



Introduction:

In an effort to streamline the demolition by neglect process, staff has identified two changes to the demolition by neglect ordinance that will better serve City needs. Staff proposes the following two changes to the demolition by neglect ordinance:

1. Removal of the historic landmark designation requirement to qualify for demolition by neglect.
2. Changing the membership of the demolition by neglect review committee to replace the Building Official with a member of the building department inspection team.

With increased recent interest in the City's demolition by neglect ordinance, staff reviewed the subject ordinance for compliance with state law and the City's needs. The current version of the demolition by neglect ordinance requires that a property receive a historic landmark designation by the Historic Zoning Commission prior to being considered for demolition by neglect review. The current version of the demolition by neglect ordinance contains a process for designation of historic landmarks both with and without property owner consent. Staff, after review with the City Attorney, cannot find a reason or mandate for designation of historic landmarks in the demolition by neglect process. Subsequently, removal of the historic landmark designation and associated processes is proposed as an amendment to the demolition by neglect ordinance.

The current version of the demolition by neglect ordinance contains a requirement for a review committee to investigate demolition by neglect complaints. The review committee must currently be comprised of the building official, a member of the historic zoning commission, and a licensed engineer familiar with structural engineering (if such individual is reasonably available). It is a concern of the City's Building Official, that serving as both the hearing officer for a demolition by neglect case and being a member of the demolition by neglect review committee at the same time could be considered a conflict of interest. Therefore, staff proposes replacing the building official membership requirement with a member of the building department inspection team.

A redlined version of *Article VIII. – Demolition by Neglect* that supports the proposed changes in detail will be found on the following pages of this report.

PART II - CODE OF ORDINANCES  
Chapter 114 - ZONING  
ARTICLE III. - DISTRICTS  
DIVISION 4. HISTORIC DISTRICT OVERLAY (H-2O)

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***DIVISION 4. HISTORIC DISTRICT OVERLAY (H-2O)<sup>1</sup>***

**Sec. 114-238. Intent.**

Within the H-2O, Historic District Overlay, as shown on the zoning map, it is the intent to preserve and protect historic sites and structures. The requirements of the district are designed to protect and preserve historical and architectural values, provide protection from uses that would lessen the significance of the surrounding uses, create an aesthetic atmosphere, strengthen the economy and promote education and knowledge of heritage of the present and future citizens of the community.

(Code 1981, app. A, art. VI, § 1; Code 1998, § 114-281)

**Sec. 114-239. Underlying district requirements apply.**

The H-2O, Historic District Overlay is superimposed as an overlay on any other zoning district, and the use, dimensional and other requirements of such other district shall apply.

(Code 1981, app. A, art. VI, § 2; Code 1998, § 114-282)

**Sec. 114-240. Historic zoning commission.**

(a) *Appointment, membership, compensation.* The board of mayor and aldermen shall create a seven-member historic zoning commission which shall consist of:

- (1) A representative of a local patriotic or historic organization;
- (2) An architect, if available; a member of the planning commission at the time of the appointment; and
- (3) The remaining members shall be appointed from the community in general.

Members shall be appointed by the mayor, subject to confirmation by the board of mayor and aldermen. Appointment shall be arranged so that the term of one member shall expire each year, and his successor shall be appointed in like manner for a term of five years. All members shall serve without compensation.

(b) *Organization and meetings.* The commission shall elect a chairperson and any other officers desired. Meetings shall be held at the call of the chairperson or by a majority of the members. Minutes shall be kept of all meetings, and all meetings and records shall be open to the public. A quorum shall consist of four members, and official actions may be carried by a majority vote in the presence of a quorum.

(c) *Powers and duties.* The historic zoning commission shall:

- (1) Make recommendations to the planning commission, the board of mayor and aldermen or others in regard to all matters relating to the:

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<sup>1</sup>State law reference(s)—Historic zoning, T.C.A. § 13-7-401 et seq.

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- a. Preservation and enhancement of structures, premises and areas of substantial historical or architectural significance;
  - b. Establishment of historic districts and regulations to be enforced thereunder; and
- (2) Have any other powers and duties as provided in this chapter.

(Code 1981, app. A, art. VI, § 3; Code 1998, § 114-283)

### **Sec. 114-241. Procedures for establishing district.**

The procedure for establishing an historic district shall involve the historic zoning commission, the planning commission and the board of mayor and aldermen. Consideration for designating a site, structure or area as an historic district shall be considered first by the historic zoning commission. Any person, group or agency desiring such a designation shall submit an application to the historic zoning commission containing any relevant information as may be desired by the historic zoning commission, and the historic zoning commission shall inform the occupants and owners of the property involved of the consideration that is being given for designating the property as an historic district. After appropriate review, the historic zoning commission shall forward its report and recommendation to the planning commission. The planning commission and board of mayor and aldermen shall then follow the procedure established for designating any zoning district or for amendment to this chapter.

(Code 1981, app. A, art. VI, § 4; Code 1998, § 114-284)

### **Sec. 114-242. Building permits.**

In an historic district, any building permit issued shall be in conformance with the following:

- (1) *Permit required.* No alteration, moving, demolition, addition or new construction shall take place in an historic district until an application for a certificate of appropriateness has been filed with the zoning administrator and an approved permit obtained for the proposed work. In addition, an application shall be made in the same manner for any work, including but not limited to alterations, additions, demolition, removal or new construction which alters or contributes to the exterior appearance of existing structures, including but not limited to exterior painting or finishing of structures and their roofs, guttering, siding, trim and foundations, or their environment, including but not limited to isolated features such as chimneys, walls, trees, streams, foundations, roadbeds and general grading, and an approved building permit shall be obtained before work can begin.
- (2) *Application for certificate of appropriateness.* An application for a certificate of appropriateness shall be referred directly by the zoning administrator to the historic zoning commission. In applying to the zoning administrator for a certificate of appropriateness, the applicant shall submit a dimensional scale plan indicating the shape, size and location of the lot to be built upon and the shape, size, height and location of all buildings to be erected, altered or moved and of any building already on the lot. The applicant shall also state the existing and intended use of all such buildings and shall provide preliminary exterior elevations indicating material, color, architectural features, signs and such other information as may be required by the zoning administrator or the historic zoning commission for determining whether this chapter is being observed.
- (3) *Historic zoning commission action.* Upon receiving the application, the historic commission shall, within 30 days following the availability of sufficient data, issue to the office of the zoning administrator a letter stating its approval, with or without attached conditions, or disapproval with the grounds for disapproval stated in writing.

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- a. *Commission review.* In its review of material submitted, the historic zoning commission shall give consideration to:
    1. The historic and architectural value of the present structure;
    2. The relationship of exterior architectural features of such structure to the rest of the structures of the surrounding area;
    3. The general compatibility of exterior design, arrangement, texture and materials proposed to be used; and
    4. Any other factor, including aesthetics, which is deemed pertinent.
  - b. *Disapproval.* If disapproval is being considered, the historic zoning commission shall describe to the applicant, if possible, the types of changes in the application that would be necessary for the historic zoning commission to consider approval.
  - c. *Limitations on historic zoning commission.* The historic zoning commission shall not consider or make any requirements pertaining exclusively to the interior of a structure, shall not grant variances from the terms of this chapter and shall not make any requirement except for the purpose of preventing developments obviously incongruous to the historic aspects of the district.
  - d. *Minor improvements.* The historic zoning commission chairman in conjunction with the zoning administrator, or designee, shall be responsible for reviewing an application that substantially conforms to the district guidelines and is minor. Minor improvements will not alter the appearance or integrity of the structure, (for example, minor improvements include things such as roof shingles, paint color, or any cosmetic repairs) provided chairman and zoning administrator, or designee, agree the minor improvement substantially conforms to the guidelines for that historic district, the chairman is authorized to approve the minor improvement. Upon such approval a copy will be included as an item on the agenda of the next available historic zoning commission meeting to serve as additional notice of the action taken.

(Code 1981, app. A, art. VI, § 5; Code 1998, § 114-285; Ord. No. 6544, § I, 2-16-2016; Ord. No. 6730, § X, 6-19-2018)

### **Sec. 114-243. Appeal.**

Anyone who may be aggrieved by any final order or judgment of the historic zoning commission under this division may have the order or judgment reviewed by the courts by the procedure of statutory certiorari as provided for in state law.

(Code 1981, app. A, art. VI, § 6; Code 1998, § 114-286)

### **Secs. 114-244—114-250. Reserved.**

## **ARTICLE VIII. DEMOLITION BY NEGLECT**

### **Sec. 114-650. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Building* means any occupied or vacant walled or roofed structure or part thereof used for human occupation or intended to be so used and includes any garages, outbuildings, and appurtenances belonging thereto or usually enjoyed therewith.

*Commission* means the historic zoning commission established pursuant to section 114-240.

*Demolition by neglect* means neglect in maintaining, repairing, or securing ~~an historic landmark in an a structure in an established~~ historic district that results in deterioration of an exterior feature of the ~~landmark building~~, or the loss of the structural integrity of the ~~landmark building~~, including the existence of any defect listed in section 114-654. The term "demolition by neglect" also includes any act or process which destroys, in part or in whole, any historic ~~landmark building in an established historic district~~.

~~*Historic designation* means the formal recognition as an historic landmark.~~

~~*Historic landmark* means any structure in an historic district of this city, at least 50 years old, either publicly or privately owned, including buildings, homes, replicas, structures, objects, properties, cultural landscapes or sites that have importance in the history, architecture, archaeology, or culture of this city, state or nation, as determined by the commission and having received an historic designation.~~

*Maintenance and repair* means any work, for which a building permit is not required by law, where the purpose and effect of such work is to correct any deterioration, decay of, or damage to a structure or any architecturally significant part thereof and to restore or replace, as nearly as may be practicable, to its condition prior to the occurrence of such deterioration, decay or damage.

*Owner* means any person who, alone or jointly or severally with others, shall have legal or equitable title to any premises in fee simple and every mortgagee of record.

*Parties in interest* means all individuals, associations, or corporations who have interests of record in a building, or parcel of land or who have actual possession thereof.

*Premises* means a lot, plot, or parcel of land, including any buildings thereon.

*Preservation* means the act or process of applying measures necessary to sustain the existing form, integrity, and materials of an historic ~~landmark building~~.

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*Undue economic hardship* means the inability of the owner and parties in interest to obtain a reasonable return or a reasonably beneficial use from the historic ~~landmark building~~ that is the subject of demolition by neglect, or the inability of the owner and parties in interest to finance the required repairs to the historic ~~landmark building~~.

(Ord. No. 5298, § I(114-700), 5-17-2005)

### **Sec. 114-651. Declaration of findings, policy and purpose.**

- (a) The board of mayor and aldermen find that some buildings in the historic districts in the city are or may be allowed to be essentially demolished by neglecting repair to such buildings and that such neglect is detrimental to the protection, preservation, and enhancement of historic sites and buildings in such districts, to property values in the districts, and to the health, safety and welfare of the city and its residents. It is further found that, to prevent such demolition by neglect, T.C.A. § 13-7-407(b) authorizes the governing body of a municipality to enact an ordinance governing demolition by neglect of any building within an established historic district. The board further finds that population growth and development may result in the destruction, impairment or drastic alteration of the buildings, structures and areas important to the city's cultural, historic and architectural heritage. It is further found that the prevention of needless destruction and impairment and the attendant preservation of the city's cultural, historic and architectural heritage are essential to the public health, safety and welfare. The intent of this article is to create a reasonable balance between private property rights and the public interest in preserving the city's historic character and culture. It is also the intent of this chapter not to preserve every old building in the city, but rather to prevent the destruction of historic and architecturally significant sites, buildings, and structures in established historic districts.
- (b) The purpose of this article is to promote the public health, safety and welfare through:
- (1) The protection, enhancement, perpetuation and use of buildings, structures, sites and areas that are reminders of past eras, events and persons important in local, state or national history, or that provide significant examples of architectural styles of the past, or that are unique and irreplaceable assets to the city and its neighborhoods, or that provide for this and future generations examples of the physical surroundings in which past generations lived;
  - (2) The development and maintenance of appropriate settings and environments for such buildings and structures, and in such sites and areas;
  - (3) The enhancement of property values, the stabilization of neighborhoods in historic districts, the increase of economic and financial benefits to the city and its inhabitants, and the promotion of tourist trade and interest;
  - (4) The preservation and enhancement of varied architectural styles, reflecting the distinct phases of the city's history; and
  - (5) The provision of educational opportunities and to increase the appreciation of the city's history.

(Ord. No. 5298, § I(114-701), 5-17-2005)

### **Sec. 114-652. Enforcing official.**

The building official is designated as the public officer who shall exercise the powers prescribed in this article, except as otherwise provided in this article.

(Ord. No. 5298, § I(114-702), 5-17-2005; Ord. No. 5596, § I, 9-4-2007)

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### **Sec. 114-653. Powers of building official.**

The building official is authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purposes and requirements of this article, including the following powers, in addition to others granted in this article:

- (1) Investigate conditions in the historic districts of the city in order to determine which buildings are subject to demolition by neglect, except as otherwise provided in this article.
- (2) Administer oaths and affirmations, examine witnesses, and receive evidence.
- (3) Enter upon premises for the purposes of making examinations, provided that such entries shall be made in such manner as to cause the least possible inconvenience to persons in possession.

(Ord. No. 5298, § I(114-703), 5-17-2005; Ord. No. 5596, § II, 9-4-2007)

### **Sec. 114-654. Prevention of demolition by neglect.**

(a) The exterior features of any historic ~~landmark building~~ located in any historic district shall be preserved against decay and deterioration, and kept free from structural defects by the owner thereof or parties in interest and shall not be permitted to suffer demolition by neglect. It shall be unlawful and an offense for owners or parties in interest of historic ~~landmarks buildings, in established historic districts~~, to allow any of the following defects to exist and the owner or parties in interest shall repair such exterior features if they are found to be deteriorating, or if their condition is contributing to deterioration, including but not limited to the following defects:

- (1) Deterioration of exterior walls or other vertical supports rendering such components incapable of carrying imposed load, or that causes leaning, sagging, splitting, listing or buckling.
- (2) Deterioration of roofs, roof supports, joists or other horizontal components rendering such components incapable of carrying imposed loads, or that causes leaning, sagging, splitting, listing or buckling.
- (3) Deterioration, leaning or settling of chimneys.
- (4) Deterioration or crumbling of exterior stucco, mortar or masonry surfaces.
- (5) 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.
- (6) Ineffective waterproofing of exterior walls, roofs or foundations, including broken windows or doors.
- (7) Defective protection or lack of weather protection for exterior wall and roof coverings, with apparent evidence of deterioration.
- (8) Rotting, holes, and other forms of decay.
- (9) Unsafe electrical or mechanical conditions constituting a fire or safety hazard.
- (10) Deterioration of any component so as to create a hazardous condition that could lead to a claim that demolition is necessary for public safety.
- (11) Deterioration of any exterior features so as to create or permit the creation of any hazardous or unsafe condition to life, health, or other property.



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- (b) The preventive measures outlined in subsection (a) of this section are for structural conditions leading to dilapidation of the structure only. This shall not be construed to include cosmetic repair or maintenance.

(Ord. No. 5298, § I(114-704), 5-17-2005)

### **Sec. 114-655. Institution of action and notification of hearing.**

- (a) (a) Whenever a writing is filed with the building official by either the historic zoning commission, by at least five residents of the city, or by a city building inspector charging that an historic **landmark building** in any historic district is threatened with demolition by neglect as set out in section 114-654, or whenever it appears to the building official that any historic **landmark-building, in an established historic district**, is threatened by demolition by neglect such charge shall be referred to the review committee. The review committee shall make a preliminary investigation of the charge applying the standards set forth in section 114-654. If such preliminary investigation discloses a basis for the charge, the review committee shall issue and cause to be served upon the owner and parties in interest of such historic **landmarkbuilding**, as the same may be determined by reasonable diligence, a complaint stating the charges the committee finds have a basis for demolition by neglect and a notice that a hearing will be held before the building official at a time and place therein fixed. The review committee shall consist of **the building official a member of the building department inspection team** and two individuals appointed by the mayor and approved by the board of mayor and aldermen for a term of not more than three years, one of whom shall be a member of the historic zoning commission and the other of whom shall be a licensed engineer familiar with structural engineering, if such individual is reasonable available.
- (b) The complaint shall contain a notice that a hearing will be held before the building official at a time and place therein fixed, not less than ten days or more than 30 days after the service of the complaint. The notice shall also state that the owner and parties in interest shall have the right to file an answer to the complaint, appear in person, or otherwise, and to give testimony at the time and place fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the building official.

(Ord. No. 5298, § I(114-705), 5-17-2005; Ord. No. 5596, § III, 9-4-2007)

### **Sec. 114-656. Hearing procedure.**

- (a) A record of the entire hearing shall be made by tape recording or by other means of permanent recording determined appropriate by the building official. A recording of the proceedings shall be made available to all parties upon request and upon payment of a fee established by the board of mayor and aldermen.
- (b) Oral evidence shall be taken only on oath or affirmation.
- (c) Hearsay evidence is admissible and may be used to support a finding.
- (d) Any relevant evidence shall be admitted if it is the type of evidence upon which responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction of this state.
- (e) Irrelevant and unduly repetitious evidence shall be excluded.
- (f) Each party shall have the following rights, among others:

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- (1) To call and examine witnesses on any matter relevant to the issues of the hearing;
  - (2) To introduce documentary and physical evidence;
  - (3) To cross examine opposing witnesses on any matter relevant to the issue of the hearing;
  - (4) To refute the evidence against the party; and
  - (5) To representation by counsel.

(Ord. No. 5298, § I(114-706), 5-17-2005)

**Sec. 114-657. Determination of and further notice by building official.**

- (a) If, after such notice and hearing as provided for in section 114-655, the building official determines that the historic landmark building in question has suffered demolition by neglect, the building official shall state in writing findings of fact in support of such determination and shall issue and cause to be served upon the owner, and/or parties in interest, an order requiring repairs, improvements, and/or correction of defects, within the time specified, of those elements of the historic landmark building that are deteriorating, contributing to deterioration, or deteriorated. Any repairs, improvements, and/or correction of defects instituted in compliance with this section shall be made in conformance with the zoning and building codes.
- (b) In the event the owner, and/or other parties in interest desire to petition for a claim of undue economic hardship, the order of the building official shall be stayed until after a determination in accordance with the procedures of section 114-658.

(Ord. No. 5298, § I(114-707), 5-17-2005)

**Sec. 114-658. Undue economic hardship.**

- (a) The building official may exempt an historic landmark building from a demolition by neglect order if the building official finds that the owner and parties in interest have proven the order to repair creates undue economic hardship on the owner and parties in interest. An application for a determination of undue economic hardship by the owner and parties at interest shall be made, on a form prepared by the building official, not more than 30 days after delivery of the order finding demolition by neglect. The application must include photographs of the building, information pertaining to the historic significance of the site, if any, and all information required by the building official. All owners and parties in interest must submit the application under oath. The burden of proof of the undue economic hardship is on the owner and parties in interest.
- (b) The application shall include the information specified in subsection (a) of this section, and the building official may require that an owner and parties in interest furnish such additional information the building official deems relevant to a determination of undue economic hardship.
- (c) In the event any of the required information is not reasonably available to the owner and parties in interest, and cannot be readily obtained, the owner and parties in interest shall describe the reasons why such information cannot be obtained.
- (d) The building official shall hold a hearing on the application within 30 days of the timely receipt of such application. Notice will be given and hearing procedures followed in the same manner as set forth in sections 114-655(b) and 114-656. The owner and parties in interest may submit such relevant information they deem appropriate to prove undue economic hardship, but at a minimum shall submit to the building official for his review at least the following information:
  - (1) Nature of ownership, legal possession, custody, and control;

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- (2) Financial resources of the owner and parties in interest;
  - (3) Cost of the repair or correction with supporting documentation from licensed contractors;
  - (4) Valuation of the land and improvements;
  - (5) Real property taxes for each of the previous two years and the appraised value of the property for those years established by the property assessor for property tax purposes;
  - (6) Amount paid for the property, date of purchase, and party from whom purchased, including a description of any relationship between the grantor and grantee, or other means of acquisition of title, such as by gift or inheritance;
  - (7) Annual debt service on the property, if any, for previous two years;
  - (8) The marketability of the property for sale or lease, considered in relation to any listing of the property for sale or lease, and price asked and offers received, if any, within the previous two years. This should include testimony and relevant documents regarding:
    - a. Any real estate broker or firm engaged to sell or lease the property;
    - b. Reasonableness of the price or rent sought by the applicant; and
    - c. Any advertisements placed for the sale or lease of the property;
  - (9) If the property is commercial or income producing property, the annual gross income from the property for the previous two years; itemized operating and maintenance expenses for the previous two years as claimed as deductions on United States tax returns; and debt service, if any on the property, if not including as an operating or maintenance expense;
  - (10) Itemized operating and maintenance expenses for the previous two years, including proof that adequate and competent management procedures were followed;
  - (11) All appraisals obtained within the previous two years by the owner or parties in interest or others in connection with the purchase, financing, attempted sale, or ownership of the property;
  - (12) Any federal income tax returns on or relating to the property for the previous two years; and
  - (13) Any other information the building official deems relevant to the determination of undue economic hardship.
- (e) Undue economic hardship does not include self-created hardships, willful or negligent acts of the owner or parties in interest, purchase of the property for substantially more than the market value, failure to perform normal maintenance and repairs, failure to diligently solicit and retain tenants, or failure to provide normal tenant improvements.
- (f) Within 30 days of the hearing on the application, the building official shall make a written finding of whether undue economic hardship exists, and shall enter the reasons for such finding into the record. In the event of a finding of no undue economic hardship, the building official shall issue an order for repair, improvements, or correction of defects within the time specified. In the event of a finding of undue economic hardship, the finding shall be accompanied by a recommended plan to relieve the economic hardship. This plan may include, but not be limited to loans or grants from the city, county, state, or other public, private, or non-profit sources, acquisition by purchase or eminent domain, changes in applicable zoning regulations, or relaxation of the provisions of this article sufficient to mitigate the undue economic hardship.

(Ord. No. 5298, § I(114-708), 5-17-2005)

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**Sec. 114-659. Service of complaints or orders.**

Complaints or orders issued by the building official under this article shall be served upon persons, either personally or by certified mail, return receipt requested, but if the whereabouts of such persons are unknown and the same cannot be ascertained by the building official in the exercise of reasonable diligence, and the building official shall make an affidavit to that effect, then the serving of such complaints or orders upon such persons may be made by publishing the same once each week for two consecutive weeks in a newspaper printed and published in the city. A copy of such complaints or orders shall be posted in a conspicuous place on the premises affected by the complaint or order. In addition, a copy of such complaints or orders shall also be filed for record in the register's office of the county in which the building is located, and such filing shall have the same force and effect as other lis pendens notices provided by law.

(Ord. No. 5298, § I(114-709), 5-17-2005)

**Sec. 114-660. Remedies.**

If the owner, and/or parties in interest, fail or refuse to comply with the order of the building official within the time specified, the city may apply for appropriate equitable remedies to enforce the provisions of this article, including an order directing that improvements or repairs be made, or that other action be taken that is necessary to bring the property in compliance with this article, and if the city shall make the repairs it shall have a lien as set out in section 114-661.

(Ord. No. 5298, § I(114-710), 5-17-2005)

**Sec. 114-661. Creation of lien and payment into court.**

The amount of the cost of such repairs or corrections ordered by the court and made or procured by the building official shall upon the filing of the notice with the office of the register of deeds of the county in which the property lies, be a lien in favor of the city against the real property on which such cost was incurred, second only to liens of the state, county and city for taxes; any lien of the city for special assessments; and any valid lien, right or interest in such property duly recorded or duly perfected by filing, prior to the filing of such notice. The city tax collector shall collect these costs at the same time and in the same manner as property taxes are collected and shall include penalties and interest calculated as if it were overdue property taxes. However, nothing in this section shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

(Ord. No. 5298, § I(114-711), 5-17-2005)

**Sec. 114-662. Appeals from decision of building official.**

- (a) The aggrieved party, against whom the decision of the building official is made, may have a review of the decision by petition for a common law writ of certiorari, addressed to either the city law court or chancery court. Such petition shall be filed within 60 days from the date the decision or order of the building official is made and written notice thereof given the aggrieved party.
- (b) Immediately upon the grant of the common law writ of certiorari and service thereof, the building official shall cause to be made, certified, and forwarded to such court a complete transcript of the proceedings in the cause by the building official.

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- (c) The action may be reviewed by the court in which the petition for certiorari is filed and shall be heard solely upon the transcript of the proceedings before the building official, and neither party shall be entitled to introduce new evidence in such court.
  - (d) Any party dissatisfied with the decree of the court hearing the cause may, upon giving bond as required by law, take an appeal, as is made and provided by law, where the case shall be heard upon the transcript of the record from the court in which the cause is heard.

(Ord. No. 5298, § I(114-712), 5-17-2005)

**~~Sec. 114-663. Procedures for designation of historic landmarks with the owner's consent.~~**

- ~~(a) Any completed application for designation filed by the owner with the planning department, once reviewed by the planning manager or designee, shall be promptly referred to the commission. The commission shall hold a public hearing on the application not less than 30 days, or more than 60 days after the filing of the application to consider the approval of the historic designation. In determining whether to approve the designation the commission shall consider the criteria contained in section 114-665, and must find the application meets at least one of the criteria listed therein.~~
- ~~(b) A notice of the hearing shall be served as provided in section 114-659 by the planning manager or designee. The notice shall include the date, time, and place of the hearing and a brief summary of the proposed action.~~
- ~~(c) The planning manager or designee shall review the proposed designation with respect to its relationship to the land use plan; the effect of the designation on the surrounding neighborhood; and such other planning considerations as may be relevant to the proposed designation. The planning manager or designee shall provide written comments and recommendations regarding the proposed designation to the commission no less than seven days before the hearing.~~
- ~~(d) The hearing shall be conducted using the procedure set out in section 114-656.~~

~~(Ord. No. 5298, § I(114-713), 5-17-2005)~~

**~~Sec. 114-664. Procedures for designation of historic landmarks without the owner's consent.~~**

- ~~(a) Any completed application for designation is filed by one other than the owner with the planning department, once reviewed by the planning manager or designee, shall be promptly referred to the commission and if the owner or owners of the property nominated for designation does not consent to the designation the commission shall hold a public hearing on the application not less than 30 days, nor more than 60 days after the filing of the application to consider the approval of the historic designation, unless the commission grants a continuance in the matter. In determining whether to approve the designation the commission shall consider the criteria contained in section 114-665 and must find the application meets at least three of the criteria listed therein.~~
- ~~(b) A notice of the hearing shall be served as provided in section 114-659 by the planning manager or designee. The notice shall include the date, time, and place of the hearing and a brief summary of the proposed action.~~
- ~~(c) The planning manager or designee shall review the proposed designation with respect to its relationship to the land use plan; the effect of the designation on the surrounding neighborhood; and such other planning considerations as may be relevant to the proposed designation. The planning manager or designee shall provide written comments and recommendations regarding the proposed designation to the commission at the hearing.~~
- ~~(d) The hearing shall be conducted using the procedure set out in section 114-656.~~

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- (e) — At least four of seven members of the commission must be present at the hearing in order to establish a quorum. In the event of vacancies on the commission, then two-thirds of commission members shall constitute a quorum. If a quorum is missing then the chairperson of the commission may set a new date for a special hearing or the matter may be heard on the next regularly scheduled meeting date of the commission.
- (f) — The decision of the commission shall be made by a majority roll call vote after the commission has heard all interested parties and relevant evidence. The board may continue the hearing from time to time as necessary to gather all relevant evidence to make its recommendation. The board shall consider the conformance or lack of conformance of the proposed designation with the purposes, standards and criteria of this article. The commission board shall either approve or disapprove the proposed designation after considering the criteria set forth in section 114-665.

(Ord. No. 5298, § 1(114-714), 5-17-2005)

### **Sec. 114-665. Criteria for designation.**

To be eligible for designation as an historic landmark a structure shall be located in an historic district, shall be at least 50 years old and possess architectural, social, or geographical/environmental importance by meeting one or more of the following:

- (1) — Exemplifies specific elements of an architectural style or period;
- (2) — Is an example of the work of an architect or builder who is recognized for expertise nationally, state-wide, regionally, or locally;
- (3) — Demonstrates superior craftsmanship or high artistic value;
- (4) — Represents an innovation in construction, materials or design;
- (5) — Represents a style particularly associated with the historic district or the city;
- (6) — Represents a pattern or grouping of elements representing at least one of the above criteria;
- (7) — Has undergone significant historic remodel;
- (8) — Is the site of historic event that had an effect upon society;
- (9) — Exemplifies cultural, political, economic or social heritage of the community;
- (10) — Represents an association with a notable person or the work of a notable person;
- (11) — Represents a typical example/association with a particular ethnic group;
- (12) — Represents a unique example of an event in the city's history;
- (13) — Enhances sense of identity of the community;
- (14) — Is an established and familiar natural setting or visual feature of the community;
- (15) — Is listed on the National Register of Historic Places or is designated by the state historic preservation office as an historic designation or landmark.

(Ord. No. 5298, § 1(114-715), 5-17-2005)

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**Sec. 114-666. Appeal from decision of the commission.**

- (a) — The aggrieved party, against whom the decision of the commission is made, may have a review of the decision by petition for a common law writ of certiorari, addressed to either the city law court or chancery court. Such petition shall be filed within 60 days from the date the decision of the commission is made.
- (b) — Immediately upon the grant of the common law writ of certiorari and service thereof, the commission shall cause to be made, certified, and forwarded to such court a complete transcript of the proceedings in the cause by the commission.
- (c) — The action may be reviewed by the court in which the petition for certiorari is filed and shall be heard solely upon the transcript of the proceedings before the commission, and neither party shall be entitled to introduce new evidence in such court.
- (d) — Any party dissatisfied with the decree of the court hearing the cause may, upon giving bond as required by law, take an appeal, as is made and provided by law, where the case shall be heard upon the transcript of the record from the court in which the cause is heard.

(Ord. No. 5298, § I(114-716), 5-17-2005)

**Sec. 114-667. Procedure for nomination of historic landmarks.**

- (a) — The commission, board of mayor and aldermen or owners may nominate a property or structure for designation as an historic landmark.
- (b) — Upon inquiry for nomination, the planning manager or designee and at least one member of the commission shall contact the owner or owners of the property outlining the reasons and effects of designation as an historic property and, if possible, shall secure the consent of the owner or owners to such designation before the nomination is accepted as complete for review.
- (c) — If the property is found to have a potential for designation, an application shall be filed with the planning manager or designee on forms prescribed by the commission, and shall include the names of all owners of property included in the proposed designation, and shall be accompanied by all data required by the commission. The planning manager or designee shall transmit copies of the application to relevant city departments. The planning manager or designee shall in all cases notify, in writing, all owners of property included in the proposed designation, other than applicants, that the designation proceedings have been initiated.
- (d) — Each such nomination shall include a description of the characteristics of the proposed historic landmark which justify its designation, a description of the particular features that should be preserved, and shall include a legal description of the location and boundaries of the property.

(Ord. No. 5298, § I(114-717), 5-17-2005)

**Sec. 114-668. Legal protection for nominated properties.**

For a property which has been nominated but not yet designated as an historic landmark, permits to alter or remodel the exterior of the property or properties to build, relocate, or raze shall not be issued during the 90-day period following the date nomination is received by the planning manager or designee.

(Ord. No. 5298, § I(114-718), 5-17-2005)

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**Sec. 114-669. Resubmission for approval of designation as an historic landmark.**

~~Whenever the commission denies the approval of a proposed designation, no person shall submit an application that is the same or substantially the same for at least one year from the effective date of the final action on the original proposal.~~

~~(Ord. No. 5298, § I(114-719), 5-17-2005)~~

**Sec. 114-670. Rules.**

The board of mayor and aldermen may make rules and regulations necessary for the administration and enforcement of this article.

(Ord. No. 5298, § I(114-720), 5-17-2005)

**Sec. 114-671. Penalty and enforcement.**

Any person violating any section of this article shall be guilty of an offense and upon conviction shall be penalized not less than \$1.00 and not more than \$50.00 for each offense. Each day a violation continues shall constitute a separate offense. The imposition of a penalty under this section shall be supplemental to any other action or penalty and shall not prevent the revocation of any permit or license, the taking of any remedial or injunctive action, or seeking any other legal or equitable relief or enforcement.

(Ord. No. 5298, § I(114-721), 5-17-2005)

**Sec. 114-672. Powers conferred are supplemental.**

Nothing in this article shall be construed to abrogate or impair the powers of the city with regard to the enforcement of the provisions of its Charter or any other ordinances or regulations, nor to prevent or punish violations thereof, and the powers conferred by this article shall be in addition and supplemental to the powers conferred by the Charter and other laws. Nothing contained within this article shall diminish the power of the city to declare a building unsafe or a violation of any building or housing code of the city.

(Ord. No. 5298, § I(114-722), 5-17-2005)