

Division 2. Historic Preservation

4.2.1 Title

This division shall be commonly cited as the historic preservation ordinance.

4.2.2 Purpose

(a) This division sets out standards and procedures for the protection, enhancement, designation and preservation of landmarks or districts of historical and cultural importance and significance.

(b) The city council hereby declares that as a matter of public policy the protection, enhancement, and perpetuation of landmarks or districts of historical and cultural importance and significance is necessary to promote the economic, cultural, educational, and general welfare of the public. It is recognized that the city represents the unique confluence of time and place that shaped the identity of generations of citizens, collectively and individually, and produced significant historic, architectural, and cultural resources that constitute their heritage. This act is intended to:

- (1) Protect and enhance the landmarks and districts which represent distinctive elements of the city's historic, architectural, and cultural heritage;
- (2) Foster civic pride in the accomplishments of the past;
- (3) Protect and enhance the city's attractiveness to visitors and the support and stimulus to the economy thereby provided;
- (4) Ensure the harmonious, orderly, and efficient growth and development of the city;
- (5) Promote economic prosperity and welfare of the community by encouraging the most appropriate use of such property within the city;
- (6) Encourage stabilization, restoration, and improvements of such properties and their values.

4.2.3 Scope

This division applies to all property within the incorporated municipal boundaries (i.e., city limits) and the extraterritorial jurisdiction (ETJ). This division applies to actions done after November 14, 2006 (enactment date of the ordinance).

4.2.4 Burden of proof

An applicant for a certificate of appropriateness under this division must establish that the

application complies with the requirements of this division.

4.2.5 Definitions

(a) Rules of interpretation. Words and phrases used in this division shall have the meanings set forth in this section. Terms that are not defined below, but are defined elsewhere in the Code of Ordinances, shall be given the meanings set forth in the code. Words and phrases not defined in the Code of Ordinances shall be given their common, ordinary meaning unless the context clearly requires otherwise. When not inconsistent with the context, words used in the present tense shall include the future tense, words in the plural number shall include the singular number (and vice versa), and words in the masculine gender shall include the feminine gender (and vice versa). The word “shall” is always mandatory, while the word “may” is merely directory. Headings and captions are for reference purposes only.

(b) Specific definitions.

Alteration. A physical change in or to a building.

Architectural control. Regulations governing the appearance or architectural style of buildings or structures. Architectural control is a form of aesthetic zoning.

Building. A building such as a house, barn, church, hotel, or similar construction that is created to shelter any form of human activity. “Building” also may be used to refer to a historically and functionally related unit, such as a courthouse and jail or a house and barn.

Certificate of appropriateness. A signed and dated document evidencing the approval of the commission of historic structures, sites, or areas that are identified with the lives of historical personages or with important events in national, state, regional, or local history. Structures or areas that embody the distinguishing characteristics of an architectural type specimen as to color, proportion, form and architectural details.

Comprehensive historic preservation plan. A document that integrates the various preservation activities and gives them coherence and direction, as well as relates the community’s preservation efforts to community development planning as a whole.

Comprehensive plan. A document or series of documents prepared by a planning commission or department setting forth policies for the future of a community. Enabling statutes in many states require zoning to be in accordance with a comprehensive plan. A comprehensive plan may also be called a master plan.

Concept site plan. A drawing of the overall conceptual layout of a proposed development, superimposed upon a topographic map which generally shows the anticipated plan of development, and which serves as a working base for noting and incorporating suggestions of the city’s administrative officers and consultants, the commission, the P&Z, and the city council.

Design review. The decision-making process conducted by an established review committee of a local government that is guided by the terms set in the historic preservation ordinance.

Design review guidelines. The set of guidelines adopted by the commission that details acceptable alterations of designated properties.

District. An area that possesses a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development.

Exterior features. Features which include the architectural style, general design and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material and the type and style of all windows, doors, walls, roofs, light fixtures, signs, other appurtenant features and significant trees.

Historic preservation commission. The citizens' advisory group appointed by the city council to oversee historic matters within the city. The term may be referenced in this division with the word "commission."

Historic property. A district, site, building, structure, or object significant in history, architecture, engineering, archeology, or culture at the national, state, or local level.

Historic resource. This generally is the same as a historic property. It includes architectural, historical, and archeological properties as well as landscape features.

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

Intensive survey. A systematic detailed examination of an area designed to gather information about historic properties sufficient to evaluate them against predetermined criteria of significance.

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

Landmark. This refers to any individual building, structure, or object that is significant for historical, architectural, or archeological reasons.

Object. 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. Although it may be, by nature or design, movable, an object is associated with a specific setting or environment, such as statuary in designed landscape.

Officer. The historic preservation officer appointed by the mayor to administer the historic preservation ordinance and advise the commission on matters submitted to it.

Ordinary repairs or maintenance. Work done to prevent deterioration of a resource or any part thereof by returning the resource as nearly as practical to its condition prior to such deterioration, decay, or damage, and by using where possible original material. The term expressly omits activities involving the expansion, modification, enlargement, reduction, renovation or remodeling of buildings or structures. The term also omits the cutting away of walls or partitions, cutting or removal of a structural beam or loadbearing support, or removal or change of means of egress. The term also omits changes in exterior paint color.

Overlay zones. A set of zoning requirements that is described in the ordinance text, is mapped, and is imposed in addition to those of the underlying district. Development within the overlay zone must conform to the requirements of both zones or the more restrictive of the two.

Person. A human individual, trust, association, group, partnership, company, corporation or government entity.

Preservation. The act or 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 or features of the property which are significant to its historical, architectural, and cultural values.

Restoration. The act or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time by means of the removal of later work or by the replacement of missing earlier work.

Site. A site is the location of a significant event, 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.

Special district. A district established to accommodate a narrow or special set of uses or for special purposes. The term can signify any district beyond the conventional residential, commercial, industrial, and agricultural districts. Examples include open space districts, hotel/motel districts, or historic preservation districts. The establishment of special districts must have an appropriate police power basis.

Structure. The term “structure” is used to distinguish from buildings those functional constructions made usually for purposes other than creating shelter.

Zoning. A police power measure enacted primarily by general purpose units of local government, 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.

4.2.6 Enforcement; penalties

(a) Enforcement. The city shall have the power to administer and enforce the provisions of this division as may be required by governing law. Any person violating any provision of this division is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this division is hereby declared to be a nuisance.

(b) Criminal penalty. It shall be a violation of this ordinance to violate any provision of this division. Any person violating any provision of this division shall, upon conviction, be fined a sum not to exceeding two thousand dollars (\$2000.00) if the violation governs fire safety, zoning, public health, or sanitation. Each day that a provision of this division is violated shall and may constitute a separate offense. An offense under this division is a misdemeanor.

(c) Civil remedies. Nothing in this division shall be construed as a waiver of the city’s right to bring a civil action to enforce the provisions of this division and to seek remedies as allowed by law, including but not limited to the following:

(1) Injunctive relief to prevent specific conduct that violates this division or to require specific conduct that is necessary for compliance with this division;

(2) A civil penalty up to five hundred dollars (\$500.00) a day when it is shown that the defendant was actually notified of the provisions of this division and after

receiving notice committed acts in violation of this division or failed to take action necessary for compliance with this division; and

(3) Other available relief.

4.2.7 Fees

Fees for a certificate of appropriateness and other fees that may be associated with this division shall be established by the city council from time to time as set forth in the city's fee schedule ordinance.

4.2.8 Historic preservation commission

The Historic Preservation Commission is described in [Section 2, Procedures and Administration](#).

4.2.9 Historic preservation officer

(a) The mayor shall appoint a qualified city official, staff person, or appropriate resident of the city to serve as historic preservation officer (hereafter, the "officer"). This officer shall administer this division and advise the commission on matters submitted to it.

(b) In addition to serving as representative of the commission, the officer is responsible for coordinating the city's preservation activities with those of state and federal agencies and with local, state, and national nonprofit preservation organizations.

4.2.10 Procedure for designation of landmarks and districts

(a) The city council may designate sites, buildings, structures, landscapes, and objects as landmarks and areas as historic districts and the public right-of-way in and surrounding them by adopting zoning overlay districts designated as "H" on the city's official zoning map pursuant to procedures incorporated into the city's zoning ordinance by the city council. The provisions pertaining to the designation of historic landmarks and historic districts constitute a part of the comprehensive zoning plan of the city.

(b) A designation request may be initiated by a property owner or the commission. A building or site may not be designated as landmark without the owner's consent.

(c) Property owners of proposed historic landmarks and property owners within a proposed historic district shall be notified by mail at least fifteen (15) days prior to the commission hearing on the recommended designation or the rescinding of a designation. At the commission's public hearing, owners, interested parties, and

technical experts may present testimony or documentary evidence which will become part of a record regarding the historic, architectural, or cultural importance of the proposed historic landmark or proposed historic district.

(d) The commission may recommend the designation of a landmark or historical district if it meets one or more of the criteria for the designation of a landmark or district.

(e) Upon recommendation of the commission, the proposed historic landmark or historic district shall be submitted to the planning and zoning commission within thirty (30) days from the date of the submittal of the designation request. The planning and zoning commission shall give notice and conduct its hearing on the proposed designation within forty-five (45) days of receipt of such recommendation from the commission. Notice of the public hearing shall be provided to all property owners within two hundred feet (200') of the affected property at least ten (10) days prior to the public hearing, and also published in the official local newspaper at least ten (10) days prior to the public hearing.

(f) The city council shall schedule a hearing on the planning and zoning commission's recommendation to be held within forty-five (45) days of receipt of the recommendation of the planning and zoning commission. Notice of the public hearing shall be provided to all property owners within two hundred feet (200') of the affected property at least ten (10) days prior to the public hearing, and also published in the official local newspaper at least ten (10) days prior to the public hearing. Notice of the hearing before the city council may be provided simultaneously with notice of the P&Z hearing.

(g) Upon designation of a building, object, site, or structure as a historic landmark or district, the city council shall cause the designation to be recorded in the official public records of real property of the county, the tax records of the city, and the Hays County Appraisal District, as well as the official zoning map of the city.

4.2.11 Criteria for designation of landmarks and districts

A historic landmark or historic district may be designated if it:

- (a) Possesses significance in history, architecture, archeology, or 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 the lives of persons significant in our past;
- (d) Embodies the distinctive characteristics of a type, period, or method of construction;
- (e) Represents the work of a master designer, builder, or craftsman; and/or
- (f) Represents an established and familiar visual feature of the city.

4.2.12 Implementation standards; incentives

(a) Implementation manual.

(1) The city council is hereby authorized to enact by resolution implementation standards and guidelines.

(2) No person shall violate historic implementation standards or guidelines adopted by the city council under this section.

(b) Incentives.

(1) The city council is hereby authorized to approve by resolution financial and/or regulatory incentives for historic preservation, at the city council's discretion.

(2) Incentives shall be designed to achieve the purposes and objectives of this division.

(3) Applicants that obtain a certificate of appropriateness for an alternative exterior design standard are eligible for incentives under this division.

4.2.13 Certificate of appropriateness required; expiration

(a) Certificate required. No person shall carry out any construction, reconstruction, alteration, restoration, or relocation of any historic landmark or any property within a historic district, nor shall any person make any material change in the paint color, 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 historic landmark or any property within a historic district, without a certificate of appropriateness. Painting of unpainted stone or masonry is prohibited.

(b) Expiration. A certificate of appropriateness expires one year from the date it is issued if the approved work has not commenced, and it expires two years from the date it is issued if the approved work has not been completed.

(c) Extension. A certificate of appropriateness may be extended by the city council

for up to six (6) months upon request of the applicant and upon showing of good cause.

(d) Exemption for ordinary repairs and maintenance. A certificate of appropriateness is not required for ordinary repairs and maintenance for which the cumulative cost of construction is less than ten thousand dollars (\$10,000.00). There is an expedited process for projects that for which the cumulative construction costs are less than ten thousand dollars (\$10,000.00) but involve more than ordinary repairs and maintenance.

4.2.14 Criteria for issuance of certificate of appropriateness; rehabilitation standards

(a) In considering an application for a certificate of appropriateness, the commission shall be guided by design guidelines adopted by the city, and, where applicable, the following from the Secretary of the Interior's standards for rehabilitation of historic buildings. Any adopted design guidelines and Secretary of the Interior's standards shall be made available to the property owners of historic landmarks or within historic districts.

(b) Every reasonable effort shall be made to adapt the property in a manner which requires minimal alteration of the building, structure, object, or site and its environment.

(c) The distinguishing original qualities or character of a building, structure, object, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.

(d) All buildings, structures, objects, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.

(e) Changes which may have taken place in the course of time are evidence of the history and development of a building, structure, object, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.

(f) Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure, object, or site shall be kept where possible.

- (g) Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should reflect the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, sustained by historical, physical, or pictorial evidence, rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- (h) The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- (i) Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- (j) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural, or cultural material, and such design is compatible with the size, scale, color, material, and character of the property, neighborhood, or environment.
- (k) Wherever possible, new additions or alterations to buildings, structures, objects, or sites shall be done in such a manner that, if such alterations were to be removed in the future, the essential form and integrity of the building, structure, object, or site would not be impaired.
- (l) Paint color shall be based on duplication of paint color, sustained by historical, physical, or pictorial evidence, when available, rather than on conjectural designs.
- (m) The commission shall review all construction plans and concept site plans for construction in the historic district in order to insure compatibility with the zoning requirements and the surrounding buildings and environment in relation to height, gross volume, and proportion.

4.2.15 Application for certificate of appropriateness; application for alternative exterior design standards; review procedure; appeals

- (a) Application. Prior to the commencement of any work requiring a certificate of appropriateness, the owner shall file an application for such a certificate with the commission. The application shall contain:

- (1) Name, address, and telephone number of the applicant (and property owner(s), if different), detailed description of proposed work with a concept site plan; and a description of how the proposed work will be in character with the architectural or historical aspect of the structure or site and the applicable zoning requirements;
 - (2) Location and photograph of the property and adjacent properties;
 - (3) Elevation drawings of the proposed changes, if available;
 - (4) Samples of materials to be used;
 - (5) If the proposal includes signs or lettering, a sign permit application in conformance with the sign ordinance ([chapter 26](#) of this code), a description of materials to be used, method of illumination (if any), and a plan showing the sign's location on the property;
 - (6) The intended and desired starting date and completion date of the alterations to be made;
 - (7) Color chips of the colors which will be used on the structure;
 - (8) Payment of the applicable fees as required by the fee schedule ordinance. The application will not be deemed complete nor will it be processed until such fee is paid in full;
 - (9) Any other information which the commission may deem necessary in order to visualize the proposed work; and
 - (10) Property owner's signed authorization of the proposed work.
- (b) Application for alternative exterior design standards. Alternative exterior design standards for any new construction in a historic district may be submitted, along with all application requirements in subsection (a) of this section, for consideration by the commission when site conditions make strict compliance with the certificate of appropriateness requirements undesirable or impractical.
- (1) Considerations. The alternative standards shall, as a whole, meet or exceed the standards of the implementation manual adopted by the city council, as amended. When a provision is reduced, the alternative standards shall increase other provisions to offset any noncompliance. For instance, if exterior materials do not meet the guidelines of the implementation manual, the architectural features,

landscape features or other enhancements may be accentuated to balance the building's overall historic impact.

(2) Review and appeal process. The commission shall consider the alternative exterior design standards for issuance or denial. An applicant for an alternative exterior design standard dissatisfied with the action of the commission relating to the issuance or denial of an alternative exterior design standard shall have the right to appeal in accordance with the appeals process for the certificate of appropriateness in subsections (f) and (g) of this section.

(3) Waivers. A waiver can be applied for if the exterior redesign of a redevelopment project cannot be done without damaging existing utilities, curbs, or sidewalks.

(c) Building permit. No building permit, if required, shall be issued for such proposed work until a certificate of appropriateness has first been issued by the commission. The certificate of appropriateness required by this division shall be in addition to and not in lieu of any building permit that may be required by any other ordinance of the city.

(d) Time for action by commission. The commission shall review the application at a regularly scheduled meeting within sixty (60) days from the date the application is received, at which time an opportunity will be provided for the applicant to be heard. The commission shall approve, deny, or approve with modifications the permit within forty-five (45) days after the review meeting. In the event the commission does not act within ninety (90) days of the receipt of the application, a permit shall be deemed granted by operation of law.

(e) Form of decision. All decisions of the commission shall be in writing. The commission's decision shall state its findings pertaining to the approval, denial, or modification of the application. A copy shall be sent to the applicant. Additional copies shall be filed as part of the public record on that property.

(f) Appeal to planning and zoning commission. An applicant for a certificate of appropriateness dissatisfied with the action of the commission relating to the issuance or denial of a certificate of appropriateness shall have the right to appeal to the planning and zoning commission within thirty (30) days after receipt of notification of such action. The planning and zoning commission shall conduct a

hearing within thirty (30) days of receipt of a written letter of appeal. The planning and zoning commission shall give notice to the applicant by mail. The planning and zoning commission shall make its decision within thirty (30) days of the hearing.

(g) Appeal to city council. An applicant for a certificate of appropriateness dissatisfied with the action of the planning and zoning commission relating to the issuance or denial of a certificate of appropriateness shall have the right to appeal to the city council within thirty (30) days after receipt of notification of such action. The city council shall conduct a hearing within thirty (30) days of receipt of a written letter of appeal. The city council shall give notice to the applicant by mail. The city council shall make its decision within thirty (30) days of the hearing.

(h) Expedited process for small projects. There shall be an expedited process for obtaining a certificate of appropriateness for small projects, the cumulative costs of which are less than ten thousand dollars (\$10,000.00). This process is available for projects that involve more than just ordinary repairs and maintenance. The historic preservation officer is hereby authorized to administratively approve the applications without public notice or a hearing. Administratively complete applications shall be evaluated and decisions rendered within fifteen (15) business days of submittal. To be eligible, the project must not involve:

- (1) Expansion or reduction of the building's footprint;
- (2) Alterations to the building facade facing a public street or street right-of-way;
- (3) Modifications of the building's color scheme; or
- (4) Any substantive revisions that in the historic preservation officer's judgment are contrary to the spirit of this division and harmful to the integrity of the historic landmark or, if the building is not a landmark, the historic district.

4.2.16 Certificate of appropriateness for demolition

A permit for the demolition of a historic landmark or property within a historic district, including secondary buildings and landscape features, shall not be granted by the city without the review and approval of a completed application for a certificate of appropriateness by the city, as provided in sections 24.07.013 [4.2.13], 24.07.014 [4.2.14], and 24.07.015 [4.2.15] of this division.

4.2.17 Economic hardship

(a) Hardship process. After receiving written notification from the commission of the denial of a certificate of appropriateness, an applicant may commence the hardship

process. No building permit, demolition permit, or certificate of appropriateness shall be issued unless the commission makes a finding that hardship exists, and an economic hardship letter is issued by the city.

(b) Criteria for claim of hardship. When a claim of hardship is made due to the effect of this division, the owner must prove that:

- (1) The property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;
- (2) 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; and
- (3) Efforts to find a purchaser interested in acquiring the property and preserving it have failed.

(c) Effort to seek alternative. The applicant shall consult in good faith with the commission, 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 documented to the commission.

(d) Action by commission. The commission shall hold a public hearing on the application within sixty (60) days from the date the application is received by the officer. Following the hearing, the commission has thirty (30) days in which to prepare a written recommendation to the building official or other official. In the event that the commission does not act within ninety (90) days of the receipt of the application, a letter may be issued.

(e) Form of decision. All decisions of the commission shall be in the form of a written letter. A copy of the letter shall be delivered to the applicant in person or by registered mail and a copy filed with the city secretary's office for public inspection. The commission's decision shall state the reasons for granting or denying the economic hardship application.

(f) Appeal to planning and zoning commission. An applicant for a economic hardship letter dissatisfied with the action of the commission relating to the issuance or denial of a economic hardship letter shall have the right to appeal to the planning and zoning commission within thirty (30) days after receipt of notification of such action. The planning and zoning commission shall conduct a hearing within thirty (30) days

of receipt of a written letter of appeal. The planning and zoning commission shall give notice to the applicant by mail. The planning and zoning commission shall make its decision within thirty (30) days of the hearing.

(g) Appeal to city council. An applicant for a economic hardship letter dissatisfied with the action of the planning and zoning commission relating to the issuance or denial of a economic hardship letter shall have the right to appeal to the city council within thirty (30) days after receipt of notification of such action. The city council shall conduct a hearing within thirty (30) days of receipt of a written letter of appeal. The city council shall give notice to the applicant by mail. The city council shall make its decision within thirty (30) days of the hearing.

4.2.18 Compliance with certificate of appropriateness; inspections; stop-work order

All work performed pursuant to a certificate of appropriateness issued under this division shall conform to any requirements included therein. It shall be the duty of the city inspector or the officer to inspect periodically any such work to assure compliance. In the event work is not being performed in accordance with the certificate of appropriateness, the city inspector or the officer shall issue a stop-work order and all work shall immediately cease. No further work shall be undertaken on the project as long as a stop-work order is in effect.

4.2.19 Ordinary maintenance and insignificant alterations

Nothing in this division 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. In-kind replacement or repair is included in this definition of ordinary maintenance. The term expressly omits activities involving the expansion, modification, enlargement, reduction, renovation or remodeling of buildings or structures. The term also omits the cutting away of walls or partitions, cutting or removal of a structural beam or loadbearing support, or removal or change of means of egress.

4.2.20 Demolition by neglect

No owner or person with an interest in real property designated as a landmark or included within a historic district shall permit the property to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would, in the judgment of the commission, produce a detrimental effect upon the character of the historical district as a whole or the life and character of the property itself. Examples of such deterioration include:

- (a) Deterioration of exterior walls or other vertical supports;
- (b) Deterioration of roofs or other horizontal members;
- (c) Deterioration of exterior chimneys;
- (d) Deterioration or crumbling of exterior stucco or mortar;
- (e) Ineffective waterproofing of exterior walls, roof, or foundations, including

broken windows or doors; and/or

(f) Deterioration of any feature so as to create a hazardous condition which could lead to the claim that demolition is necessary for the public safety.