

ITEM# 1.5

Discussion and action, if any, related to an ordinance providing for amendments to the city's Historic Preservation Ordinance under Section 1.47B of its Code of Ordinances (Appendix A) with necessary revisions to ensure compliance with state and city regulations, as recommended by the City's Historic Preservation Commission.

MISSION HISTORICAL PRESERVATION COMMISSION

ORDINANCE NO. 5036

AN ORDINANCE REPEALING ORDINANCE NO. 1662, OF THE CITY OF MISSION, REGARDING HERITAGE PRESERVATION OVERLAY DISTRICT; CREATING SECTION 1.47B IN THE CITY OF MISSION ZONING ORDINANCE ARTICLE VIII – USE DISTRICTS AND CONDITIONAL USES, TITLED "HISTORIC PRESERVATION OVERLAY DISTRICT" CREATING, ENTITLED "HISTORIC PRESERVATION OVERLAY DISTRICT" CREATING A HISTORIC PRESERVATION COMMISSION; PROVIDING DEFINITIONS AND TERMS; SETTING FORTH DUTIES AND RESPONSIBILITIES OF THE HISTORIC PRESERVATION COMMISSION; DEFINING DUTIES AND RESPONSIBILITIES OF THE HISTORIC PRESERVATION OFFICER; PROVIDING DESIGN CRITERIA FOR HISTORIC AND LANDMARK PROPERTIES; PROVIDING A PROCESS FOR DESIGNATION OF HISTORIC PROPERTIES; CREATING MINIMUM MAINTENANCE STANDARDS; PROVIDING GUIDELINES FOR OBTAINING A CERTIFICATE OF APPROPRIATENESS; PROVIDING FOR A PENALTY; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR PUBLICATION AND EFFECTIVE DATE.

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.

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.

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.

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

City Ordinance No. 1662, dated March 23, 1992 and all subsequent amendments thereto are hereby repealed and are of no further force and effect.

That the following Mission Historic Preservation Ordinance is hereby ADOPTED pursuant to CH. 211 TEXAS LOCAL GOVERNMENT CODE.

1. PURPOSE

The City Council of Mission, Texas, hereby declares that as a matter of public policy, the protection, enhancement, and preservation of landmarks and districts of architectural

archaeological, cultural, and historic significance is necessary to promote the economic, cultural, educational, and general welfare of the public.

This ordinance is intended to:

1. protect and enhance the landmarks and districts which represent distinctive elements of Mission's historic, architectural, and cultural heritage;
2. foster civic pride in the accomplishments of the past;
3. protect and enhance Mission's attractiveness to visitors and the support and stimulus to the economy thereby provided;
4. insure the orderly, efficient, and appropriate growth and development of the City;
5. promote economic stability and prosperity of the community by encouraging the most appropriate use of historic properties within the City; and
6. encourage stabilization, restoration, and improvements of such properties and their values by offering incentives for rehabilitation.

2. DEFINITIONS

Alteration. Shall mean any exterior change, demolition, or modification to a property with historic overlay zoning, including but not limited to:

1. Exterior changes to or modifications of structures, architectural details, or visual characteristics;
2. Construction of new structures;
3. Disturbance of archeological sites or areas; or
4. Placement or removal of exterior objects that affect the exterior qualities of the property.

Applicant. The owner of record of a property with existing or proposed historic overlay zoning, the agent or lessee thereof with the approval of the owner of record in a notarized form, or a person holding a bona fide contract to purchase the property with approval of the property owner.

Archeological resource. A site with archeological or paleontological value in that it has produced or can be expected to produce data affecting theories of historic or prehistoric interest.

Architectural feature. The architectural elements embodying style, design, general arrangement, and components of the exterior of any building or structure, including, but not limited to, the kind, color, and texture of the building materials, and the style and type of all windows, doors, lights, signs, and porches.

Building. A structure for business or residential use, created to shelter people or things, such as a house, barn, church, hotel, warehouse or similar structure, including a historically related.

complex, such as a courthouse and jail or a house and barn. When separated by dividing walls without openings, each portion of such structure so separated shall be deemed a separate building.

Certificate of appropriateness. The certificate issued by the City approving alteration, rehabilitation, construction, reconstruction, or improvement of a property with historic overlay zoning.

Certified local government. A federal government program authorized by the National Historic Preservation Act, 16 U.S.C. 470 et seq., that provides for the participation of local governments in a federal/state/local government partnership.

City. The City of Mission, Texas, as represented by the Mayor and City Council.

Commission. The Historic Preservation Commission created under this section.

Construction. The addition or placement of any improvement to a property with existing or proposed historic overlay.

Contributing. A building, structure, site, or object within a designated historic district which:

- embodies the significant physical features and characteristics of the district, or adds to the historical association, historical architectural qualities, or archeological values identified for the district; and
- was present during the period of significance relating to the documented significance of the district; and
- possesses historic integrity or is capable of yielding important information about the period.

Dangerous structure. A structure that poses an imminent threat to public health or safety.

Demolition. The complete or partial removal of a building, structure, object, or site, including landscape features and archeological sites.

Demolition by neglect. Improper maintenance, neglect in the maintenance of, or lack of maintenance of any structure or property with historic overlay zoning, which results in deterioration of the structure and threatens the preservation of the structure.

Design guidelines. The "Design Guidelines for Historic Mission, Texas" as adopted by the City Council and as may be amended from time to time.

Designation. The process by which the City Council may designate certain buildings, land, areas, and districts in the City with historic overlay zoning and define, amend, and delineate the boundaries thereof.

Economic hardship. The inability of an owner to obtain a reasonable return or a reasonable beneficial use from a property with historic overlay zoning as required by the *United States Supreme Court in Penn Central Transportation Company v. New York City*, 438 U.S. 104 (1978) and subsequent decisions. A reasonable economic return does not have to be the most profitable return possible or allow the highest and best use of the property.

Historic district. An area of the City containing a grouping of historic properties that are designated with historic overlay zoning and that may contain properties that are both contributing and non-contributing, but that is united historically or aesthetically. For the purpose of this section, the entirety of an historic district shall have historic overlay zoning.

Historic landmark. Any building, structure, object, site, or portion thereof with historic overlay zoning.

Historic preservation officer. The Historic Preservation Officer for the City of Mission shall be appointed by the City Manager. This officer shall administer this Chapter and advise the Commission on matters submitted to it.

Historic resource. Any building, structure, or object with historic overlay zoning being considered for relocation.

Improvement. Any building, structure, or object constituting a physical betterment of real property, or any part of such betterment, including but not limited to streets, alleys, curbs, lighting fixtures, signs and the like.

Initiated designation. The historic designation procedure is considered to be initiated immediately when the City Council, the Planning and Zoning Commission, or the Historic Preservation Commission votes to initiate it or, in the case of initiation by the property owner(s), when the designation report is filed with the Planning Director.

Landscapes. Any improvement or vegetation including but not limited to: shrubbery, trees, plantings, outbuildings, walls, courtyards, fences, swimming pools, planters, gates, street furniture, exterior lighting, and site improvements, including but not limited to subsurface alterations, site regarding, fill deposition, and paving.

Low-income homeowner. Any homeowner that meets the U. S. Department of Housing and Urban Development (HUD) qualifications for low income.

National Historic Landmark. A district, site, building, structure, and/or object that has been formally designated as a National Historic Landmark by the U.S. Secretary of the Interior and possesses exceptional value or quality in illustrating or interpreting the heritage of the United States in history, architecture, archeology, engineering, and culture and that possesses a high degree of integrity of location, design, setting, materials, workmanship, feeling, and association. National Historic Landmarks are automatically listed in the National Register.

National Register of Historic Places. A federal list of cultural resources worthy of preservation, authorized under the National Historic Preservation Act of 1966 as part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect the nation's historic and archeological resources. The National Register Program is administered by the Commission, by the state historic preservation office, and by the National Park Service under the Department of the Interior. Significant federal benefits may accrue to owners of properties listed or determined eligible for listing in the National Register.

Noncontributing. A building, site, structure, or object that is located within a designated historic district, but does not add to the historic associations, historic architectural qualities,

or archeological values for which the district is significant because:

- It was not present during the period of significance.
- It does not relate to the documented significance of the property; and/or
- due to alterations, disturbances, additions, or other changes, it no longer possesses historic integrity and/or is capable of yielding important information about the period.

Object. A material thing of functional, cultural, historical, or scientific value that may be, by nature or design, movable, yet is related to a specific setting or environment.

Ordinary repair or maintenance. Ordinary maintenance shall be defined as any work that does not constitute a change in design, material, or outward appearance, and that includes in-kind (same original material) replacement or repair.

Relocation. Any changes in the location of a building, object, or structure, either within its present setting or to another setting.

Secretary of the Interior's Standards for the Treatment of Historic Properties. A federal document providing standards and guidelines for the appropriate rehabilitation, preservation, restoration, and reconstruction of historic buildings.

Site. 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 maintains historical or archeological value regardless of the value of any existing buildings, or objects.

Structure. A work made up of interdependent and interrelated parts in a definite pattern of organization constructed by man. The term includes, but is not limited to engineering projects, earthworks, and bridges.

3. HISTORIC PRESERVATION COMMISSION

Number of members, appointment. The Historic Preservation Commission shall consist of seven (7) members. Appointment of members shall be made by the City Council.

Make-up of the Commission. A member must be a resident of the City and have lived within the City for a minimum of twelve (12) months immediately prior to appointment.

In making appointments to the Commission, the Council shall attempt to maintain a balance of interest and skills on the Commission by assessing the individual qualifications of the candidates, including, but not limited to, their knowledge and demonstrated interest in preservation-related fields such as architecture, history, archeology, planning, or urban or community design. All members shall have a knowledge of and demonstrated interest in historic preservation. At least one member shall be an owner-occupant of a property with historic overlay zoning.

Regardless of profession, background, or experience, members of the Commission will require ongoing training and education in architectural history, historic preservation law, and other relevant topics. Initial and annual training for new members, as well as an up-to-date reference manual for Commissioners, shall be provided.

Terms. Commission members shall serve for a term of two (2) years, their terms to be staggered, with the exception that for the initial Commission members, the City Council shall appoint the three (3) current members of the Commission for two (2) years, and two (2) new members for a term of three (3) years.

The Inaugural Commission shall consist of the following members with terms expiring as stated.

| <u>Name</u> | <u>Expiration of Term</u> |
|----------------|---------------------------|
| Member Place 1 | December 31, 2021 |
| Member Place 2 | December 31, 2021 |
| Member Place 3 | December 31, 2021 |
| Member Place 4 | December 31, 2022 |
| Member Place 5 | December 31, 2022 |
| Member Place 6 | December 31, 2022 |
| Member Place 7 | December 31, 2022 |

Terms of members shall expire on December 31; provided, however, that members shall continue to serve until their successors are appointed.

Vacancies. Vacancies shall be filled by the Mayor, subject to ratification by the City Council, for the unexpired term of any member whose term becomes vacant.

Removal. All members of the Commission shall serve at the pleasure of the City Council and may be removed with or without cause upon a majority vote of the City Council.

Any member who misses three consecutive meetings shall forfeit his or her position, and a replacement shall be appointed by the Mayor, subject to ratification by the City Council, to fill the unexpired term.

Any member may resign by submitting a letter of intent to the City Council.

Election of chair and vice-chair. The chair and vice-chair of the Commission shall be elected by and from members of the Commission.

Compensation. Members shall serve without pay. Members may be reimbursed for actual expenses incurred in the performance of their duties from available funds approved in advance.

Quorum. Four members shall constitute a quorum for transactions of business, and no decision shall be rendered without a concurring vote of at least four members.

Regular meetings. The Commission shall meet at least every other month, if business is at hand, otherwise yearly.

Special meetings. Special meetings may be called at any time by the Commission chair, vice chair, or at the written request of at least three members, or upon notice from the historic preservation officer or zoning administrator that a matter requires the consideration of the Commission.

Compliance with Texas Open Meetings Act. All meetings shall be held in conformance with the Texas Open Meetings Act, Chapter 552 of the Texas Government Code, as amended.

Rules of Order. The Commission shall follow Robert's Rules of Order or other rules of procedure as determined by the Commission.

4. RESPONSIBILITIES OF THE COMMISSION

The Commission shall be empowered to:

1. Make recommendations to the City for the employment of professional consultants as necessary to carry out the duties of the Commission.
2. Adopt parliamentary rules and procedures necessary to carry out the business of the Commission.
3. Adopt criteria for the evaluation of significance of historic landmarks and rules for the delineation of historic district boundaries, subject to ratification by the City Council.
4. Review and take action on the designation of historic landmarks and the delineation of historic districts, subject to ratification by the City Council.
5. Recommend and confer recognition upon the owners of historic landmarks or properties within historic districts by means of certificates, plaques, or markers.
6. Review and recommend to 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 that may affect the purpose of the ordinance.
7. Implement and maintain a system of survey or inventory of significant historic, architectural, and cultural properties or resources and all properties located within designated historic districts located in the City. Such information shall be maintained securely and made accessible to the public and should be updated at least every ten (10) years.
8. 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 property, as deemed necessary.
9. Create sub-committees from among its membership and delegate to these committees such responsibilities as necessary to carry out the purposes of this ordinance.
10. Maintain written meeting minutes, which are recorded by staff and demonstrate all actions taken by the Commission and the reasons for taking such actions.
11. Increase public awareness of the value of historic, cultural, and architectural preservation by developing and participating in public education programs.
12. Review and take action on all certificate of appropriateness applications.
13. Review and take action on all appeals on action taken by the historic preservation officer regarding the administrative review of certificate of appropriateness applications.
14. Develop, prepare, and adopt specific design guidelines, subject to ratification by the City Council, for use in the review of all certificates of appropriateness applications.

15. Prepare and submit annually to the City Council a report summarizing expenditures, goals and objectives, and work completed during the previous year, as well as anticipated budgetary requests.
16. Make recommendations to the City concerning the utilization of state, federal, or private funds to promote the preservation of historic properties within the City.
17. Recommend to City Council the acquisition of historic properties endangered by demolition where their preservation is essential to the purpose of this ordinance and where private preservation is not feasible.
18. Propose incentive program(s) to City Council for the owners of historic properties
19. Review and take action on all City preservation-related incentive program applications involving work on historic properties, for compliance with adopted "Design Guidelines for Historic Mission, Texas" pursuant to this ordinance.
20. Recommend whether to accept, on behalf of the City government, any donation of preservation easements and/or development rights, as well as any other gift of value for the purpose of historic preservation, subject to the approval of City Council.

5. HISTORIC PRESERVATION OFFICER

The Historic Preservation Officer for the City of Mission shall be appointed by the City Manager. This officer shall administer this Chapter and advise the Commission on matters submitted to it.

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 non-profit preservation organizations.

Responsibilities. The HPO shall be empowered to:

- i. Administer this ordinance and advise the Commission on matters submitted to it.
- ii. Maintain and hold open for public inspection all documents and records pertaining to the provisions of this ordinance.
- iii. Receive and review all applications pursuant to this ordinance to ensure their completeness.
- iv. Review and forward with any recommendations all applications for certificates of appropriateness subject to review by the Commission pursuant to this ordinance.
- v. Ensure proper posting and noticing of all Commission meetings, schedule applications for Commission review, provide information packets to its members prior to the meetings, record meeting minutes, and facilitate all Commission meetings.

6. CRITERIA FOR DESIGNATION OF HISTORIC PROPERTIES OR DISTRICTS

The Commission shall use criteria for evaluation of significance of an historic landmark or historic district as established by the National Park Service for use in the administration of the National Register of Historic Places. The Commission shall refer to the National Register Bulletin No. 15, *How to Apply the National Register Criteria for Evaluation*, published by the National Park Service, for further guidance in the application of these criteria.

In addition, the following criteria shall be considered in determining whether historic overlay zoning should be applied to an individual property or historic district within the City of Mission boundaries:

- A. Association with events that have made significant contribution(s) to the broad patterns of history for the City of Mission.
- B. Association with the lives of persons significant to the City of Mission past.
- C. Embodiment of the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction for the City of Mission.
- D. Archaeological value, in the sense that the property has yielded, or may be likely to yield, information important in prehistory or history to the City of Mission.

Additional criteria for designation of historic districts. In addition to the general criteria listed above, the Commission shall consider the following.

Where the designation is made based on the general character of the proposed historic district, these findings may include, but shall not necessarily be limited to:

- a. Scale of buildings and structures typical of the area.
- b. Architectural style typical of the area.
- c. Architectural period typical of the area.
- d. Building materials typical of the area.
- e. Colors used in buildings typical of the area.
- f. Signage and street furniture typical of the area.
- g. Landscapes typical of the area.
- h. Typical relationships of buildings to the landscapes in the area.
- i. Typical relationships of buildings in the area to the street.
- j. Setbacks and other physical patterns of buildings in the area.
- k. Typical patterns of rooflines of buildings in the area.
- l. Typical patterns of porch and entrance treatments of buildings in the area.

Where the designation is made based on the character of a limited number of specific buildings in the proposed historic district, the findings may include, but shall not necessarily be limited to:

- a. Architectural style of the buildings.
- b. Architectural period of the buildings.
- c. Textures of materials used in the buildings.
- d. Colors of the materials used in the buildings.
- e. Rooflines of the buildings.

- f. Porch and entrance treatments of the buildings
- g. Height and mass of the buildings.
- h. Relative proportions of the buildings (width to height, width to depth).

Already listed properties. Properties that, as of the date of the adoption of this ordinance, are listed as a Recorded Texas Historic Landmark (RTHL) or State Archeological Landmark (SAL), or that are listed individually or within an historic district on the National Register of Historic Places (NR) shall automatically be considered eligible for designation as *historic landmarks* pursuant to this ordinance.

The historic preservation officer shall compile a list of such properties and shall initiate an application for historic overlay zoning for each property so identified, pursuant to this ordinance.

The Commission may establish a process by which it identifies additional properties that are so recognized on the National Register or by the State, either on an annual basis or as such properties are listed and that information becomes known to the Commission and may direct the historic preservation officer to initiate applications for historic overlay zoning for those properties, pursuant to this ordinance.

7. DESIGNATION PROCESS

These provisions pertaining to the designation of historic properties constitute a part of the comprehensive zoning plan of the City.

Owners of proposed historic properties shall be notified prior to the Commission hearing on the recommended 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 property. The City may designate an historic landmark without the property owner's approval.

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 designation shall be made on forms as prescribed by the City and shall be filed with the HPO along with any fees in accordance with the municipal fee schedule. Buildings, structures, sites, or areas located within the City which substantially comply with the criteria found in Section 20.7 may be recommended by the Commission to the City Council as historic landmarks or historic districts. The application shall contain:

- For a proposed historic landmark, the name, address, telephone number of applicants, and physical address of the property.
- For a proposed historic district, the name, address, telephone number of applicants, and no more than 50% negative responses from owners of properties in the proposed district, where a poll has been taken, each property is counted separately, and no response is considered an affirmative response.
- Site plan of the proposed landmark property, or map indicating the geographic boundaries of the proposed district, showing all affected buildings and/or structures.

- Detailed historic description and background on the proposed landmark or proposed district.
 - o Current photographs of the overall property or area, along with any historical photographs, if available.
 - o Any other information which the HPO or Commission may deem necessary.

Upon receipt of a completed designation application, the HPO shall schedule a hearing at the next available regularly scheduled Commission meeting. Notice of the application shall be mailed to the property owner(s) and advertised in the official newspaper and/or posted on the property as provided for a zoning change.

A proposed historic landmark or district for which an application for designation has been received shall be protected by and subject to all the provisions of this ordinance governing demolition, minimum maintenance standards, and penalties until a final decision by the City Council becomes effective, but not to exceed 180 days.

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 district. 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.

The Commission 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.

The Planning and Zoning Commission shall give notice and conduct its hearing upon receipt of the recommendation from the Commission. 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. 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.

Upon receipt of the joint recommendation on the application from the Commission and the Planning and Zoning Commission, the City Council shall schedule a hearing on the application 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. Significance shall be considered only on the record made before the Commission and the Planning and Zoning Commission.

Upon designation of a historic landmark or historic 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 Bell County, and with the tax appraisal office.

The applicant or any persons adversely affected by any determination of the Commission 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 Commission'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. Appeals to the City Council shall be considered only on the record made before the Commission and may only allege that the Commission's decision was arbitrary, capricious, or illegal.

8. ORDINARY MAINTENANCE

Nothing in this ordinance shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of an historic landmark or a property within an 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 determine what is "ordinary maintenance."

9. MINIMUM MAINTENANCE STANDARDS

No owner or person with an interest in real property designated as an historic landmark or a property located within an historic district shall permit the property to fall into a serious state of disrepair so as to result in the significant deterioration of any exterior architectural feature which would, in the judgment of the Commission, create a detrimental effect upon the historic character of the landmark or district.

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.

10. 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 planning department staff shall work together in an effort to reduce Demolition by Neglect involving properties with historic overlay zoning. A Demolition by Neglect citation as determined by the Commission 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 29.10 herein.

1) While the HPO will act as the point of contact, the planning department staff shall, when needed, assist with inspections. If there is a dispute between the HPO and planning department staff, the City Manager shall make the final determination.

2) The procedure for citing a property owner for Demolition by Neglect shall be as follows:

(a) Initial identification is made by visual inspection of the area by the HPO or a Commission member or by referral from someone in the area. All referrals shall be made in writing and shall be submitted to the HPO.

(i) Once the initial identification is made, followed by a preliminary determination by the HPO, the property owner shall be notified by U.S. mail of the defects of the building and informed of any incentive programs that may be available for repair. The owner shall be given thirty (30) days in which to respond to the preliminary determination by submitting a stabilization proposal to the HPO. The stabilization proposal will be presented to the Commission at the next available meeting. If the Commission approves the proposal, a certificate of appropriateness (if necessary) may be issued administratively by the HPO. The approval will detail the specific work that 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 Commission on the status of the property every thirty (30) days, once work begins on the property.

(ii) 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.

(iii) 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 Commission for a citation hearing. The HPO shall send a third notice via certified mail informing the owner of the hearing, the property shall be posted with a notice of the violation in accordance with the provisions of this Ordinance, and a public hearing on the citation shall be scheduled.

(iv) At the public hearing, the owner will be invited to address the Commission's concerns and to show cause why a citation should not be issued. The Commission 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.

(v) If the owner is cited for the condition of Demolition by Neglect of the property, he shall be given fourteen (14) days to submit a stabilization proposal to the HPO, and at the discretion of the Commission, up to one (1) year to correct the defects. The HPO

shall update the Commission on the status of the property every thirty (30) days once work begins on the property.

(vi) If the owner does not respond with a stabilization proposal, the matter shall be turned over to the City Attorney's office for recommendation to the City Council for legal action.

(3) The City may create programs, or enter into partnerships with local non-profit organizations, to assist low-income and/or elderly homeowners with maintenance.

11. CERTIFICATES OF APPROPRIATENESS

(a) *Applicability.* A certificate of appropriateness shall be required in the following circumstances before the commencement of development within or work upon any property with historic overlay zoning:

(1) Whenever such work or development requires a building permit or certificate of zoning compliance issued by the City.

(2) Whenever such work includes the erection, moving, demolition, reconstruction, restoration, or alteration of the exterior of a property with historic overlay zoning, except when such work satisfies all the requirements of ordinary maintenance and repair as defined in Section 29.3, definitions.

(b) *Certificate of appropriateness required.* No building permit shall be issued by the building official for any property with historic overlay zoning until the application for such permit has been reviewed and a certificate of appropriateness has been approved by the HPO or the Commission.

(c) *Procedures.*

(1) After an application for a certificate of appropriateness is submitted, the HPO shall determine whether the application shall be eligible for administrative review or the application shall be considered by the Commission.

(2) An application shall be eligible for administrative review by the HPO for the following:

a. Paint colors for the exterior of a structure including siding, trim, doors, steps, porches, railings, and window frames. This shall not include painting or otherwise coating previously unpainted masonry;

b. The placement and screening, if necessary, of roof-mounted equipment and other mechanical equipment of various types;

c. The placement and design of screening treatments for trash and recycling receptacles;

d. Fences to be installed in the rear and/or side yard;

e. Ground lighting;

- f. Elements attached to a facade of any building, garage or carriage house including, but not limited to door hardware, hinges, mailboxes, light fixtures, sign brackets, street address signage and historic interpretive signage.
 - g. Replacing roofing materials or color on a flat roof that will not be visible from the ground or from immediately adjacent taller buildings;
 - h. Gutters and downspouts;
 - i. Installation or removal of landscaping, including trees;
 - j. Accessibility ramps;
 - k. Changes to awning fabric color for an existing awning;
 - l. Landscape elements, including but not limited to walks, paving, benches, outdoor furniture, planters, pools, trellises, arbors and gazebos;
 - m. Installation of any elements required by other codes such as emergency lighting;
 - n. Modifications that are considered non-permanent such as, but not limited to, window films and temporary features to weatherize or stabilize a historic resource;
 - o. Minor modifications to an existing certificate of appropriateness that still meets the intent of the original approval;
 - p. Renewal of an expired certificate of appropriateness.
- (3) If an application for administrative review is approved or approved with conditions, the HPO shall issue a certificate of appropriateness pursuant to section (d) below.
- (4) If the HPO: forwards the application to the Commission because it does not meet the criteria in subsection (2) above, does not act on the application within ten (10) business days of receipt of the complete application, disapproves the application, or the applicant wishes to appeal the administrative decision or associated conditions of the certificate of appropriateness application, the Commission shall consider the application. An appeal to an administrative decision shall be filed with the Commission within ten (10) business days of said decision.
- (5) If an application is to be considered by the Commission, the HPO shall inform the applicant of the meeting date at which the application shall be considered. The applicant shall have the right to be heard and may be accompanied or represented by counsel and/or one or more construction or design professionals at the meeting.
- (6) The HPO shall review the application and make a recommendation to the Commission during the meeting at which the application shall be considered.

(7) After hearing the applicant and any other interested parties, and considering the recommendation from the HPO, the Commission shall take one of the following actions:

- a. Approve the proposed work or development and issue a certificate of appropriateness.
- b. Approve the proposed work or development with conditions and issue a conditional certificate of appropriateness.
- c. Disapprove the certificate of appropriateness.

(8) In the case of the disapproval of a certificate of appropriateness by the Commission, the Commission shall state in writing the reasons for such disapproval and may include suggestions in regard to actions the applicant might take to secure the approval of the Commission concerning future issuance of a certificate of appropriateness.

(d) *Certificate.*

(1) It shall be the responsibility of the HPO to issue the actual certificate of appropriateness following administrative approval or approval by the Commission with any designated conditions, and to maintain a copy of the certificate of appropriateness, together with the proposed plans. These shall be public documents for all purposes.

(2) Work performed pursuant to the issuance of a certificate of appropriateness shall conform to the requirements of such certificate. It shall be the duty of the building official to inspect from time to time any work performed pursuant to a certificate of appropriateness to assure such compliance. In the event that such work is not in compliance, the building official shall issue a stop work order and/or citation as prescribed by ordinance. The Commission may request that the building official inspect the work and issue a stop work order.

(e) *Criteria.* The HPO or the Commission shall determine whether to grant a certificate of appropriateness based on the following criteria:

- (1) The effect of the proposed change upon the general historic, cultural and architectural nature of the historic property or historic district;
- (2) The appropriateness of exterior architectural features, including parking and loading spaces, which can be seen from a public street, alley or walkway; and
- (3) The general design, arrangement, texture, material and color of the building or structure and the relation of such factors to similar features of buildings or structures in the historic district, contrast or other relation of such factors to other buildings or structures built at or during the same period, as well as the

uniqueness of such features, considering the remaining examples of architectural, historical and cultural values.

- (f) **Guidelines.** In all of its determinations of architectural appropriateness and historical integrity in the design and construction of historic properties or signs, the HPO or the Commission shall use the most recent edition of the book entitled, "The Secretary of the Interior's Standards for the Treatment of Historic Properties: With Guidelines for Preserving, Rehabilitation, Restoring and Reconstructing Historic Buildings", attached hereto as Exhibit "A" for reference, or any future publication which replaces this book, and the following criteria as guidelines:
- (1) Every reasonable effort shall be made to provide a compatible use for a property that requires minimal alteration, or to use a property for its originally intended purpose.
 - (2) The distinguishing original qualities or character of a historic property and its environment should not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
 - (3) All historic properties shall be recognized as products of their own time. Alterations that have no historic basis and which seek to create an earlier appearance shall be discouraged.
 - (4) Changes that may have taken place in the course of time are evidence of the history and development of an historic property and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
 - (5) Distinctive stylistic features or examples of skilled craftsmanship that characterize a historic property shall be treated with sensitivity.
 - (6) Weakened architectural features that are found in kind are to be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match 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, substantiated by historic physical or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other properties.
 - (7) Surface cleaning shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building material shall not be undertaken without approval from the Historic Preservation Commission.
 - (8) Every reasonable effort shall be made to protect and preserve archeological resources affected by or adjacent to any project.
 - (9) Contemporary design for alterations and additions shall not be discouraged when such alterations and additions do not destroy significant historic, architectural, or cultural material and when such design is compatible with the size, scale, color,

material, a character of the property, neighborhood or environment. Wherever possible, new additions or alterations shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the historic property would be unimpaired.

- (g) **Supplemental guidelines.** The HPO or the Commission may develop, and the City Council may approve, such supplemental guidelines as it may find necessary to implement the regulations of historic overlay zoning or the findings applicable to the designation of a particular historic property. Such guidelines may include, but are not limited to the following:
- (1) Charts or samples of acceptable materials for siding, foundations, roofs, or other parts of buildings;
 - (2) Illustrations of appropriate architectural details;
 - (3) Specifications of appropriate relationships to streets, sidewalks, other structures, and buildings;
 - (4) Illustrations of appropriate porch treatments or entrances; or
 - (5) Illustrations of appropriate signage or street furniture.
- (h) **Certificate of appropriateness for demolition.**
- (1) **Certificate required.** No historic property shall be demolished or removed unless such demolition shall be approved by the Commission and a certificate of appropriateness for such demolition shall be granted.
 - (2) **Procedure.**
 - a. The procedure for issuance of a certificate of appropriateness for demolition shall be the same as for the issuance of other certificates of appropriateness with the following modification.
 - b. After the hearing, the Commission may approve the certificate of appropriateness, thereby authorizing the demolition, or the Commission may disapprove the certificate of appropriateness and postpone the demolition or removal for a period of one hundred and twenty (120) days. The purpose of such a postponement would be to allow the Commission and any interested parties to explore alternatives to demolition.
 - c. The Commission may extend the postponement period for an additional sixty (60) days in order to enable the completion of ongoing negotiations.
 - d. Notwithstanding any provision of this ordinance, the City Council reserves the right to prohibit the demolition of a landmark structure with six (6) affirmative votes.

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 - d. Notwithstanding any provision of this ordinance, the City Council reserves the right to prohibit the demolition of a landmark structure with six (6) affirmative votes.

(3) **Supplemental demolition criteria.** In determining whether to issue a certificate of appropriateness for demolition, the Commission, and, on appeal, the City Council, shall consider the following criteria, in addition to the criteria specified in this section:

- a. The uniqueness of the property as a representative type or style of architecture, historic association, or other element of the original designation criteria applicable to such structure or tract.
- b. The condition of the property from the standpoint of structural integrity and the extent of work necessary to stabilize the property.
- c. The economically viable alternatives available to the demolition applicant, including:
 1. Donation of a part of the value of the subject structure or site to a public or nonprofit agency, including the conveyance of development rights and facade easement.
 2. The possibility of sale of the property, or any part thereof, to a prospective purchaser capable of preserving such property.
 3. The potential of the property for renovation and its potential for continuing use.
 4. The potential of the property for rezoning in an effort to render such property more compatible with the physical potential of the property. The ability of the property to produce a reasonable economic return on investment for its owner; provided, however, that this factor shall not have exclusive control and effect but shall be considered along with all other criteria contained in this section.

(i) **Certificate of appropriateness for relocation.**

- (1) **Certificate Required.** No historic resource shall be relocated unless such relocation shall be approved by the Commission and a certificate of appropriateness for such relocation shall be granted. For the purposes of this subsection concerning relocation, the term "historic resource" shall be used to describe an individual building, structure, or object designated according to the procedures in Section 29.8.
- (2) **Procedure.** The procedure for issuance of a certificate of appropriateness for relocation shall be the same as for the issuance of other certificates of appropriateness with the following additions:
 - a. If the historic resource is a Recorded Texas Historical Landmark or listed on the National Register of Historic Places, the applicant shall be required to notify the appropriate party at the Texas Historical Commission and receive a response in writing, prior to submitting an application for the

relocation to the Historic Preservation Commission.

- b. Documentation shall be provided to the Commission at the time of application for a certificate of appropriateness that provides the following information:
 1. Overview of the proposed relocation of the historic resource, including:
 - (a) Reasons for relocating the historic resource; and
 - (b) Reasons for selection of destination site.
 2. Photographs, which document all aspects of the historic resource. Requirements for photographs shall be provided by the Commission. At a minimum, photographs provided by the applicant shall include but are not limited to:
 - (a) Each elevation of the building;
 - (b) Street view;
 - (c) All prominent architectural features; and
 - (d) Any additional accessory buildings that also have historic overlay zoning, showing how they relate to the primary structures.
 - (e) Requirements for photographs shall be maintained and provided by the Commission.
 3. Site plan of historic resource in current location.
 4. Site plan of historic resource in new location.
- c. Public notices of the proposed relocation shall be required as follows:
 1. *Signed notice.* Within five (5) business days of receipt of an application for a certificate of appropriateness for relocation, the City shall post a sign showing notice of the application on the originating location and on the proposed destination location, for the purpose of notifying the public of the proposed relocation.
 2. *Mailed notice.*
 - (a) Ten (10) business days prior to the Commission meeting when the application will be heard, written notices shall be mailed to each owner, as indicated by the most recently approved City tax roll, of real property within 300 feet of the

existing property with the resource proposed for relocation and 300 feet of the proposed new location. Notice may be served by its deposit in the U.S. Mail in the City, properly addressed with postage paid.

- (b) Mailed notices shall contain at least the following specific information:
 - (1) The general location of land that is the subject of the application and/or a location map;
 - (2) The legal description or street address;
 - (3) The substance of the application;
 - (4) The time, date and location of the Historic Preservation Commission meeting;
 - (5) A phone number to contact the City; and
 - (6) A statement that interested parties may appear at the hearing.

 - d. When a historic resource is relocated to a new site, the historic resource shall retain the historic overlay and therefore continue to be subject to the requirements of a certificate of appropriateness.
- (3) *Supplemental relocation criteria.* In determining whether to issue a certificate of appropriateness for relocation, the Commission, and, if necessary, on appeal, the City Council, shall consider the following criteria, in addition to the criteria specified in this subsection
- a. The historic resource is imminently threatened by demolition or removal of historic overlay zoning.
 - b. Reasonable alternatives have been examined to mitigate the threat to the historic resource, in lieu of relocation. Alternatives may include, but are not limited to:
 - 1. Modification of the proposed project affecting the historic resource to avoid its impact on the location of the historic resource.
 - 2. Incorporation of the historic resource, in its entirety, into the proposed project that would affect the location of the historic resource.
 - c. When relocated, the historic resource shall remain in the City of Mission.

- d. The structural condition of the historic resource has been examined so that it has been determined that the historic resource may be moved and that damage to the historic resource which would result from the move can be minimized. Stabilization of the historic resource prior to and/or during the move may be required.
- e. A new location for the historic resource has been determined that would be compatible with the architectural aspects of the historic resource, to the extent possible. Consideration shall include the review of all of the following:
 - 1. Size of the resource and destination lot;
 - 2. Massing;
 - 3. Architectural style;
 - 4. Review of all adopted design guidelines by the Commission in determining compatibility; and
 - 5. Other historic resources, which are not the primary resource on the site, but are historically associated with the primary resource, also should be relocated, if possible, and may be considered for relocation with the primary resource on the same certificate of appropriateness
- f. Any historic resource relocated pursuant to this section shall be required to conform to any siting conditions at the new location. These siting conditions shall include, but are not limited to, setback requirements, structural alteration requirements such as enclosed parking requirements, and architectural requirements such as exterior finishes and orientation.
- g. The applicant agrees to the following additional conditions of the certificate of appropriateness:
 - 1. The historic resource shall be secured from vandalism and other damage for the time that it remains vacant as a result of the relocation process.
 - 2. The applicant shall be required to display a plaque, provided and paid for by the City, which documents the historic resource's original location, date of relocation, and reason for relocation.
 - 3. The historic overlay shall convey with the historic resource to its new location.
 - 4. The historic overlay shall be removed from the originating property, unless one of the following applies:

- (a) The property is located within an historic district; or
 - (b) Only an accessory structure has been moved and the primary structure on the site remains; or
 - (c) The site itself is historically significant.
5. The City may apply the historic overlay to the destination lot(s), by following the procedures for applying historic overlay in Section 29.8 of the code. If the historic resource is being moved into an already designated historic district, the historic overlay shall remain and apply to the destination lot or lot(s).
 6. The applicant shall provide photographs to the HPO of the relocated historic resource once relocation is complete.
 7. Information regarding the relocation shall be filed in the appropriate City and county records.
- (4) *Fee Waivers.* If a certificate of appropriateness for relocation has been approved by the Commission, the following fees shall be waived:
- a. Building moving and permits fees
 - b. Notice requirement fees.

U) *Appeals.* Appeals of certificate of appropriateness decisions made by the Commission shall be made within fifteen (15) days to the City Council.

12. ECONOMIC HARDSHIP

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; and
- (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; and
- (c) Earnest and reasonable efforts to find a purchaser interested in acquiring the property and preserving it have failed; and
- (d) The property cannot be moved or relocated to another site similar site or within the District.

1) 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 Commission. 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:

- (a) Purchase date price and financing arrangements
- (b) Current market value
- (c) Form of ownership
- (d) Type of occupancy
- (e) Cost estimates of demolition and post demolition plans for development
- (f) Maintenance and operating costs
- (g) Inspection report by licensed architect or structural engineer having experience working with historic properties
- (h) Costs and engineering feasibility for rehabilitation
- (i) Property tax information
- (j) Rental rates and gross income from the property
- (k) 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 Commission at the hearing.

13. 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. If work is not being performed in accordance with the certificate of appropriateness, or upon notification of such fact by the Commission 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 hearing before the Commission to explain the non-compliance. No further work shall be undertaken on the project if a stop work order is in effect until a decision is rendered by the Commission on the application.

14. PENALTIES

It shall be unlawful to construct reconstruct, significantly alter, restore, or demolish any building or structure designated with historic overlay zoning in violation of the provisions of this ordinance. 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 ordinance 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 any abatement restitution.

15. 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.

16. EFFECTIVE DATE

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

17. PASSED AND APPROVED:

At a regular meeting of the City Council of the City of Mission, Texas, this 14th day of June 2021, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Local Government Code, §551, et seq.


Mayor Dr. Armando O'caña

ATTEST:


Anna Carrillo, City Secretary




Chaffie Garcia, III
Mission Historical Commission Chairperson

ATTEST:


Cynthia Stojanovic
Historic Preservation Officer

APPROVED AS TO FORM:


Gus Martinez, City Attorney