**

The procedure for obtaining a Certificate of Appropriateness may be initiated by the city for all city-owned Landmarks or proposed work within a District, or by the individual property owner(s) of the subject Landmark or for a property located within a District. The application must be submitted for reviewed and approved by the HPO or the HPC prior to the commencement of any work. An application for Certificate of Appropriateness shall be made on forms as prescribed by the city and shall be filed with the HPO along with fees in accordance with the municipal fee schedule.

- 1) Administrative design review affecting Landmarks and properties located in Districts.
  - a. Upon receipt of a completed Certificate of Appropriateness application as determined by the HPO, the HPO shall review the application for a preliminary determination of compliance with the Secretary of the Interior's Standards for Rehabilitation and the adopted Design Guidelines. The applicant is encouraged to schedule a meeting with the HPO prior to the submittal of an application to discuss the proposed work and get initial design direction. The HPO reserves the right to forward any Certificate of Appropriateness application to the HPC for review and approval when direction on design policy is needed or if unable to determine compliance with the the Secretary of the Interior's Standards for Rehabilitation or the Design Guidelines. Proposed work to all city-owned Landmarks, all proposed work within a District, and for all city preservation related incentive programs or federal projects must be reviewed by the HPC.
  - b. Within five (5) days of receipt of a completed Certificate of Appropriateness application and a preliminary determination of compliance, notice of the pending administrative action shall be mailed to the property owner(s), to all immediate

adjacent property owner(s), and posted on the property by the city establishing a fourteen (14) day period in which written comments may be submitted to the HPO.

- c. At the end of the notice period, the HPO shall meet with the Chair of the HPC to review the application and any comments received for design compliance consensus. If approved, the HPO shall issue a Certificate of Appropriateness consisting of written findings of fact, conclusions of law and any specific conditions of approval (if any), supporting the decision. The HPO shall also provide anyone who submitted written comments with a copy and forward its decision to the Development Services Department. Any specific conditions of approval as identified by the HPO shall be attached to the construction documents prior to the issuance of any building permits. No subsequent changes shall be made to the approved design without the prior review and approval of the HPO. An applicant shall have one (1) year from the date of issuance of a Certificate of Appropriateness to secure a building permit for the specified improvements or it shall become null and void.
  - d. If the HPO and Chair of the HPC finds the proposed work will have an Adverse Effect on the Landmark, or property located within a District, or if the proposed work is inconsistent with the Secretary of the Interior's Standards for Rehabilitation or adopted Design Guidelines, the HPO shall advise the applicant and any written commenter of the disapproval of the application and of any changes to the application which are necessary for approval of same. A Certificate of Appropriateness application that has been denied administratively may not be resubmitted without incorporating changes to the application which are necessary for approval of the same.
  - e. If no action has been taken by the HPO within sixty (60) days of the original receipt of the application, a Certificate of Appropriateness shall be deemed issued by the HPO and the HPO shall so advise the applicant in writing.
  - f. The applicant or any persons adversely affected by the determination of the HPO may appeal the decision to the HPC. Appeal requests shall be filed in writing to the HPO within ten (10) days of the HPO's decision. The HPO must schedule the appeal for a public hearing at the next available regularly scheduled HPC meeting. Notice of the appeal shall be posted on the property for a period of fourteen (14) days upon receipt of a formal appeal request. A written notice of the public hearing for the appeal request shall also be provided to all parties who received mailed notice for the original HPO's preliminary determination. Appeals to the HPC shall be considered only on the record made before the HPO.
- 2) HPC design review affecting Landmarks and properties located in Districts.
- a. Upon receipt of a completed Certificate of Appropriateness application as determined by the HPO, the HPO shall review the application for a preliminary determination of compliance with the Secretary of the Interior's Standards for Rehabilitation and any applicable adopted Design Guidelines. The applicant is encouraged to schedule a meeting with the HPO prior to the submittal of an application to discuss the proposed work and get initial design direction.
  - b. Within five (5) days of receipt of a completed Certificate of Appropriateness and a preliminary determination of compliance, the HPO shall schedule a public hearing at the next available regularly scheduled HPC meeting. Notice of the

pending HPC hearing for compliance with the Secretary of the Interior's Standards for Rehabilitation and any adopted Design Guidelines shall be mailed to the property owner(s), to all immediate adjacent property owner(s), and posted on the property by the city establishing a fourteen (14) day period in which written comments may be submitted to the HPO. A published notice of the scheduled hearing shall also be made in accordance with the Texas Open Meeting Act. All review criteria and the formal written report to the HPO shall be made available to the applicant prior to the hearing.

- c. The HPC shall review the application at a regularly scheduled meeting. At that time, the applicant shall have an opportunity to be heard, present testimony and evidence to demonstrate that the proposed work is in compliance with the Secretary of the Interior's Standards for Rehabilitation and any adopted Design Guidelines. Other interested parties and technical experts may also present testimony or documentary evidence which will become part of a record. The burden of proof shall be upon the applicant. In the event a hearing is not scheduled within ninety (90) days of receipt of the application, a Certificate of Appropriateness may be granted.
- d. The HPC may take action to approve, postpone requesting additional information or deny the application. If no hearing has been scheduled within ninety (90) days of the original receipt of the application by the HPO, a Certificate of Appropriateness shall be deemed issued and the HPO shall so advise the applicant in writing.
- e. If approved, the HPO shall issue a Certificate of Appropriateness to the applicant with the written findings of fact, conclusions of law and any specific conditions of approval (if any) supporting the decision. The HPO shall also provide anyone who submitted written comments with a copy and forward the HPC's decision to the Development Services Department. Any specific conditions of approval made by the HPC shall be attached to the construction documents prior to the issuance of any building permits. No subsequent changes shall be made to the approved design without the prior review and approval of the HPO or HPC. An applicant shall have one (1) year from the date of issuance of a Certificate of Appropriateness to secure a building permit for the specified improvements or it shall become null and void.
- f. If the HPC finds the proposed work will have an Adverse Effect on the Landmark, or property located within a District, or if the proposed work is inconsistent with the Secretary of the Interior's Standards for Rehabilitation or any applicable adopted Design Guidelines, the HPC shall advise the applicant at the hearing of the disapproval of the application and of any changes to the application which are necessary to approval of the same. Within five (5) days following the meeting, the HPO shall provide the applicant and any written commenter noticing in writing of the disapproval of the application and of any changes to the application which are necessary for approval of the same. A Certificate of Appropriateness application that has been denied may not be resubmitted without incorporating changes to the application which are necessary for approval of the same.
- g. The applicant or any persons adversely affected by the action of the HPC may appeal the decision to the City Council. Appeal requests shall be filed in writing to

the HPO within ten (10) days of the HPC's decision. The HPO must schedule the appeal for a public hearing at the next available regularly scheduled HPC meeting. Notice of the appeal shall be posted on the property for a period of fourteen (14) days upon receipt of a formal appeal request. A written notice of the public hearing for the appeal request shall also be provided to all parties who received mailed notice for the HPC hearing.

- h. The City Council shall give notice, follow publication procedure, hold hearings, and make its decision in the same manner as provided in the general zoning ordinance of the city. Appeals to the City Council shall be considered only on the record made before the HPC, and may only allege that the HPC's decision was arbitrary, capricious, or illegal.

### **Section 13. Demolition of Landmarks**

It is the intent of this and succeeding sections to preserve the historic and architectural resources of the city through limitations on demolition and removal of Landmarks to the extent it is economically feasible practical and necessary. The demolition or removal of historic buildings structures and sites in the city diminishes the character of the city's historic Districts and it is strongly discouraged. Instead the city recommends and supports preservation rehabilitation and relocation within the historic district. It is recognized however that structural deterioration, economic hardship and other factors not entirely within the control of the property owner may result in the necessary demolition or removal of a historic building structure or site.

- 1) Removal or repair of hazardous or dangerous Landmarks:
  - a. If the building official determines a Landmark to be structurally unsound and a hazardous or dangerous building pursuant to the provisions found in the city's adopted building code, the building official shall be required to provide written notice to the HPC of the ordered removal or repair of the Landmark prior to taking such action; and,
  - b. The provisions contained in Section 214.00111 of the Texas Local Government Code provides additional authority to the city to preserve substandard historic buildings and are effective immediately upon designation as a Certified Local Government by the US Department of the Interior, National Park Service and Texas State Historic Preservation Officer as provided by 16 U.S.C., Section 470 et seq.; and,
  - c. The property owner(s) of the demolished Landmark removed under this procedure is subject to the penalties found in Section 40-120 herein.

### **Section 14. Certificates of Appropriateness for Demolition Affecting Landmarks or Historic Districts**

No person shall carry out the demolition of a Landmark or property within a District, including secondary buildings and landscape features that are not previously deemed a hazardous or dangerous building by the building official, or without the review and approval of a Certificate of Appropriateness for Demolition application by the HPC. The application shall be required in addition to, and not in lieu of, any required building permit. All demolition permits require a sixty day stay of demolition to allow for exploration of options to preserve the structure.

- 1) In the absence of a determination by the building official of the subject property as a hazardous or dangerous building, the HPC may consider an application for a Certificate of Appropriateness for Demolition of a Landmark or property located within a District, only if it meets compliance with one of the following:
  - a. The subject property of the application is not a recognized Landmark.
  - b. The subject building, structure or object is not an accessory building and/or landscape features that is integral to the historic interpretation or integrity of the Landmark.
  - c. The applicant is requesting a Certificate of Appropriateness for Demolition of a Landmark on the basis of Economic Hardship pursuant to Section 16.
  - d. The subject building, structure or object has lost its architectural significance and integrity over time for reasons not entirely within the control of the current or previous property owner(s).

**Section 15. Procedure for Certificates of Appropriateness for Demolition Affecting Landmarks or Historic Districts**

The procedure for obtaining a Certificate of Appropriateness for Demolition may be initiated by the city for all city-owned Landmarks or proposed work within a District, or by the individual property owner(s) of the subject Landmark or property within a District. The application must be submitted to the HPO for review and approval by the HPC prior to the commencement of any work. An application for Certificate of Appropriateness for Demolition shall be made on forms as prescribed by the city and shall be filed with the HPO along with fees in accordance with the municipal fee schedule.

- 1) The application shall contain:
  - a. Name, address, telephone number of applicant, and physical address of the individual property.
  - b. Site plan of the individual property or map indicating the area of the proposed demolition showing all affected buildings and/or structures on the site.
  - c. Photographs of existing conditions as well as any historical photographs, if available.
  - d. All future development plans for the property, if available.
- 2) An individual property that is under review by the city for a Certificate of Appropriateness for Demolition shall be protected by and subject to all of the provisions of this Article governing demolition, minimum maintenance standards and penalties until a final decision by the HPC becomes effective.
- 3) The procedure for a Certificate of Appropriateness for Demolition shall be the same as provided for in Section 10 herein.
- 4) The procedure for a Certificate of Appropriateness for Demolition application involving a claim of Economic Hardship shall be as follows:
  - a. Upon receipt of a completed Certificate of Appropriateness for Demolition application, the HPO shall review the application for a preliminary determination of compliance with the standards for economic hardship.
  - b. The applicant is encouraged to schedule a meeting with the HPO prior to the submittal of an application to discuss the application and get initial direction.
  - c. Within five (5) days of receipt of a completed Certificate of Appropriateness involving a claim of Economic Hardship and a preliminary determination of compliance, the HPO shall schedule a public hearing at the next available

regularly scheduled HPC meeting. Notice of the pending HPC hearing for compliance with the standards for economic hardship and the criteria for review. Notice of the hearing shall be mailed to the property owner(s), to all immediate adjacent property owner(s), and posted on the property by the city. The owner shall be required to stabilize and secure the property subject to the penalties of this Article until a final decision by the HPC becomes effective. A published notice of the scheduled hearing shall also be made in accordance with the Texas Open Meeting Act. All review criteria and the formal written report to the HPO shall be made available to the applicant prior to the hearing.

- d. The HPC shall conduct its initial review of the application at a regularly scheduled meeting. At that time, the applicant shall have an opportunity to be heard, present testimony and evidence to demonstrate that standards for economic hardship and the criteria for review have been met. Other interested parties and technical experts may also present testimony or documentary evidence which will become part of a record. The burden of proof shall be upon the applicant. In the event the HPC does not act within ninety (90) days of receipt of the application, a Certificate of Appropriateness for Demolition may be granted.
- e. In considering the application, the HPC shall take action to postpone the application in order to establish a Stay of Demolition period, during which time the owner shall allow the city to post a sign stating that the property is subject to demolition. Said sign shall be at least three feet by two feet 3 X 2 readable from a point of public access and state that more information may be obtained from the HPO for the duration of the stay. The owner shall conduct in good faith with the city local preservation organizations and interested parties a diligent effort to seek an alternative that will result in the rehabilitation of the Landmark. Negotiations may include but is not limited to such actions to utilize various preservation incentive programs sell or lease the Landmark, or facilitate proceedings for the city to acquire the Landmark under its power of eminent domain, if appropriate, and financially possible. If negotiations are successful, the Certificate for Demolition application shall be considered withdrawn and all associated applications closed.
- f. At the end of the one hundred and eighty (180) days, if prior negotiations are unsuccessful and the request for demolition stands, the HPO shall schedule a second public hearing on the application at the next available regularly scheduled HPC meeting pursuant to the same manner described above in Subsection (b).
- g. At the end of the second hearing, the HPC may take action to approve, postpone requesting additional information or deny the application. If no hearing has been scheduled within sixty (60) days of the end of the stay period, a Certificate of Appropriateness shall be deemed issued and the HPO shall so advise the applicant in writing.
- h. If approved, the HPO shall issue a Certificate of Appropriateness to the applicant with the written findings of fact, conclusions of law and any specific conditions of approval (if any) supporting the decision. The HPO shall also provide anyone who submitted written comments with a copy and forward the HPC's decision to the Development Services Department. The approval shall be valid for one (1) year from the hearing date of the HPC's final decision. The historic property shall immediately be removed from the city's inventory of historic properties the official

public records of real property of Wise County and the official zoning maps of the city.

- i. Prior to demolition, the city may as a condition of approval require the owner to provide documentation of the demolished historic property at the owner's expense in accordance with the standards of the Historic American Building Survey (HABS). Such documentation may include photographs, floor plans, measured drawings, an archeological survey, or other information as specified.
- j. Forward a recommendation to the Planning Commission to place limitations on future development on the subject property in regard to square footage, building footprint, scale mass, height, setbacks, etc. of the demolished Landmark to help ensure infill that is architecturally compatible.
- k. Approval for the demolition of a structure may be conditioned upon the construction of an acceptable replacement structure, or landscape or park plan. A bond or other financial guaranty in the amount of the cost of the replacement structure may be required in order to assure the construction of the replacement structure, or park, or landscape plan.
- l. Forward a recommendation to the Planning Commission to place limitations on future development on the subject property in regard to square footage, building footprint, scale mass, height, setbacks, etc. of the demolished Landmark to help ensure infill that is architecturally compatible.
- m. The city may also require the owner to incorporate an appropriate memorialization of the building, structure or site such as a photographic display or plaque into any proposed future development project on the property.
- n. Denial of a Certificate of Appropriateness application for Demolition involving Economic Hardship shall prevent the owner from demolishing the property or reapplying for another Certificate of Appropriateness application for Demolition for a period of three (3) years from the hearing date of the HPC's final decision, unless substantial changes in circumstances have occurred other than resale of the property or those caused by acts beyond the control of the owner. It shall be the responsibility of the owner to stabilize and maintain the minimum maintenance standards for the property so as not to create a hazardous or dangerous building.
- o. The city may continue to provide the owner with information regarding financial assistance for the necessary rehabilitation or repair work as it becomes available.
- p. The owner may appeal the decision of the HPC to the City Council. Appeal requests shall be filed in writing to the HPO within ten (10) days of the HPC's decision. The City Council shall give notice, follow publication procedure, hold hearings, and make its decision in the same manner as provided in the general zoning ordinance of the city. Appeals to the City Council shall be considered only on the record made before the HPC, and may only allege that the HPC's decision was arbitrary, capricious, or illegal.

#### **Section 17. Economic Hardship involving Certificates of Appropriateness for Demolition Affecting Landmarks**

No Certificate of Appropriateness for Demolition involving a claim of economic hardship may be approved, nor shall a demolition permit be issued by the city unless the owner proves compliance with the following standards for economic hardship:

- a) The property is incapable of earning a reasonable return in its current or rehabilitated state, regardless of whether that return represents the most profitable return possible.
  - b) The property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return.
  - c) Earnest and reasonable efforts to find a purchaser interested in acquiring the property and preserving it have failed.
  - d) The property cannot be moved or relocated to another site similar site or within the District.
  - e) The city shall adopt by resolution separate criteria for review in considering claims of economic hardship for investment for income producing and non-income producing properties, as recommended by the HPC. Non-income properties shall consist of owner occupied single family dwellings and non-income producing institutional properties. All standards for review shall be made available to the owner prior to the hearing. The information to be considered by the city may include but not be limited to the following:
    - i. Purchase date price and financing arrangements
    - ii. Current market value
    - iii. Form of ownership
    - iv. Type of occupancy
    - v. Cost estimates of demolition and post demolition plans for development
    - vi. Maintenance and operating costs
    - vii. Inspection report by licensed architect or structural engineer having experience working with historic properties
    - viii. Costs and engineering feasibility for rehabilitation
    - ix. Property tax information
    - x. Rental rates and gross income from the property
    - xi. Other additional information as deemed appropriate
- 2) Claims of economic hardship by the owner shall not be based on conditions resulting from:
- a. Evidence of demolition by neglect or other willful and negligent acts by the owner
  - b. Purchasing the property for substantially more than market value at the time of purchase
  - c. Failure to perform normal maintenance and repairs
  - d. Failure to diligently solicit and retain tenants
  - e. Failure to provide normal tenant improvements
- 3) Throughout the process, the applicant shall consult in good faith with the HPO, local preservation groups and interested parties in a diligent effort to seek an alternative that will result in preservation of the property. Such efforts must be demonstrated to the HPC at the hearing.

### **Section 18. Enforcement**

All work performed pursuant to a certificate of appropriateness issued under this ordinance shall conform to any requirements included therein. It shall be the duty of the building inspector to inspect periodically any such work to assure compliance. In the event work is not being performed in accordance with the certificate of appropriateness, or upon notification of such fact by the HPC and verification by the HPO, the building inspector shall issue a stop work order and all work shall immediately cease. The property owner shall then be required to apply for a

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hearing before the HPC to explain the non-compliance. No further work shall be undertaken on the project as long as a stop work is in effect until a decision is rendered by the HPC on the application.

### Section 19. Penalties

It shall be unlawful to construct reconstruct significantly alter restore or demolish any building or structure designated as a Landmark or in a designated District in violation of the provisions of this Article. The city in addition to other remedies may institute any appropriate action or proceeding to prevent such unlawful construction reconstruction significant alteration or demolition to restrain correct or abate such violation or to prevent any illegal act business or maintenance in and about such premises including acquisition of the property.

Any person firm or corporation violating any provision of this division shall be guilty of a class C misdemeanor punishable by a fine of not less than two hundred and fifty dollars (\$250.00 or more than two thousand dollars (\$2,000.00). Each day the violation continues shall be considered a separate offence. Such remedy under this section is in addition to the abatement restitution.

### Section 20. Severability Clause

Should any paragraph, phrase, sentence, or clause of this ordinance be determined to be unconstitutional, said determination shall not affect the remaining paragraphs, phrases, sentences or clauses which shall remain in full force and effect.

### Section 21. Effective Date

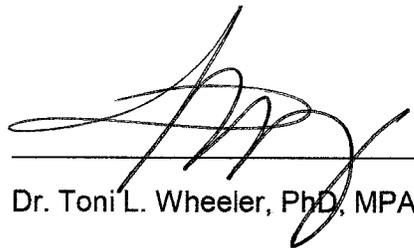
This ordinance shall become effective after passage and publication as required by law.

**PRESENTED AND APPROVED** on this the 5<sup>th</sup> day of October, A.D. 2015.

APPROVED AS TO FORM:

ATTEST:

  
\_\_\_\_\_  
Terry L. Solomon, Mayor

  
\_\_\_\_\_  
Dr. Toni L. Wheeler, PhD, MPA, PMP