

**AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: August 27, 2024
PUBLIC HEARING DATE: September 24, 2024

CONTACT PERSON(S) NAME AND PHONE NUMBER: Philip F. Etiwe, (915) 212-1553
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DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: #3 Promote the Visual Image of El Paso

SUBGOAL: 3.1 Provide business friendly permitting and inspection process
3.2 Set one standard for infrastructure across the city

SUBJECT:

An Ordinance amending Title 20 (Zoning), Chapter 20.20 (Historic Landmark Preservation). The penalty is as provided in Chapter 20.24 of the El Paso City Code.

BACKGROUND / DISCUSSION:

Chapter 20.20, the portion of the city code that governs historic preservation, was last modified in 2006. The revisions will streamline the ordinance, make it more efficient, and create a shorter processing time and will provide clarification for property owners, architects, and contractors and will improve efficiency so staff has better direction and property owners can get through the process faster. The Historic Landmark Commission and City Plan Commission both reviewed and recommended approval unanimously.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Planning & Inspections, Planning Division

SECONDARY DEPARTMENT: N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

Philip Etiwe

AN ORDINANCE AMENDING TITLE 20 (ZONING), CHAPTER 20.20 (HISTORIC LANDMARK PRESERVATION). THE PENALTY IS AS PROVIDED IN CHAPTER 20.24 OF THE EL PASO CITY CODE.

WHEREAS, the Historic Landmark Commission recommended approval of the changes on October 2, 2023;

WHEREAS, the City Plan Commission recommended approval of the amendments on September 23, 2023;

WHEREAS, the City Historic Landmark Commission recognizes the need to update the code in order to strengthen the ordinance and prevent deterioration of historic properties and to see more compliance with city rules;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That Title 20 (Zoning), Chapter 20.20 (Historic Landmark Preservation), be replaced in its entirety as follows:

Chapter 20.20 - HISTORIC LANDMARK PRESERVATION

Section 1. That Title 20 (Zoning) Chapter 20.20 (Historic Landmark Preservation), Section 20.20.010 (Declaration of Policy) be amended and replaced as follows:

20.20.010 - Declaration of policy.

- A. City Council finds and declares as a matter of public policy that the protection, enhancement, preservation and use of historic landmarks is a public necessity and is required in the interest of the culture, prosperity, education, safety and general welfare of the people. The purposes of this chapter include the following but are not limited to:
- B. To protect, enhance and perpetuate historic landmarks which represent or reflect distinctive and important elements of the city's, region's, state's or nation's architectural, archaeological, cultural, social, economic, ethnic and political history and to develop appropriate settings for such places;
- C. To safeguard the city's historic and cultural heritage, as embodied and reflected in such historic landmarks by appropriate regulations;
- D. To stabilize and improve property values in such locations;
- E. To foster civic pride in the beauty and accomplishments of the past;
- F. To protect and enhance the city's attractions to tourists and visitors and provide incidental support and stimulus to business and industry;
- G. To strengthen the economy of the city;

- H. To promote the use of historic landmarks for the culture, prosperity, education and general welfare of the people of the city and visitors to the city;
- I. To prevent the uprooting of architectural products of distinct periods, which may occur without regard to the feasibility of preserving and continuing the use of such landmarks, and without consideration of the irreplaceable loss to the people of the city of the cultural, historic and aesthetic values represented by such landmarks.

Section 2. That Title 20 (Zoning) Chapter 20.20 (Historic Landmark Preservation), Section 20.20.020 (Definitions) be amended and replaced as follows:

20.20.020 - Definitions.

All references to historic properties, sites, districts, resources, or landmarks in this chapter means any property with an “H” overlay and designated as such by the City of El Paso.

- A. In addition to the definitions of Chapter 20.02, the following definitions apply only to this chapter of the code, and control if in conflict with Chapter 20.02.
 - 1. "Addition" means a completely new structure or new component to an existing structure.
 - 2. "Administrative review" means the approval process by which the Historic Preservation Officer (HPO) or his designee administratively approves or denies submitted applications in accordance with the Administrative Review Design Guidelines.
 - 3. "Alteration" means any construction or change of the exterior of a building, site or structure including, but not limited to, the erection, construction, reconstruction or removal of any structure in/within a historic district or of the designated interior space of a landmark structure. Alteration shall include, but not be limited to, the changing of roofing or siding materials; changing, eliminating or adding doors, door frames, windows, window frames, shutters, fences, railings, porches, balconies, signs or other ornamentation; the changing of paint color; re-grading; fill; imploding or other use of dynamite. Alteration shall not include ordinary repair and maintenance.
 - a. "Alteration, major" means an alteration shall be deemed to be major if it is the kind of work, which is customarily done with the aid of plans or specifications.
 - b. "Alteration, minor" means an alteration shall be deemed to be "minor" if it is the kind of work which is customarily done without the aid of plans and which would not substantially change the external appearance of the building, site, or structure, and if new material added does not exceed one hundred square feet of floor area.
 - 4. "Appurtenance" means, but is not limited to, any accessory or subordinate building, object or structure, fence, street furniture, fixture, vending machine, fountain or artwork, located on the grounds of a historic landmark or in a historic district.
 - 5. "Archaeology" means the science or study of the material remains of past life or activities and the physical site or context in which they are found.

6. "Architectural style" means the architectural character and general composition of a structure, including but not limited to, the kind, color and texture of the building material and the type, design and character of all windows, door, light fixtures, signs and appurtenant elements.
7. "Area" means a specific geographic division of the City of El Paso.
8. "Building" means a structure 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 and multi-family buildings.
9. "Cemetery" means any site, as defined by Texas statute, which contains at least one burial, marked or previously marked, dedicated to and used or intended to be used for the permanent interment of the human dead, to include perpetual care and non-perpetual care cemeteries.
10. "Certificate of Appropriateness" means the certificate issued by the Historic Landmark Commission after review of a submitted application, and it is determined that the proposed project is appropriate for the landmark or historic district for which it is requested. It is not considered or defined as a building permit.
11. "Character-defining architectural element" means a distinctive architectural feature, quality, or combination thereof, that distinguishes one structure from another or which is unique to that structure.
12. "Cluster" means a group of cultural resources with compatible buildings, objects or structures geographically or thematically relating to and reinforcing one another through design, setting, materials, workmanship, congruency and association.
13. "Construction" means the act of adding new material to an existing building, structure or site.
14. "Contributing property" means a building, object, site or structure, in a historic district or "cluster" that contributes to the district's or cluster's historical significance through location, design, setting, materials, workmanship, and/or association. All properties within a designated district shall receive equal protection of the ordinance and shall conform to the guidelines whether designated as either contributing or non-contributing.
15. "Cultural" means the quality in a society that arises from an interest in or an acquaintance with what is generally regarded as excellence in arts, literature, architecture, manners, or scholarly pursuits and/or the socially transmitted behavior patterns, arts, beliefs, institutions, and all other products of human work that are considered as the expression of a particular period, class, community or population.
16. "Cultural resources" means districts, sites, parks, plazas, resources or structures that possess integrity of location, design, setting, materials, workmanship, congruency, and association in such a way that they are symbolic of excellence in North American, Texas, or El Paso history, architecture, archeology or culture.
17. "Days" means that, unless otherwise specified, all days are to be calendar days.

18. "Demolition" means any act or process that destroys, razes, or permanently impairs the structural integrity, in whole or in part, of any mobile or immobile structure governed by this chapter.
19. "Design guidelines" means the written standards adopted by the City Council which are intended to provide guidelines to the Historic Landmark Commission and Historic Preservation Officer to govern construction to preserve the historic, cultural and architectural character of an area or of a building, object, site or structure.
20. "Economic return" means a financial profit or capital appreciation from use or ownership of a building, object, site or structure.
20. "Effect" means a change in the quality of the historical, architectural, archaeological, or cultural significance of a resource, or in the characteristics that qualify the resource as historically important.
21. "Effect, adverse" means a negative change in the quality of the historical, architectural, archaeological or cultural significance of a resource, or in the characteristics that qualify the resource as historically important.
22. "Enclosure" refers to fences, walls or other physical features used to contain open space or provide privacy.
23. "Historic district" means an area designated by City Council, state or federal authority and which contains within definable geographic boundaries one or more "H-overlay" properties or clusters, including their accessory buildings, fences and other appurtenances, and natural resources having historical, cultural and archaeological significance, and which may have within its boundaries landmarks, contributing, and non-contributing buildings or structures, which will all receive the equal protection of the historic district designation.
24. "Historic interiors" means an architecturally or historically significant interior space which remains substantially intact in terms of: (1) original configuration, (2) original volume, and/or (3) original architectural ornamentation and decoration; which exhibit surviving original historical finishes or has the potential for accurate restoration of such finishes; and which is open, to be used by, or may be used by the public.
25. "Historic landmark" also referred to as an "H-overlay" property, means those buildings, objects, sites or structures of historical, cultural, architectural or archaeological importance and whose demolition or destruction would constitute an irreplaceable loss to the quality and character of El Paso; certain inventoried interior spaces which are accessible to the public; such buildings, objects, sites or structures, their appurtenances, and the property which they are located, having been so designated by city council.
26. "Historic Landmark Commission ("HLC")" the commission appointed by the mayor and City Council to assist in the preparation of the city's historic preservation plan, to create and review guidelines for historic districts, to review and approve, approve with conditions or deny applications relating to historic properties and to perform other functions as delineated in Title 2.

27. "Historic preservation program" city program under the direction of the city manager's office to encourage historic preservation through education, advocacy and incentives, and to oversee the application and enforcement process for historic properties.
28. "Historic Preservation Officer ("HPO")" means the person or persons designated by the City Manager for the City of El Paso to coordinate the historic preservation program; to review and administratively approve applications, refer violations as appropriate to the enforcement authorities and provide administrative staff support to the Historic Landmark Commission. The HPO will coordinate the development and implementation of the historic preservation plan and the city's efforts to encourage participation in the plan.
29. "Historic preservation plan" is a supplement to the plan for El Paso relating to the preservation of historic properties.
30. "Intrusion" means a building, object, site or structure which detracts from a district's or cluster's historical significance because of its incompatibility with the district's or cluster's sense of time, place, and historical development; or its incompatibility of scale, materials, texture or color, whose integrity has been irretrievably lost; or whose physical deterioration or damage makes it infeasible to rehabilitate.
31. "Inventory" means a systematic listing of cultural, historical, architectural or archaeological resources prepared by a city, state or federal government, following standards set forth by federal, state and city regulations for evaluation of cultural properties.
32. "Landscape architectural feature" means the general arrangement of grounds including, but not limited to, the topographic grade water pooling and runoff, types and sites of plant materials, type and sites of surface materials such as decorative bark, rock, stone, gravel, concrete asphalt, brick, and the types and sites of constructions not otherwise deemed to be structures per se, such as fences, retaining walls, decks and other miscellaneous fixtures.
33. "Minor modification" means a change or changes to an approved application that is in substantial conformity with the approved plans and application.
34. "National Register" means the National Register of Historic Places maintained by the Secretary of the Interior.
35. "National Historic Landmark" means a historic property that the Secretary of the Interior has designated a national historic landmark.
36. "Non-contributing property" means a building, object, site or structure in a historic district which does not contribute to the district's or cluster's historical significance through location, design, setting, material, workmanship, feeling and association, but due to its proximity to historic landmarks and contributing properties, has the potential to affect the character of the historic district or cluster that it is located within. All properties within a designated district shall receive equal protection of the ordinance whether designated as either contributing or non-contributing.

37. "Object" means a material thing of functional, aesthetic, cultural, historical, archaeological or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.
38. "Ordinary repair and maintenance" means any work, the purpose and effect of which is to correct or prevent any deterioration or decay of or damage to a building, object or structure or any part thereof and to restore same, as nearly as may be practicable, to its condition prior to such deterioration, decay or damage, using the same materials or those materials which are, in appearance, as close as possible to the original.
39. "Reconstruction" means the act or process of reassembling, reproducing or replacing by new construction, the form, detail and appearance of a destroyed or vanished property and its setting as it appeared at a particular period of time by means of the removal of later workmanship, or by the replacement of missing earlier work, or by reuse of original materials.
40. "Rehabilitation" means the act or process of returning a building, object, site or structure to a state of utility through repair, remodeling or alteration that makes possible an efficient contemporary use while preserving those portions or features of the building, object, site or structure that are significant to its historical, architectural and cultural values.
41. "Relocation" means any change of the location of a building, object or structure in its present setting to another setting.
42. "Resource" means a source or collection of buildings, objects, sites, structures or areas that exemplify the cultural, social, economic, political, archaeological or architectural history of the nation, state or city.
43. "Restoration" means the act or process of accurately recovering the form and details of a building, object, site or structure and its setting as it appeared at a particular period of time by means of the removal of later work or by the repair or replacement of missing earlier work.
44. "Significant historic landmark" means:
 - a. Those buildings, objects, sites, site improvements, appurtenances or structures of the highest and most unique historical, cultural, architectural or archaeological importance whose demolition or destruction would constitute an irreplaceable loss to the quality and character of El Paso;
 - b. Inventoried interior spaces designed or intended to be occupied as part of the structure and which are accessible to the public; and
 - c. Significant historic landmarks are also referred to as landmarks in this chapter.
45. "Site" means the location of a significant event, a prehistoric or historic occupation or activity, or a building, structure or cluster, whether standing, ruined or vanished, where the location itself maintains historical or archaeological value regardless of the value of any existing structure.

46. "Stabilization" means the act or process of applying measures designed to reestablish a weather-resistant enclosure or the structural stability of an unsafe or deteriorated building, object, site or structure while maintaining the essential form as it exists at present.
47. "Substantial conformity" means the revisions to approved applications that do not significantly alter the historic character or alter additional physical elements of the structure as approved in the original application.
48. "Thematic group" means a finite group of resources related to one another in a clearly distinguishable way, by association with a single historic person, event or developmental force, as one building type, design or use, as designed by a single architect, as a single archaeological site form, or as a particular set of archaeological research.
49. "Unreasonable economic hardship" means an economic burden imposed upon the owner which is unduly excessive and prevents a realization of a reasonable rate of return upon the value of his property. Shall be proven by means of financial documentation including, but not limited to, bids from contractors, proof of payment for the property, site, object, or structure.
50. "Vista" means a view through or along a right-of-way opening, including those along the river's banks, which, as a view corridor, frames, highlights or accentuates a prominent building, object, site, structure, scene or panorama, or patterns or rhythms of buildings, objects, site or structures; to include views of areas at a distance, such as a remote view of the downtown or the mountains.
51. "Zone" means a designated area, within a historic district, which is unique in character, tone, theme, architecture, and/or culture. A district may be divided into zones, to assist property owners and the HLC in structuring design guidelines and further evaluating applications for certificates of appropriateness.

Section 3. That Title 20 (Zoning) Chapter 20.20 (Historic Landmark Preservation), Section 20.20.030 (Administration of the Historic Preservation Program) be amended and replaced as follows:

20.20.030 - Administration of the historic preservation program.

The historic preservation program will be administered under the direction of the City Manager's office including appropriate staffing and administrative support of the program subject to budget appropriations approved and authorized by the City Council.

Section 4. That Title 20 (Zoning) Chapter 20.20 (Historic Landmark Preservation), Section 20.20.040 (Procedure for Designation of Historic Landmarks and Districts) be amended and replaced as follows:

20.20.040 - Procedure for designation of historic landmarks and districts.

- A. The City Council may designate buildings, structures, sites, districts, areas and lands in the city as historic landmarks and define, amend and delineate the boundaries thereof. Requests for designation may be made by the City Council, HLC or by the public on a form or zoning application obtained from the city. Completed request forms shall be returned to the city for processing. All designations shall meet all requirements under Section 211.0165 of the Texas Local Government Code, as amended from time to time, or subsequent Texas statute replacing Section 211.0165 of the Texas Local Government Code.
- B. The HLC shall review and forward any recommendations to the City Plan Commission within forty-five (45) days, to be forwarded to the City Council for final action. In the event the HLC does not recommend an applicant's request for designation of a resource the applicant may petition the City Plan Commission for a hearing, following procedures set forth in Chapter 2.08 of this Code.
- C. The HLC shall hold a public hearing on all proposed ordinances relating to historic properties. Notice shall be given as required by Section 211.007, Texas Local Government Code.
- D. The designation of a historic landmark or historic district may be amended or removed using the same procedure provided in this section for the original designation.
- E. The suffix "H" shall appear after the zoning designation of those buildings, structures, sites, districts, areas and lands which the City Council designates as historical landmarks, and shall be reflected on the zoning map. Such designation shall be in addition to any other designation established under this title. Use of classifications as to all property which may be included by a historic landmark designation shall continue to be governed by the comprehensive zoning ordinance of the City and the procedures established therein.
- F. Council may use the following designations for individual buildings, objects, sites or property and which are in a historic district or designated with an "H" overlay:
 - 1. Significant or independent historic landmark;
 - 2. Contributing property; and
 - 3. Non-contributing property as those terms are defined in Section 20.20.020.
- G. Upon passage of a historic landmark designation ordinance, the city clerk shall file a copy of the ordinance with the city and county tax assessors and in the official records of real property of El Paso County together with a notice verifying H-overlay designation of the subject property. The city clerk shall also send a copy of such notice to the owner or owners of the subject property.
- H. Interim Protection – Notification of proposed designation shall be sent to the property owner via certified mail sixty (60) days prior to the HLC hearing to the address listed on the El Paso Central Appraisal District Appraisal Roll at the time of notice. Until the HLC denial

or designation is approved for the property by City Council, no permits or work on the property shall be approved unless it is for emergency or restorative work. No permits for demolition or alteration that cannot be approved administratively shall be approved until the HLC has reviewed the case for designation.

Section 5. That Title 20 (Zoning) Chapter 20.20 (Historic Landmark Preservation), Section 20.20.050 (Historic Landmarks Designation Criteria) be amended and replaced as follows:

20.20.050 - Historic landmarks designation criteria.

In making designations set forth in this chapter, the HLC, the City Plan Commission, and City Council shall consider, but shall not be limited to, one or more of the following criteria:

- A. Character, interest or value as part of the development, heritage or cultural characteristics of the city, state or the United States;
- B. Recognition as a Recorded Texas Historic Landmark, a National Historic Landmark, or entry into the National Register of Historic Places;
- C. Embodiment of distinguished characteristics of an architectural type or specimen;
- D. Identification as the work of an architect or master builder whose individual work has influenced the development of the city;
- E. Embodiment of distinguished elements of architectural design, detail, materials or craftsmanship which represent a significant architectural innovation;
- F. Relationship to other distinctive buildings, sites or areas which are eligible for preservation according to a plan based on architectural, historic or cultural motif;
- G. Portrayal of the environment of a group of people in an area of history characterized by a distinctive architectural style;
- H. Archaeological value, in that it has produced or can be expected to produce data affecting theories of historic or prehistoric interest;
- I. Exemplification of the cultural, economic, social, ethnic or historical heritage of the city, state or the United States;
- J. Location as the site of a significant historic event;
- K. Identification with a person or persons who significantly contributed to the culture and development of the city, region, state or the United States.

Section 6. That Title 20 (Zoning) Chapter 20.20 (Historic Landmark Preservation), Section 20.20.060 (Acquisition of Historic Landmarks) be amended and replaced as follows:

20.20.060 - Acquisition of historic landmarks.

The following options shall be available to the HLC, for recommendation to the City Council of El Paso, for acquisition of historic buildings, objects, sites, resources and structures of historic, cultural, architectural, and/or archeological importance that may be but not limited to historic landmarks:

- A. If the HLC finds that buildings, structures, sites, districts, resources, land or structures of other areas cannot be preserved without acquisition, the HLC shall recommend to City Council that the fee simple or lesser property interest of the property in question be acquired by gift, devise, purchase, eminent domain, or otherwise pursuant to the city charter and state and federal law;
- B. The HLC may recommend to City Council, within ten (10) days of the hearing before the HLC, or at the City Council's next regular meeting, that the historic landmark property, resource or site be acquired. Council will have thirty (30) days to state an affirmative intent to negotiate with the property owner and, if successful, the Council shall complete such a purchase within a reasonable time thereafter;
- C. Formulate a program for preservation and public action which will state the role of various city departments in acquisition of historic landmarks or sites;
- D. Suggest sources of funds for preservation and restoration activities and acquisitions, to include federal sources, state sources private and foundation sources, as well as municipal sources;
- E. Recommend, to the proper agencies, incentives designed to encourage historical preservation.

Section 7. That Title 20 (Zoning) Chapter 20.20 (Historic Landmark Preservation), Section 20.20.070 (Historic Landmark Recognition) be amended and replaced as follows:

20.20.070 - Historic landmark recognition.

- A. When approved by City Council resolution, the City may honor property owners with a Historic Building Award. The award will be based on the following:
 - 1. Nominations will be open to the public sector, private sector, and general public each calendar year that funding for the plaques is available. The deadline for submission of nominations will be September 1st. Nomination shall be submitted in the form of a letter. The HLC may recommend not more than five structures for an award. Final decision, by the HLC, will be made at a regularly scheduled meeting;
 - 2. The HLC shall award a maximum of five plaques each calendar year;
 - 3. Criteria for awarding a Historic Building Plaque Award are as follows:
 - a. The building shall be at least fifty years old,
 - b. The building shall have an "H" overlay, be a recorded Texas Historic Landmark, or listed on the National Register of Historic Places,

- c. The building shall have been rehabilitated and/or maintained in good condition, and plans prepared for the work approved by the HLC, evidenced by issuance of a Certificate of Appropriateness,
- d. If the building was rehabilitated using state, federal, or community development block grant funding, plans shall have been reviewed and approved by the State Historic Preservation Office (SHPO),
- e. At the time of the award, the building shall be in compliance with all municipal codes and ordinances, and have no open violations.
- f. Award winners may be honored at a subsequent City Council meeting,
- g. Recipients are required to display the award in a publicly visible location on the facade of the structure. Any replacement plaques will be acquired at the owner's expense. If the owner wishes to modify the location of the plaque, the owner may propose a new location to the Historic Preservation Officer. The HPO may approve the request or forward it to the HLC for consideration and approval.

Section 8. That Title 20 (Zoning) Chapter 20.20 (Historic Landmark Preservation), Section 20.20.080 (Alterations and Changes to Landmarks and H-overlay properties) be amended and replaced as follows:

20.20.080 - Alterations and changes to landmarks and H-overlay properties.

- A. No person or entity shall construct, reconstruct, alter, change, remove, demolish or fail to maintain, any of the following, unless a Certificate of Appropriateness or a Certificate of Demolition has been approved by the HLC or approval granted through administrative review:
 - 1. Any building, object, site, landscape architectural feature, or group of such designated with an “H” overlay or as a historic landmark as defined by this chapter and designated by the City Council.
- B. No building permit shall be issued for such proposed work until a Certificate of Appropriateness has first been issued by the Historic Landmark Commission or approval granted through administrative review. The Certificate of Appropriateness or administrative review approval shall be in addition to and not in lieu of any building permit that may otherwise be required.
- C. Certificates of Appropriateness, Certificates of Demolition and applications for administrative review shall be granted, granted with modifications, or denied based on the following criteria:
 - 1. When City Council has adopted architectural and design guidelines for a particular district, those guidelines shall control provided they are not in conflict with other requirements of the city code, except that the HLC may approve exceptions to the guidelines in an effort to maintain the historic integrity of an “H” overlay property, in which case the exception shall control in that particular case;

2. When no guidelines have been adopted for a particular district, the guidelines from the district most similar in character, design, materials, workmanship, time of construction shall apply; or as identified in the "Guide to the Identification and Preservation of El Paso's Cultural, Historic and Architectural Resources";
3. When the preceding does not provide guidelines applicable to the project, then the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings shall apply (36 CFR Part 68) (U.S. Department of the Interior, National Park Service, Preservation Assistance Division. U.S. Government Printing Office Document Number: 19940 - 160-280 QL 3, Washington, D.C., or most current revision).
4. The guidelines and use thereof by the HPO for use in granting an administratively issued Certificate of Appropriateness for a site located in an Area of Potential Effect shall be as provided by the resolution of the City Council adopting such guidelines – see Chapter 3.8.
5. An approved administrative review application shall expire twenty-four (24) months after approval after which the applicant can reapply.
6. An approved Certificate of Appropriateness application shall expire forty-eight (48) months after approval. If the work has not been completed within forty-eight (48) months, the applicant shall reapply to the HLC.
7. An approved Certificate of Demolition application shall expire within twelve (12) months of approval. If the work is not completed within that period, the property owner shall reapply to the HLC.
8. All public works (*unless the proposal is restorative, rehabilitative, or meeting the requirements for administrative review and approval*) in historic districts shall be reviewed and approved by the Historic Landmark Commission. All public projects to be reviewed by the Historic Landmark Commission shall require notification of registered neighborhood associations in the area of work. The Historic Preservation Officer (HPO) shall be on the design team for all public works in historic districts. All city departments shall comply with this ordinance.

D. Application Content.

1. For the exterior of a property with an “H” overlay or a property located in an Area of Potential Effect (see Chapter 3.04.035) applying for a tax exemption, or a designated historic interior, the applicant shall submit the following:
 - a. One copy of a completed application for administrative review, Certificate of Appropriateness or Certificate of Demolition form. Applications shall be typewritten, printed in ink, or electronically submitted in legible form. Completed applications shall be accepted and reviewed administratively or scheduled for HLC hearing, as applicable, on a first-come, first-serve basis. Incomplete applications shall not be processed and shall be returned to the applicant;

- b. One copy of a detailed site development plan and construction documents drawn to scale, as applicable, showing the following:
 - i. Legal description of the property,
 - ii. Lot lines with dimensions of the areas,
 - iii. Location and arrangement of structures and fencing,
 - iv. Location, type, and arrangement of windows, doors, and other openings where applicable; (Include sample of each type of window or door from brochure, catalog or manufacturer),
 - v. Square footage of structure(s), including number of dwelling units,
 - vi. Required yards and setbacks,
 - vii. Proposed building materials (i.e., concrete, stucco, wood, metal),
 - viii. Sample of proposed color(s) and texture (i.e., color swatch with name, manufacturer, and number),
 - ix. Material and product samples from brochure, catalog or manufacturer,
 - x. Open spaces, where applicable,
 - xi. Landscaped planted areas including square footage, list of plants, dimensions of existing and new construction including paving, planting, and any illustration of masonry or other materials,
 - xii. Architectural design of buildings, modification, addition, or new construction (floor plan(s), sections, and elevations),
 - xiii. Construction details for roof, walls, floor and foundation;
 - xiv. Drawings of site development plans, floor plans when needed, exterior elevations and building sections shall be drawn to scale and noted. Not to Scale (NTS) drawings will not be accepted.
 - xv. Shop drawings, cut sheets, elevations, plans, and sections with dimensions for windows, doors, architectural components, and structures as needed,
 - xvi. Existing and proposed elevations, site plans, floor plans, and building sections of affected areas as needed.
 - xvii. Renderings will not be accepted as a substitute for detailed plans and sections shall be drawn to scale and noted. Not To Scale (NTS) drawings will not be accepted.
- c. Printed hard copies of color photographs showing current conditions of the site and/or structures (pictures from Google Earth or an online program will not be accepted);

- d. One copy of a proof of ownership or other legal document demonstrating that the individual(s) or corporation submitting the application is the current property owner such as a certificate from a title company or warranty deed. An individual or entity who has a contract to purchase property may also submit an application with the owner's written authorization. This requirement shall not apply to administrative review applications;
- e. A copy of any deed restrictions, existing or proposed, on the property shall also be submitted. This requirement shall not apply to administrative review applications;
- f. One eight and one-half inch by eleven inch copy of the detailed site development plan and scaled construction drawings and one full-size set measuring 24" x 36" in size. The copy shall contain the address and legal description of the property. This requirement shall not apply to administrative review applications;
- g. A plan showing restoration or rehabilitation of the interior (if designated) and the exterior unless the applicant provides an inspection report that shows that the interior fully complies with all applicable code requirements and is not in need of restoration or rehabilitation, in which case the plans need only address the exterior of the site.
- h. Drawings shall comply with the requirements set by the Texas Board of Architectural Examiners for commercial structures.

E. Administrative Review and Approval.

- 1. The Historic Preservation Officer shall review and approve, approve with modifications or deny all administrative review applications in accordance with the administrative review design guidelines, for the following types of requests:
 - a. Landscape materials including vegetation, irrigation, and xeriscaping, in the front, rear, side yards and parkways to include the following:
 - i. Open spaces, where applicable, including square footage, list of plants, dimensions of new construction including paving, planting, and any installation of masonry and other materials;
 - ii. Landscaped planted areas, where applicable, including square footage, list of plants, dimensions of existing and new construction including paving, planting, and any installation for masonry or other materials;
 - iii. Type of landscape or surface material to be replaced; to include a sample of the proposed surface material;
 - b. New fencing on the front, rear and side yards to include the following:
 - i. Location and type of proposed fencing;
 - ii. Type of proposed fencing including material, dimensions, and color;
 - iii. Chain-link fence is not an acceptable material for approval under administrative review;

- c. Metal coverings and security grilles for windows and doors, guardrails and handrails for safety, to include photographs and drawings (elevations and sections) and showing the following:
 - i. Location of proposed security grilles;
 - ii. Type of proposed security grille including dimensions, material and color;
 - iii. Guardrails and handrails placed on or in an area where they will not alter, damage, or destroy architectural fabric and made of simple black metal pickets.
- d. Exterior accessibility ramps when placed where historic or significant architectural fabric shall be altered requires review by the HLC to include the following:
 - i. Location of proposed accessibility ramp;
 - ii. List of materials, dimensions, and colors;
 - iii. Shall comply with Texas Accessibility Standards for commercial properties.
- e. Skylights, solar panels, HVAC units, and any mechanical, electrical, or plumbing equipment when placed in non-character-defining facades and are not visible with the front facade; to include the following:
 - i. Location of proposed skylight, solar panels or HVAC unit or any mechanical, electrical, or plumbing equipment;
 - ii. List of materials, dimensions, and colors;
 - iii. Sample of skylight, solar panels, HVAC unit or any mechanical, electrical or plumbing equipment with dimensions (Include sample from brochure, catalog or manufacturer);
- f. Off-premises and on-premises commercial and residential signs within historic districts in accordance with Chapter 20.18 as applicable; to include the following:
 - i. Location of proposed signage;
 - ii. List of materials and colors;
 - iii. Elevations and sections, drawn to scale, of signage including total square footage.
- g. Replacement of garage or household exterior doors that match the original doors to include sample of door from brochure, catalog or manufacturer listing materials, dimensions, and color;
- h. Walkways, driveways, and aprons; include location and materials;
- i. Swimming pools and tennis courts where permitted by sufficient area in the side and rear yard and not visible from the right-of-way;
- j. Routine maintenance, including but not be limited to: painting, re-roofing, repair of walks, driveways, fences;
- k. Placement of fire escapes when placed in non-character-defining facades and where allowed by other city ordinances;

- l. Installation of windows and doors similar to the original in appearance, operation, and purpose, regardless of construction materials and shall include sample, elevations, sections, and/or shop drawings of window and doors from a brochure, catalog or manufacturer listing materials, dimensions, color, operation, configuration, details, and finish; also include existing and proposed elevations of each façade;
 - m. Installation of an accessory structure when placed in non-character-defining facades, not in the front or side yards, and when no other accessory buildings exist on the site. Accessory structure shall not exceed two hundred square feet in size. Roof height shall not exceed height of the main structure. Colors shall complement the existing historic structure;
 - n. Installation of outdoor playground equipment when placed in non-character-defining facades and not in the front or side yards;
 - o. Painting of previously painted surfaces other than brick or any type of stone or masonry with colors compatible with the historic district. Colors may be denied by the Historic Preservation Office and can be appealed to the Historic Landmark Commission.
 - p. Installation of outdoor lighting fixtures and security fixtures when such elements complement the design context of the structure and do not alter, damage, or destroy historic fabric or character defining features. Drawings shall include elevations and sections drawn to scale that show materials, dimensions, color, and installation;
 - q. Minor alterations in a non-character-defining facade and not visible from the street. Any alteration found to have a detrimental impact on the historic character of the structure or historic district shall be subject to the requirements for approval for a Certificate of Appropriateness as outlined in Section 20.20.130(C).
3. Color photographs showing current conditions of the property shall be submitted in hard copy or e-mail form to the Historic Preservation Office and shall be required to be furnished by the applicant for all administrative review requests. Google Earth or online pictures will not be accepted.
 4. The applicant may appeal decisions of the HPO to the HLC through the application process.
- F. Certificate of Appropriateness and Certificate of Demolition. Any and all changes or alterations to landmarks and H-overlay properties, as described in Section 20.20.140(A), that are not eligible for administrative review shall require an application for Certificate of Appropriateness or Certificate of Demolition to be reviewed and approved by the HLC. A complete Certificate of Appropriateness application shall be submitted to the Historic Preservation Office at least fourteen (14) days before the HLC meeting for its review.

G. Historic Landmark Commission Review.

1. The Historic Landmark Commission, upon ten (10) days' notice to the applicant, shall hold a hearing on the application. Upon review, if the HLC finds the proposed work of a nature which will not adversely affect any significant architectural or historical feature of a designated historic landmark, property or site, and is appropriate and consistent with the spirit and purposes of this section, it shall forward a Certificate of Appropriateness to the applicant within fifteen (15) days after the public hearing.
2. If the Historic Landmark Commission finds that the proposed work will adversely affect or destroy any significant architectural or historical feature of the designated historic landmark, property, site resource, or historic interior, or is inappropriate or inconsistent with the spirit and purposes of this section, it shall render a denial of the request and forward the notice of denial to the applicant within fifteen (15) days after the public hearing. The HLC shall state the reason(s) for its disapproval.
3. If no action has been taken by the Historic Landmark Commission within forty-five (45) days of the receipt of a completed application, the application shall be approved as submitted, and a Certificate of Appropriateness shall be issued by the HLC. However, a Certificate of Demolition shall never be issued before the expiration of sixty (60) days of receipt of a completed application.
4. No change shall be made in the application, issuance, or execution of any building permit after the issuance of a Certificate of Appropriateness, without submittal of a request for minor modification as provided for in Section 20.20.150, otherwise, a new application to the Historic Landmark Commission and approval thereof in the same manner as previously provided shall be submitted.
5. After a decision is reached by the Historic Landmark Commission denying an application for a Certificate of Appropriateness, no application for a Certificate of Appropriateness for a given property may be resubmitted within twelve (12) months from date of action by the HLC unless the HLC finds that a substantial change in conditions has occurred, or that applicant has resubmitted in conformance with subsection 3.
6. Applicants aggrieved by a decision of the Historic Landmark Commission may appeal to City Council, using the procedure identified in Section 20.20.190. All fees for an appeal shall be paid in full at the time of submission. If the fee is not paid, the appeal will be deemed incomplete. Once notices for a public hearing have been sent and/or posted, the hearing shall be held unless the applicant withdraws his application in which event no request for the same or similar change shall be accepted for one year at which time a new application including payment of new fees may be filed. No fees are to be refunded in the event of a withdrawal.

H. Area of Potential Effect. A Certificate of Appropriateness may also be issued administratively by the HPO using the same criteria and standards as the HLC under subsection G of this section, or administrative approval may be granted under this chapter for the construction, reconstruction, alteration or changes proposed to be made to a site located in an Area of Potential Effect as designated by the City Council, upon the request of a person or entity intending to make application for the ad valorem tax incentive program

provided in Section 3.04.035 of this Code. In making a decision to administratively issue a Certificate of Appropriateness under this section, the HPO shall perform every duty and undertake every obligation imposed on the HLC in this section for the situations when the HLC is authorized to issue a Certificate of Appropriateness.

Section 9. That Title 20 (Zoning) Chapter 20.20 (Historic Landmark Preservation), Section 20.20.090 (Modification of Certificate of Appropriateness) be amended and replaced as follows:

20.20.090 - Modification of Certificate of Appropriateness.

- A. If an applicant desires to make minor modifications to the Certificate of Appropriateness when preparing final working drawings, he/she may apply to the Historic Preservation Office for a minor modification of the approved Certificate of Appropriateness.
- B. If the Historic Preservation Officer finds the minor modifications are in substantial conformity with the approved Certificate of Appropriateness, the Historic Preservation Officer shall approve the minor modifications and amend the Certificate of Appropriateness.
- C. Changes other than such minor modification shall require a new hearing and new approval in the same manner as for review of the original Certificate of Appropriateness.

Section 10. That Title 20 (Zoning) Chapter 20.20 (Historic Landmark Preservation), Section 20.20.100 (Economic Hardship Application Procedure) be amended and replaced as follows:

20.20.100 - Economic hardship application procedure.

- A. After receiving written notification from the HLC of the denial of any application, an applicant may commence the economic hardship application process discussed herein at no additional cost. No building permit or demolition permit shall be issued through this procedure unless the HLC makes a finding that, through no fault of his/her own, the owner cannot otherwise realize a reasonable rate of return on, or sell his property at a reasonable price to an individual or entity interested in preserving it.
- B. The applicant and the HLC shall consult in good faith in a diligent effort to seek an alternative that will result in preservation of the property.
- C. The HLC shall hold a public hearing on the application within thirty days from the date the complete application is received by the HLC.
- D. If the HLC approves the application, it shall forward a Certificate of Appropriateness to the applicant within ten (10) days after the public hearing. However, a Certificate of Demolition shall not be provided to the applicant until at least sixty days following the date of submittal of a completed application and no permits for demolition shall be approved by the Historic Preservation Office until sixty (60) days after approval from the HLC.

- E. If the HLC denies the application, it shall forward the disapproved application to the applicant within ten (10) days after the public hearing. The HLC shall state the reasons for its disapproval.
- F. If no action has been taken by the HLC within sixty (60) days of the original receipt of the economic hardship application by the HLC, a Certificate of Appropriateness or Certificate of Demolition shall be deemed to have been issued by the HLC, and the Historic Preservation Officer shall so advise the applicant.
- G. No change shall be made in the application for any building permit after the issuance of a Certificate of Appropriateness without submittal of a new application to the HLC and approval thereof as previously provided.
- H. After a decision is reached by the HLC denying an application, a re-submittal of application shall not be accepted for additional hearing within a twelve-month period from the date of the final decision, unless the HLC determines, after reviewing a written request of the applicant, that there has been a change in conditions sufficient to warrant an earlier rehearing.
- I. Applicants aggrieved by a decision of the HLC may appeal to City Council, using the procedure identified in Section 20.20.190.
- J. If an applicant claims Unreasonable Economic Hardship, the applicant shall submit a minimum of two detailed cost estimates for proposed work, each from a licensed contractor registered with the city.

Section 11. That Title 20 (Zoning) Chapter 20.20 (Historic Landmark Preservation), Section 20.20.110 (Enforcement) be amended and replaced as follows:

20.20.110 - Enforcement.

- A. All work performed pursuant to a Certificate of Appropriateness or administrative review shall conform to any requirements included therein. It shall be the duty of the Historic Preservation Officer to inspect any such work to assure compliance. In the event work is found that is not in accordance with the Certificate of Appropriateness or administrative review, the Historic Preservation Officer shall notify the building official or designee, who may issue a stop work order, a citation, or pursue other prosecution in accordance with this Code or any other applicable statute or law. All further work by the applicant shall be subject to the requirements of the city code or other governing statute or law.
- B. If a Certificate of Appropriateness is issued, a project is completed, and if the property qualifies for a tax abatement per Title 3 of this Code, then the Historic Preservation Officer shall inspect the premises on an annual basis to ensure compliance with the Certificate of Appropriateness for the duration of the tax abatement. If the Historic Preservation Officer determines that conditions have changed to make the project noncompliant with the Certificate of Appropriateness, they shall notify the owner in writing and submit a report to the HLC providing details of the alleged noncompliance.

- C. The HLC shall hold a hearing and notify the property of the date, time and place of the hearing so that the property owner may attend and present evidence of compliance with the Certificate of Appropriateness. The HLC shall make a finding, based upon the evidence presented by the Historic Preservation Officer and the property owner, whether or not the project is or is not in compliance with the original Certificate of Appropriateness. If the HLC finds that the project is not in compliance, the Historic Preservation Officer shall notify the taxing authority, and the tax abatement for the project shall cease immediately. The property owner may present an alternate plan in order to comply with the Certificate of Appropriateness, and the HLC may amend and approve the modifications. The property owner may appeal the HLC's decision to the City Council as provided for herein.
- D. Any application regarding a violation that was reviewed and/or approved by the HLC shall have a date of completion for the work to be completed. The HLC may decide on thirty (30) to ninety days or more for a violation to be amended, corrected, cured, or repaired. If the violation is not amended, cured, or repaired within the timeframe decided on by the HLC, the matter is to be referred to the department of Code Compliance.

Section 12. That Title 20 (Zoning) Chapter 20.20 (Historic Landmark Preservation), Section 20.20.120 (Historic Landmark Demolition or Removal) be amended and replaced as follows:

20.20.120 - Historic landmark demolition or removal.

- A. Application Requirements. A person may file an application for demolition or partial demolition of a designated historic or H-overlay property with the Historic Preservation Officer. The application for demolition or removal of any portion of a designated historic or "H" overlay property shall be in the form provided by the Historic Preservation Officer. The Historic Preservation Officer shall list in the application all required information and documentation that the Historic Preservation Officer deems necessary in order to allow the HLC to make a determination on the request. At a minimum, the Historic Preservation Officer shall include the following requirements in the application:
 - 1. Statement of the reasons for the demolition.
 - 2. A copy of the deed showing ownership of the property.
 - 3. Signature of the property owner.
 - 4. Detailed plans showing the current condition of the structure.

The Historic Preservation Office shall not process any applications that are incomplete or are missing any required documentation. The HLC shall delay the proposed demolition for a period of at least sixty (60) days from the date of submission of a completed application.

- B. Hearing Procedure. The HLC shall consider an application for demolition or partial demolition of a designated historic or "H" overlay property in accordance with the following procedures:

1. Upon receipt of a complete application, the Historic Preservation Office shall place the application in the next available HLC regular meeting for a first public hearing, provided that the Historic Preservation Office shall provide at least ten (10) days notice to the applicant of the public hearing. If the next available HLC regular meeting is within ten (10) days of the Historic Preservation Office receiving a completed application, then the Historic Preservation Office shall place the application for a public hearing on the following HLC regular meeting.
2. At the first public hearing on an application for demolition or partial demolition of a designated historic or “H” overlay property, the HLC shall only hear the evidence presented by the applicant and other interested parties. The HLC may not make a decision on the application until a second public hearing. The Historic Preservation Officer shall set the second public hearing no later than sixty (60) days from the date of the first public hearing.
3. At the second public hearing, the HLC may consider additional evidence presented by the applicant or other interested parties. The HLC will render a decision on the application at the second public hearing. The HLC shall either approve the application, deny the application, require a third public hearing to take place no later than 180 days from the date of the second public hearing, or take no action on the application and send a recommendation to City Council that the property be acquired pursuant to Section 20.20.120(A).
 - a. If the HLC fails to take action during the second public hearing, then the application will be deemed approved.
 - b. If the HLC decides to send a recommendation to City Council that the property be acquired and if City Council declines the request or takes no action within sixty (60) days of the second public hearing, then the Historic Preservation Officer shall set the application for a third public hearing.
 - c. If City Council decides to take action to acquire the property, then the application will be stayed until the acquisition of the property is complete. Once the acquisition of the property is complete then the Historic Preservation Office shall close the application and mark the process as complete. If the negotiations for the acquisition of the property fail, then the applicant may request the Historic Preservation Office to set a third public hearing on the application.
4. If the Historic Preservation Office sets the application for a third public hearing, then the HLC may consider additional evidence by the applicant or other interested parties, however, the HLC shall make a decision to either approve or deny the application. If the HLC fails to take action during the third public hearing, then the application will be deemed approved.

- C. Considerations. The HLC may consider the following factors in deciding whether or not to approve an application for demolition or partial demolition of a property designated as historic or H-overlay:
1. Historic value
 2. State of repair of the property
 3. Reasonableness of the cost of the restoration or repair
 4. The existing and potential usefulness, including economic usefulness of the property
 5. Purposes behind preserving the structure as a historic resource
 6. Loss of historic significance
 7. Proposed construction for the site
 8. The HLC may require additional information as needed in order to make an informed decision.
- D. Appeals. An applicant whose application has been denied may appeal the decision of the HLC to City Council in accordance with the following procedures.
1. Applicant shall file the appeal and pay the appeal fee with the City Clerk within fifteen (15) days of a decision by the HLC to deny an application. The appeal fee will be established annually in the annual budget resolution approved by City Council.
- E. Resubmittal of applications. After a decision is reached by the HLC denying an application for a Certificate of Demolition, a re-submittal of an application for such certificate will not be accepted for a twelve-month period from the date of final decision, except upon written request of the applicant indicating that there has been a change in conditions sufficient to warrant an earlier rehearing.
- F. Not applicable. Subsections A through E of this Section shall not apply whenever the Chief Building Official or the Fire Chief, or their designee, proceeds under Chapter 18.50. In such case, the Building and Standards Commission, after the appropriate notice and hearing, may order the building or structure, or part thereof, secured, repaired, removed, or demolished without regard to the “H”-overlay designation; but in no event may the Building and Standards Commission take such action unless it determines that the building or structure or part thereof is unsafe and dangerous so as to endanger persons or property or is a fire hazard, and that such damage or hazard is so great and so immediate that subsections A through E of this section should be circumvented to prevent immediate and substantial harm to persons or property. Such a determination by the Building and Standards Commission shall be final except as provided for by state law.

G. Prior to submitting an application for demolition or removal, the applicant shall send written notice of the proposed application via email or certified mail, facsimile transmission or personal delivery to the mayor and City Council, the County Historical Commission, and if the property is located within a Recognized Neighborhood Association (“RNA”) boundary, the applicant shall provide written notice to any such RNA. Such notice shall contain the following information:

1. A detailed description of what is being applied for;
2. A method by which the applicant can be contacted; and
3. A statement as to the application’s projected impact on the land comprising the geographic boundary of the RNA;
4. A minimum of two cost estimates from licensed contractors, engineers or architects within the state of Texas to preserve or demolish the structure.

H. As part of the submitted application, the applicant shall provide a copy of the written notice sent to each individual or entity and proof of delivery to the Historic Preservation Office and the HLC. Failure to provide written notice or an affidavit attesting hand delivery shall result in the application not being accepted as complete.

Section 13. That Title 20 (Zoning) Chapter 20.20 (Historic Landmark Preservation), Section 20.20.130 (Preservation of Demolition by Neglect) be amended and replaced as follows

20.20.130 - Prevention of demolition by neglect.

A. **Applicability.** All historic landmarks and properties with an "H" overlay shall be preserved against detrimental deterioration and kept free from certain structural defects by the owner or legal custodian who shall repair such building, object, site, or structure if it is found to have any of the following defects:

1. Deterioration of roofs or other horizontal members;
2. Deterioration of chimneys;
3. Deterioration or crumbling of stucco or mortar;
4. Ineffective waterproofing of exterior walls, roof or foundations, including broken windows or doors; or
5. Deterioration of any feature so as to create a hazardous condition which could lead to the claim that demolition is necessary for the public safety.
6. Deterioration of any feature so as to create a hazardous condition which will pose a threat to the public safety.

- B. Upon the HLC's receipt of a claim of detrimental deterioration of a landmark or property with an "H" overlay, it shall notify the owner in writing, informing the owner of the complaint and specifics of the alleged detrimental deterioration, requesting that the owner appear before the HLC for a fuller and more accurate determination of the existence of detrimental deterioration.
- C. If the HLC determines after public hearing that there is detrimental deterioration as described in subsection A, the owner or legal custodian shall be given a reasonable time and opportunity to cure. The owner or legal custodian shall comply with all requirements of requesting a certificate of appropriateness from the HLC.
- D. Recommendation of a building's safety shall be made by the Chief Building Official and an engineering consultant hired by the property owner with input from the Historic Preservation Office. The consultant shall submit a report to the city verifying the building's safety or lack thereof.
- E. If the owner ignores the notice from the HLC or fails to respond, the Building and Standards Commission shall be notified. The Historic Preservation Office and the Historic Landmark Commission are authorized to work with a property owner to encourage maintenance and stabilization of the structure and identify resources available before taking enforcement action under this section. If the owner of the property is not responsive and fails to appear before the HLC as requested, the HLC or the Historic Preservation Office may file a petition with Code Compliance requesting that the city proceed under the city abatement ordinance to require correction of defects or repairs to any structure as stated above so that such structure shall be preserved and protected in accordance with the purposes of this article and the public safety and housing ordinance.
- F. The Historic Preservation Office is authorized to notify the owner about the condition of the property constituting a case of demolition by neglect in violation of this chapter. Any such unacceptable, dangerous, unsightly or unsanitary matter in violation of this chapter shall be removed within seven (7) calendar days after the receipt of such notice. Such notice will further state that if the current property condition is not corrected within the seven (7) calendar days from the service of such notice, the City will refer the matter to the Building and Standards Commission, which may, without further notice abate this demolition by neglect by boarding and securing the property, and charge the cost of expense incurred in doing such work to the owner of such property and fix a lien thereon as provided by this article.
- G. Such notice shall be in writing and delivered in person or sent by mail (or by any means authorized by state law) to the owner, or to any one or more of the owners if the property is owned jointly or in common at the owner's address as recorded in the Central Appraisal District records of the appraisal district in which the property is located, or to any agency having the authority to lease, rent, sell, manage or take care of the land. If the correction

notice cannot be hand delivered at the time of the investigation, or the owner's address recorded in the Central Appraisal District is unknown, notice may be given by publication at least once in a newspaper of general circulation, by posting the notice on or near the front door of each building on the property to which the violation relates, or by posting the notice on a placard attached to a stake driven into the ground on the property which the violation relates, if the property contains no buildings.

- H. If the city mails a notice to a property owner in accordance with this section, and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected and the notice is considered as delivered.
- I. The person given such a notice or his/her representative shall request a meeting with the Chief Building Official and the Historic Preservation Officer or designee within seven (7) calendar days after the receipt of the notice, to present their reasons for which this ordinance should not be enforced. The meeting shall be attended by the Historic Preservation Office to determine compliance with the guidelines and city code.
- J. If the property owner or his/her representative fails to remove or correct the conditions or any other unacceptable, unsightly or unsanitary matter in violation of this chapter within seven (7) calendar days after the receipt or posting of notice, the department shall ask the Building and Standards Commission to arrange to have the boarding, securing, or removal of any other unacceptable, unsightly or unsanitary matter in violation of this chapter done and assess the cost of such clean up, disposal or removal and all reasonable expenses at the owner's expense and to take any action as provided by this chapter. The notice shall state the cost to the City or other entity, to board and secure the property, including labor costs, administrative costs, transportation expenses, publication costs, expenses for use of equipment, and materials and other reasonable expenses. The notice shall be sent in writing by the Chief Building Official requesting payment to the city within thirty (30) calendar days of receipt by the property owner. Failure to pay the costs associated with the correction of demolition by neglect will result in a request to City Council to pass a resolution declaring the reasonable expenses which include the cost of clean-up, disposal or removal, labor costs, administrative costs, transportation expenses, publication costs, expenses for use of equipment, and materials and other reasonable expenses, as well as the established authorized fee relating to the preparation of the required legal documents necessary for the creation of and release of lien, plus the cost of recording the resolution, to be a lien on the property payable within ten (10) calendar days after adoption of the resolution, and thereafter bearing ten percent yearly interest until the debt is paid in full. If passed, a copy of the resolution, authenticated by the acknowledgement of the City Clerk, shall be filed for record in the office of the County Clerk. The City Tax Assessor and Collector shall send a bill for the amount with all tax bills on the property until the debt is paid in full.

- K. The City may provide a notice to inform the owner at the owner's address as recorded in the appraisal district records of the appraisal district in which the property is located, by mail (or by any means authorized by state law) and a posting on the property, or by personal delivery of correction notice, that if the owner commits another violation of the same kind or nature that poses a condition of demolition by neglect within a twelve- (12) calendar month period from the date of the notice, the City, without further notice, may correct the violations at the owner's expense and assess the clean-up expense against the property. If a violation covered by a notice under this subsection occurs within the one- (1) year period and the city has not been informed in writing by the owner of an ownership change, then the City, without further notice, may take any action as provided by Chapter 342 of the Texas Health and Safety Code and assess its expenses as provided by Section 342.007.

Section 14. That Title 20 (Zoning) Chapter 20.20 (Historic Landmark Preservation), Section 20.20.140 (Penalty for Demolition or Alteration Without a Permit) be amended and replaced as follows:

20.20.140 - Penalty for demolition or alteration without a permit.

- A. It is unlawful to construct, reconstruct, structurally alter, remodel, renovate, restore, demolish or raze any historic landmark, property, site, or resource or any resource labeled with an "H" overlay in violation of this chapter. The City Council, through the City Attorney, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful violation and to restrain, correct or abate such violation, to prevent any illegal act, business or maintenance in and about such premises.
- B. In addition to any remedies allowed pursuant to Chapter 20.24 or other law and exercised under subsection A, a person, corporation or entity is liable to the city if the person demolishes, or causes to be demolished, or otherwise adversely affects the structural, physical or visual integrity of a historic landmark without first obtaining a permit from the building services department and a certificate of demolition from the HLC as required by this chapter. The structure or property shall have a designated "H" overlay, individually or as part of a historic district.
- C. If the structural, physical or visual integrity of the historic landmark, property, site, or structure is adversely affected to the extent that it may not feasibly be substantially restored to its original level of historic significance, damages are equal to the cost of constructing, using as many of the original materials as possible, a new structure that is a reasonable facsimile of the historic landmark as well as the cost of the attorney's, architect's and appraiser's fees and other costs related to the enforcement of this section. If it is feasible to restore the structural, physical or visual integrity of the historic landmark, property, site, or structure substantially to its former level, the damages are equal to the cost of the restoration, using as many of the original materials as possible and the cost of the attorney's, architect's and appraiser's fees and other costs related to the enforcement of this section.

- D. Instead of accepting monetary damages, the City Council may permit the liable person to construct, within a reasonable time and using as many of the original materials as possible, a structure or property that is a reasonable facsimile of the demolished historic landmark, property, site, or structure or to restore, using as many of the original materials as possible, the historic landmark, property, site, or structure and to pay the cost of the attorney's, architect's and appraiser's fees and other costs related to the enforcement of this section.
- E. If a property has any outstanding, active or open violation(s) of the City's Building and Zoning Codes, the Historic Preservation Office shall not approve any permits for the property until such violation(s) is corrected or in compliance. Only work to correct the violations will be approved.

Section 15. That Title 20 (Zoning) Chapter 20.20 (Historic Landmark Preservation), Section 20.20.150 (Ad Valorem Tax Incentives for Historic Properties) be amended and replaced as follows:

20.20.150 - Ad valorem tax incentives for historic properties.

- A. The city will provide applications for the ad valorem tax incentives program provided in Section 3.04.035 of this Code to promote preservation and restoration of historic properties.
- B. The city council may identify by resolution one or more areas of the city that abut historic landmarks and districts and include one or more historically significant sites in need of tax relief to encourage their historic preservation, and shall designate and declare those areas as areas of potential effect. Those sites meeting the criteria set forth in Section 3.04.035 of this Code and located in designated areas of potential effect shall be eligible to make application for and receive the tax incentives described in this section and as provided in Section 3.04.035 of this Code.

Section 16. That Title 20 (Zoning) Chapter 20.20 (Historic Landmark Preservation), Section 20.20.160 (Notice) be amended and replaced as follows:

20.20.160 - Notice.

Any notice required to be given under this chapter shall be by deposit in the U.S. Postal Service, postage prepaid, or by e-mail to the addressee at his last known mailing address.

Section 17. That Title 20 (Zoning) Chapter 20.20 (Historic Landmark Preservation), Section 20.20.170 (Severability) be amended and replaced as follows:

20.20.170 - Severability.

The terms and provisions of this chapter are severable and shall be governed by Section 1.04.060.

Section 18. That Title 20 (Zoning) Chapter 20.20 (Historic Landmark Preservation), Section 20.20.180 (Zoning Board of Adjustment) be amended and replaced as follows:

20.20.180 - Zoning Board of Adjustment.

This chapter is not to be construed as conferring any jurisdiction on the Zoning Board of Adjustment in matters pertaining to historic landmark preservation.

Section 19. That Title 20 (Zoning) Chapter 20.20 (Historic Landmark Preservation), Section 20.20.190 (Appeal to the City Council) be amended and replaced as follows:

20.20.190 - Appeal to the City Council.

Any applicant or the owner of any property located within three hundred (300) feet of any landmark property with an “H” overlay, or the owner of any property within the same historic district as the subject of the appeal, who is aggrieved by a ruling of the HLC concerning that landmark under the provisions of this section, may within fifteen (15) days after the ruling of the HLC, appeal to the City Council by filing written notice of such appeal with the city clerk. Following a public hearing to be held within sixty (60) days of the filing of such notice of appeal, the City Council may, by a super majority (three fourths vote of all members of the governing body) vote of all members of the City Council, uphold or overturn any ruling of the HLC made pursuant to this chapter. Appeals to the City Council may be made by filing written notice of such appeal with the City Clerk and shall be accompanied by the non-refundable fee paid in full. The appeal shall be accompanied by the fee listed in Schedule C as set by Council resolution. No appeal shall be heard until the fee is paid in full. Failure to pay the fee in full at the time of filing the appeal will render the application incomplete.

PASSED AND APPROVED this ____ day of _____, 2024.

THE CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Laura D. Prine
City Clerk

Additional signatures on following page

APPROVED AS TO FORM:

Russel T. Abeln

Russell T. Abeln
Senior Assistant City Attorney

Date: _____

APPROVED AS TO CONTENT:

Philip F. Etiwe

Philip F. Etiwe, Director
Planning & Inspections Department

Date: _____

Chapter 20.20 - HISTORIC LANDMARK PRESERVATION

Sections:

20.20.010 - Declaration of policy.

- A. ~~City Council finds and declares as a matter of public policy that the protection, enhancement, preservation and use of historic landmarks is a public necessity and is required in the interest of the culture, prosperity, education, safety and general welfare of the people. The purposes of this chapter include the following but are not limited to:~~
- B. To protect, enhance and perpetuate historic landmarks which represent or reflect distinctive and important elements of the city's, region's, state's or nation's architectural, archaeological, cultural, social, economic, ethnic and political history and to develop appropriate settings for such places;
- C. To safeguard the city's historic and cultural heritage, as embodied and reflected in such historic landmarks by appropriate regulations;
- D. To stabilize and improve property values in such locations;
- E. To foster civic pride in the beauty and accomplishments of the past;
- F. To protect and enhance the city's attractions to tourists and visitors and provide incidental support and stimulus to business and industry;
- G. To strengthen the economy of the city;
- H. To promote the use of historic landmarks for the culture, prosperity, education and general welfare of the people of the city and visitors to the city;
- I. To prevent the uprooting of architectural products of distinct periods, which may occur without regard to the feasibility of preserving and continuing the use of such landmarks, and without consideration of the irreplaceable loss to the people of the city of the cultural, historic and aesthetic values represented by such landmarks.

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(Ord. 16653 § 2 (part), 2007)

20.20.020 - Definitions.

All references to historic properties, sites, districts, resources, or landmarks in this chapter means any property with an "H" overlay and designated as such by the City of El Paso.

Commented [VP1]: Added in order to clarify all scope of construction covered by the ordinance, specifically properties with an "H" overlay. Clearly indicates properties designated by the City of El Paso and all structures and resources with a district or individually designated.

- A. In addition to the definitions of Chapter 20.02, the following definitions apply only to this chapter of the code, and control if in conflict with Chapter 20.02.
 - 1. "Addition" means a completely new structure or new component to an existing structure.
 - 2. "Administrative review" means the approval process by which the ~~H~~istoric ~~P~~reservation ~~O~~fficer (HPO) or his designee administratively approves or denies submitted applications in accordance with the Administrative Review Design Guidelines.
 - 3. "Alteration" means any construction or change of the exterior of a building, site or structure including, but not limited to, the erection, construction, reconstruction or removal of any structure in/within a historic district or of the designated interior space of a landmark structure. Alteration shall include, but not be limited to, the changing of roofing or siding materials; changing, eliminating or adding doors, door frames, windows, window frames, shutters, fences, railings, porches, balconies, signs or other ornamentation; the changing of paint color; re-grading; fill; imploding or other use of dynamite. Alteration shall not include ordinary repair and maintenance.

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- a. "Alteration, major" means an alteration shall be deemed to be major if it is the kind of work, which is customarily done with the aid of plans or specifications.
- b. "Alteration, minor" means an alteration shall be deemed to be "minor" if it is the kind of work which is customarily done without the aid of plans and which would not substantially change the external appearance of the building, site, or structure, and if new material added does not exceed one hundred square feet of floor area.
- 4. "Appurtenance" means, but is not limited to, any accessory or subordinate building, object or structure, fence, street furniture, fixture, vending machine, fountain or artwork, located on the grounds of a historic landmark or in a historic district.
- 5. "Archaeology" means the science or study of the material remains of past life or activities and the physical site or context in which they are found.
- 6. "Architectural style" means the architectural character and general composition of a structure, including but not limited to, the kind, color and texture of the building material and the type, design and character of all windows, door, light fixtures, signs and appurtenant elements.
- 7. "Area" means a specific geographic division of the City of El Paso.
- 8. "Building" means a structure 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 and multi-family buildings.
- 9. "Cemetery" means any site, as defined by Texas statute, which contains at least one burial, marked or previously marked, dedicated to and used or intended to be used for the permanent interment of the human dead, to include perpetual care and non-perpetual care cemeteries.
- 10. "Certificate of Appropriateness" means the certificate issued by the Historic Landmark Commission after review of a submitted application, and it is determined that the proposed project is appropriate for the landmark or historic district for which it is requested. It is not considered or defined as a building permit.
- 11. "Character-defining architectural element" means a distinctive architectural feature, quality, or combination thereof, that distinguishes one structure from another or which is unique to that structure.
- 12. "Cluster" means a group of cultural resources with compatible buildings, objects or structures geographically or thematically relating to and reinforcing one another through design, setting, materials, workmanship, congruency and association.
- 13. "Construction" means the act of adding new material to an existing building, structure or site.
- 14. "Contributing property" means a building, object, site or structure, in a historic district or "cluster" that contributes to the district's or cluster's historical significance through location, design, setting, materials, workmanship, and/or association. All properties within a designated district shall receive equal protection of the ordinance and shall conform to the guidelines whether designated as either contributing or non-contributing.
- 15. "Cultural" means the quality in a society that arises from an interest in or an acquaintance with what is generally regarded as excellence in arts, literature, architecture, manners, or scholarly pursuits and/or the socially transmitted behavior patterns, arts, beliefs, institutions, and all other products of human work that are considered as the expression of a particular period, class, community or population.
- 16. "Cultural resources" means districts, sites, parks, plazas, resources or structures that possess integrity of location, design, setting, materials, workmanship, congruency, and association in such a way that they are symbolic of excellence in North American, Texas, or El Paso history, architecture, archeology or culture.

17. "Days" means that, unless otherwise specified, all days are to be calendar days.

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Commented [VP5]: The language on non-contributing properties was removed from the ordinance in 2006. Since then, non-contributing properties have been subject to the same guidelines as contributing properties. This language was added to eliminate any misunderstanding.

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Commented [VP6]: There was some confusion about whether "days" meant working days or calendar days.

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18. "Demolition" means any act or process that destroys, razes, or permanently impairs the structural integrity, in whole or in part, of any mobile or immobile structure governed by this chapter.

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19. "Design guidelines" means the written standards adopted by the City Council which are intended to provide guidelines to the Historic Landmark Commission and Historic Preservation Officer to govern construction to preserve the historic, cultural and architectural character of an area or of a building, object, site or structure.

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20. "Economic return" means a financial profit or capital appreciation from use or ownership of a building, object, site or structure.

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20. "Effect" means a change in the quality of the historical, architectural, archaeological, or cultural significance of a resource, or in the characteristics that qualify the resource as historically important.

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21. "Effect, adverse" means a negative change in the quality of the historical, architectural, archaeological or cultural significance of a resource, or in the characteristics that qualify the resource as historically important.

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22. "Enclosure" refers to fences, walls or other physical features used to contain open space or provide privacy.

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23. "Historic district" means an area designated by City Council, state or federal authority and which contains within definable geographic boundaries one or more "H-overlay" properties or clusters, including their accessory buildings, fences and other appurtenances, and natural resources having historical, cultural and archaeological significance, and which may have within its boundaries landmarks, contributing, and non-contributing buildings or structures, which will all receive the equal protection of the historic district designation.

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24. "Historic interiors" means an architecturally or historically significant interior space which remains substantially intact in terms of: (1) original configuration, (2) original volume, and/or (3) original architectural ornamentation and decoration; which exhibit surviving original historical finishes or has the potential for accurate restoration of such finishes; and which is open, to be used by, or may be used by the public.

Commented [VP8]: Added to clarify that contributing and non-contributing properties are subject to the same ordinance, rules, and guidelines this language was added to eliminate any misunderstanding.

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25. "Historic landmark" also referred to as an "H-overlay" property, means those buildings, objects, sites or structures of historical, cultural, architectural or archaeological importance and whose demolition or destruction would constitute an irreplaceable loss to the quality and character of El Paso; certain inventoried interior spaces which are accessible to the public; such buildings, objects, sites or structures, their appurtenances, and the property which they are located, having been so designated by city council.

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26. "Historic Landmark Commission ("HLC")" the commission appointed by the mayor and City Council to assist in the preparation of the city's historic preservation plan, to create and review guidelines for historic districts, to review and approve, approve with conditions or deny applications relating to historic properties and to perform other functions as delineated in Title 2.

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27. "Historic preservation program" city program under the direction of the city manager's office to encourage historic preservation through education, advocacy and incentives, and to oversee the application and enforcement process for historic properties.

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28. "Historic Preservation Officer ("HPO")" means the person or persons designated by the City Manager for the City of El Paso to coordinate the historic preservation program; to review and administratively approve applications, refer violations as appropriate to the enforcement authorities and provide administrative staff support to the Historic Landmark Commission. The HPO will coordinate the development and implementation of the historic preservation plan and the city's efforts to encourage participation in the plan.

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29. "Historic preservation plan" is a supplement to the plan for El Paso relating to the preservation of historic properties.

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30. "Intrusion" means a building, object, site or structure which detracts from a district's or cluster's historical significance because of its incompatibility with the district's or cluster's sense of time, place, and historical development; or its incompatibility of scale, materials, texture or color, whose integrity has been irretrievably lost; or whose physical deterioration or damage makes it infeasible to rehabilitate.
31. "Inventory" means a systematic listing of cultural, historical, architectural or archaeological resources prepared by a city, state or federal government, following standards set forth by federal, state and city regulations for evaluation of cultural properties.
32. "Landscape architectural feature" means the general arrangement of grounds including, but not limited to, the topographic grade water pooling and runoff, types and sites of plant materials, type and sites of surface materials such as decorative bark, rock, stone, gravel, concrete asphalt, brick, and the types and sites of constructions not otherwise deemed to be structures per se, such as fences, retaining walls, decks and other miscellaneous fixtures.
33. "Minor modification" means a change or changes to an approved application that is in substantial conformity with the approved plans and application.
34. "National Register" means the National Register of Historic Places maintained by the Secretary of the Interior.
35. "National Historic Landmark" means a historic property that the Secretary of the Interior has designated a national historic landmark.
36. "Non-contributing property" means a building, object, site or structure in a historic district which does not contribute to the district's or cluster's historical significance through location, design, setting, material, workmanship, feeling and association, but due to its proximity to historic landmarks and contributing properties, has the potential to affect the character of the historic district or cluster that it is located within. All properties within a designated district shall receive equal protection of the ordinance whether designated as either contributing or non-contributing.
37. "Object" means a material thing of functional, aesthetic, cultural, historical, archaeological or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.
38. "Ordinary repair and maintenance" means any work, the purpose and effect of which is to correct or prevent any deterioration or decay of or damage to a building, object or structure or any part thereof and to restore same, as nearly as may be practicable, to its condition prior to such deterioration, decay or damage, using the same materials or those materials which are, in appearance, as close as possible to the original.
39. "Reconstruction" means the act or process of reassembling, reproducing or replacing by new construction, the form, detail and appearance of a destroyed or vanished property and its setting as it appeared at a particular period of time by means of the removal of later workmanship, or by the replacement of missing earlier work, or by reuse of original materials.
40. "Rehabilitation" means the act or process of returning a building, object, site or structure to a state of utility through repair, remodeling or alteration that makes possible an efficient contemporary use while preserving those portions or features of the building, object, site or structure that are significant to its historical, architectural and cultural values.
41. "Relocation" means any change of the location of a building, object or structure in its present setting to another setting.
42. "Resource" means a source or collection of buildings, objects, sites, structures or areas that exemplify the cultural, social, economic, political, archaeological or architectural history of the nation, state or city.
43. "Restoration" means the act or process of accurately recovering the form and details of a building, object, site or structure and its setting as it appeared at a particular period of time by means of the removal of later work or by the repair or replacement of missing earlier work.

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Commented [VP9]: The language on non-contributing properties was removed from the ordinance in 2006. Since then, non-contributing properties have been subject to the same guidelines as contributing properties. In order to clarify that contributing and non-contributing properties are subject to the same ordinance, rules, and guidelines this language was added to eliminate any misunderstanding.

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44. "Significant historic landmark" means:

- a. Those buildings, objects, sites, site improvements, appurtenances or structures of the highest and most unique historical, cultural, architectural or archaeological importance whose demolition or destruction would constitute an irreplaceable loss to the quality and character of El Paso;
- b. Inventoried interior spaces designed or intended to be occupied as part of the structure and which are accessible to the public; and
- c. Significant historic landmarks are also referred to as landmarks in this chapter.

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45. "Site" means the location of a significant event, a prehistoric or historic occupation or activity, or a building, structure or cluster, whether standing, ruined or vanished, where the location itself maintains historical or archaeological value regardless of the value of any existing structure.

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46. "Stabilization" means the act or process of applying measures designed to reestablish a weather-resistant enclosure or the structural stability of an unsafe or deteriorated building, object, site or structure while maintaining the essential form as it exists at present.

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47. "Substantial conformity" means the revisions to approved applications that do not significantly alter the historic character or alter additional physical elements of the structure as approved in the original application.

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48. "Thematic group" means a finite group of resources related to one another in a clearly distinguishable way, by association with a single historic person, event or developmental force, as one building type, design or use, as designed by a single architect, as a single archaeological site form, or as a particular set of archaeological research.

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49. "Unreasonable economic hardship" means an economic burden imposed upon the owner which is unduly excessive and prevents a realization of a reasonable rate of return upon the value of his property. Shall be proven by means of financial documentation including, but not limited to, bids from contractors, proof of payment for the property, site, object, or structure.

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Commented [VP10]: Proof of economic hardship is requested when the owner claims that a proposal would be financially difficult. It is in keeping with asking for documentation on any proposed changes.

50. "Vista" means a view through or along a right-of-way opening, including those along the river's banks, which, as a view corridor, frames, highlights or accentuates a prominent building, object, site, structure, scene or panorama, or patterns or rhythms of buildings, objects, site or structures; to include views of areas at a distance, such as a remote view of the downtown or the mountains.

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51. "Zone" means a designated area, within a historic district, which is unique in character, tone, theme, architecture, and/or culture. A district may be divided into zones, to assist property owners and the HLC in structuring design guidelines and further evaluating applications for certificates of appropriateness.

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(Ord. 16653 § 2 (part), 2007)

(Ord. No. 17442, § 50, 10-26-2010)

20.20.030 - Administration of the historic preservation program.

The historic preservation program will be administered under the direction of the City Manager's office including appropriate staffing and administrative support of the program subject to budget appropriations approved and authorized by the City Council.

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(Ord. 16653 § 2 (part), 2007)

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20.20.040 - Procedure for designation of historic landmarks and districts.

A. The City Council may designate buildings, structures, sites, districts, areas and lands in the city as historic landmarks and define, amend and delineate the boundaries thereof. Requests for designation may be made by the City Council, HLC or by the public on a form or zoning application obtained from the city. Completed request forms shall be returned to the city for processing. All designations shall meet all requirements under Section 211.0165 of the Texas Local Government Code, as amended from time to time, or subsequent Texas statute replacing Section 211.0165 of the Texas Local Government Code.

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B. The HLC shall review and forward any recommendations to the City Plan Commission within forty-five (45) days, to be forwarded to the City Council for final action. In the event the HLC does not recommend an applicant's request for designation of a resource the applicant may petition the City Plan Commission for a hearing, following procedures set forth in Chapter 2.08 of this Code.

Commented [VP11]: Section 211.0165 of the Texas Local Government code requires either the owner of the property consents to the designation; or the designation is approved by a three-fourths vote of:
(A) the governing body of the municipality; and
(B) the zoning, planning, or historical commission of the municipality, if any.

C. The HLC shall hold a public hearing on all proposed ordinances relating to historic properties. Notice shall be given as required by Section 211.007, Texas Local Government Code.

D. The designation of a historic landmark or historic district may be amended or removed using the same procedure provided in this section for the original designation.

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E. The suffix "H" shall appear after the zoning designation of those buildings, structures, sites, districts, areas and lands which the City Council designates as historical landmarks, and shall be reflected on the zoning map. Such designation shall be in addition to any other designation established under this title. Use of classifications as to all property which may be included by a historic landmark designation shall continue to be governed by the comprehensive zoning ordinance of the City and the procedures established therein.

F. Council may use the following designations for individual buildings, objects, sites or property and which are in a historic district or designated with an "H" overlay:

1. Significant or independent historic landmark;
2. Contributing property; and
3. Non-contributing property as those terms are defined in Section 20.20.020.

G. Upon passage of a historic landmark designation ordinance, the city clerk shall file a copy of the ordinance with the city and county tax assessors and in the official records of real property of El Paso County together with a notice verifying H-overlay designation of the subject property. The city clerk shall also send a copy of such notice to the owner or owners of the subject property.

H. Interim Protection – Notification of proposed designation shall be sent to the property owner via certified mail sixty (60) days prior to the HLC hearing to the address listed on the El Paso Central Appraisal District Appraisal Roll at the time of notice. Until the HLC denial or designation is approved for the property by City Council, no permits or work on the property shall be approved unless it is for emergency or restorative work. No permits for demolition or alteration that cannot be approved administratively shall be approved until the HLC has reviewed the case for designation.

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Commented [VP13]: This language was added to protect buildings and properties from demolition before the designation is finally approved.

(Ord. 16653 § 2 (part), 2007)

(Ord. No. 18975, § 1, 9-3-2019)

20.20.050 - Historic landmarks designation criteria.

In making designations set forth in this chapter, the HLC, the City Plan Commission, and City Council shall consider, but shall not be limited to, one or more of the following criteria:

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- A. Character, interest or value as part of the development, heritage or cultural characteristics of the city, state or the United States;
- B. Recognition as a Recorded Texas Historic Landmark, a National Historic Landmark, or entry into the National Register of Historic Places;
- C. Embodiment of distinguished characteristics of an architectural type or specimen;
- D. Identification as the work of an architect or master builder whose individual work has influenced the development of the city;
- E. ~~Embodiment of distinguished elements of architectural design, detail, materials or craftsmanship which represent a significant architectural innovation;~~
- F. ~~Relationship to other distinctive buildings, sites or areas which are eligible for preservation according to a plan based on architectural, historic or cultural motif;~~
- G. ~~Portrayal of the environment of a group of people in an area of history characterized by a distinctive architectural style;~~
- H. ~~Archaeological value, in that it has produced or can be expected to produce data affecting theories of historic or prehistoric interest;~~
- I. ~~Exemplification of the cultural, economic, social, ethnic or historical heritage of the city, state or the United States;~~
- J. Location as the site of a significant historic event;
- K. ~~Identification with a person or persons who significantly contributed to the culture and development of the city, region, state or the United States.~~

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(Ord. 16653 § 2 (part), 2007)

20.20.060 - Acquisition of historic landmarks.

The following options shall be available to the HLC, for recommendation to the City Council of El Paso, for acquisition of historic buildings, objects, sites, resources and structures of historic, cultural, architectural, and/or archeological importance that may be but not limited to historic landmarks;

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- A. If the HLC finds that buildings, structures, sites, districts, resources, land or structures of other areas cannot be preserved without acquisition, the HLC shall recommend to City Council that the fee simple or lesser property interest of the property, in question be acquired by gift, devise, purchase, eminent domain, or otherwise pursuant to the city charter and state and federal law;
- B. The HLC may recommend to City Council, within ten (10) days of the hearing before the HLC, or at the City Council's next regular meeting, that the historic landmark property, resource or site be acquired. Council will have thirty (30) days to state an affirmative intent to negotiate with the property owner and, if successful, the Council shall complete such a purchase within a reasonable time thereafter;
- C. Formulate a program for preservation, and public action which will state the role of various city departments in acquisition of historic landmarks or sites;
- D. Suggest sources of funds for preservation and restoration activities and acquisitions, to include federal sources, state sources private and foundation sources, as well as municipal sources;
- E. Recommend, to the proper agencies, incentives designed to encourage historical preservation.

(Ord. 16653 § 2 (part), 2007)

20.20.070 - Historic landmark recognition.

A. When approved by City Council resolution, the City may honor property owners with a Historic Building Award. The award will be based on the following:

1. Nominations will be open to the public sector, private sector, and general public each calendar year that funding for the plaques is available. The deadline for submission of nominations will be September 1st. Nominations shall be submitted in the form of a letter. The HLC may recommend not more than five structures for an award. Final decision, by the HLC, will be made at a regularly scheduled meeting;
2. The HLC shall award a maximum of five plaques each calendar year;
3. Criteria for awarding a Historic Building Plaque Award are as follows:
 - a. The building shall be at least fifty years old,
 - b. The building shall have an "H" overlay, be a recorded Texas Historic Landmark, or listed on the National Register of Historic Places,
 - c. The building shall have been rehabilitated and/or maintained in good condition, and plans prepared for the work approved by the HLC, evidenced by issuance of a Certificate of Appropriateness,
 - d. If the building was rehabilitated using state, federal, or community development block grant funding, plans shall have been reviewed and approved by the State Historic Preservation Office (SHPO),
 - e. At the time of the award, the building shall be in compliance with all municipal codes and ordinances, and have no open violations.
 - f. Award winners may be honored at a subsequent City Council meeting,
 - g. Recipients are required to display the award in a publicly visible location on the facade of the structure. Any replacement plaques will be acquired at the owner's expense. If the owner wishes to modify the location of the plaque, the owner may propose a new location to the Historic Preservation Officer. The HPO may approve the request or forward it to the HLC for consideration and approval.

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Commented [VP17]: There was no form or application specifically for a nomination.

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Commented [VP18]: An award can only be given to a property owner in good standing with the City and who has completed his/her project in accordance with the city's laws.

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Commented [VP19]: This language was added to make certain that the plaque can be viewed and read by the public.

(Ord. 16653 § 2 (part), 2007)

20.20.080 - Alterations and changes to landmarks and H-overlay properties.

A. No person or entity shall construct, reconstruct, alter, change, remove, demolish or fail to maintain, any of the following, unless a Certificate of Appropriateness or a Certificate of Demolition has been approved by the HLC or approval granted through administrative review:

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1. Any building, object, site, landscape architectural feature, or group of such designated with an "H" overlay or as a historic landmark as defined by this chapter and designated by the City Council.

Commented [VP20]: The listing of a property on the National Register of Historic Places is an honorific; there should be no restrictions because a property has been designated at the federal level. The only restrictions for a National Register listed property come when the owner is requesting federal funding (either as a tax credit or other money). Beyond that, a property listed only on the National Register does not have to comply with local preservation guidelines. Making an NR property owner comply with local historic guidelines is overreaching.

B. No building permit shall be issued for such proposed work until a Certificate of Appropriateness has first been issued by the Historic Landmark Commission or approval granted through administrative review. The Certificate of Appropriateness or administrative review approval shall be in addition to and not in lieu of any building permit that may otherwise be required.

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C. Certificates of Appropriateness, Certificates of Demolition and applications for administrative review shall be granted, granted with modifications, or denied based on the following criteria:

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1. When City Council has adopted architectural and design guidelines for a particular district, those guidelines shall control provided they are not in conflict with other requirements of the city code, except that the HLC may approve exceptions to the guidelines in an effort to maintain the

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historic integrity of an "H" overlay property, in which case the exception shall control in that particular case;

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2. When no guidelines have been adopted for a particular district, the guidelines from the district most similar in character, design, materials, workmanship, time of construction shall apply; or as identified in the "Guide to the Identification and Preservation of El Paso's Cultural, Historic and Architectural Resources";

3. When the preceding does not provide guidelines applicable to the project, then the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings shall apply (36 CFR Part 68) (U.S. Department of the Interior, National Park Service, Preservation Assistance Division. U.S. Government Printing Office Document Number: 19940 - 160-280 QL 3, Washington, D.C., or most current revision).

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4. The guidelines and use thereof by the HPO for use in granting an administratively issued Certificate of Appropriateness for a site located in an Area of Potential Effect shall be as provided by the resolution of the City Council adopting such guidelines - see Chapter 3.8.

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5. An approved administrative review application shall expire twenty-four (24) months after approval after which the applicant can reapply.

Commented [VP21]: The part of the city code that deals with revenue and finance.

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6. An approved Certificate of Appropriateness application shall expire forty-eight (48) months after approval. If the work has not been completed within forty-eight (48) months, the applicant shall reapply to the HLC.

Commented [VP22]: The applications submitted to the Historic Preservation Office do not have dates of expiration unlike building department permits, zoning applications, and other applications submitted to the City. Placing expiration dates on the applications will bring the Historic Preservation Office in line with other city departments and will add consistency.

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7. An approved Certificate of Demolition application shall expire within twelve (12) months of approval. If the work is not completed within that period, the property owner shall reapply to the HLC.

8. All public works (unless the proposal is restorative, rehabilitative, or meeting the requirements for administrative review and approval) in historic districts shall be reviewed and approved by the Historic Landmark Commission. All public projects to be reviewed by the Historic Landmark Commission shall require notification of registered neighborhood associations in the area of work. The Historic Preservation Officer (HPO) shall be on the design team for all public works in historic districts. All city departments shall comply with this ordinance.

D. Application Content.

1. For the exterior of a property with an "H" overlay or a property, located in an Area of Potential Effect (see Chapter 3.04.035) applying for a tax exemption, or a designated historic interior, the applicant shall submit the following:

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a. One copy of a completed application for administrative review, Certificate of Appropriateness or Certificate of Demolition form. Applications shall be typewritten, printed in ink, or electronically submitted in legible form. Completed applications shall be accepted and reviewed administratively or scheduled for HLC hearing, as applicable, on a first-come, first-serve basis. Incomplete applications shall not be processed and shall be returned to the applicant;

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b. One copy of a detailed site development plan and construction documents drawn to scale, as applicable, showing the following:

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i. Legal description of the property,

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ii. Lot lines with dimensions of the areas,

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- iii. Location and arrangement of structures and fencing,
- iv. ~~Location, type, and arrangement of windows, doors, and other openings where applicable; (Include sample of each type of window or door from brochure, catalog or manufacturer),~~
- v. Square footage of structure(s), including number of dwelling units,
- vi. Required yards and setbacks,
- vii. Proposed building materials (i.e., concrete, stucco, wood, metal),
- viii. ~~Sample of proposed color(s) and texture (i.e., color swatch with name, manufacturer, and number),~~
- ix. Material and product samples from brochure, catalog or manufacturer,
- x. Open spaces, where applicable,
- xi. Landscaped planted areas including square footage, list of plants, dimensions of existing and new construction including paving, planting, and any illustration of masonry or other materials.
- xii. ~~Architectural design of buildings, modification, addition, or new construction (floor plan(s), sections, and elevations),~~
- xiii. Construction details for roof, walls, floor and foundation;
- xiv. Drawings of site development plans, floor plans when needed, exterior elevations and building sections shall be drawn to scale and noted. Not to Scale (NTS) drawings will not be accepted.
- xv. Shop drawings, cut sheets, elevations, plans, and sections with dimensions for windows, doors, architectural components, and structures as needed.
- xvi. Existing and proposed elevations, site plans, floor plans, and building sections of affected areas as needed.
- xvii. Renderings will not be accepted as a substitute for detailed plans and sections shall be drawn to scale and noted. Not To Scale (NTS) drawings will not be accepted.
- c. Printed hard copies of color photographs showing current conditions of the site and/or structures (pictures from Google Earth or an online program will not be accepted);
- d. One copy of a proof of ownership or other legal document demonstrating that the individual(s) or corporation submitting the application is the current property owner such as a certificate from a title company or warranty deed. An individual or entity who has a contract to purchase property may also submit an application with the owner's written authorization. This requirement shall not apply to administrative review applications;
- e. A copy of any deed restrictions, existing or proposed, on the property shall also be submitted. This requirement shall not apply to administrative review applications;
- f. ~~One eight and one-half inch by eleven inch copy of the detailed site development plan and scaled construction drawings and one full-size set measuring 24" x 36" in size. The copy shall contain the address and legal description of the property. This requirement shall not apply to administrative review applications;~~
- g. A plan showing restoration or rehabilitation of the interior (if designated) and the exterior unless the applicant provides an inspection report that shows that the interior fully complies

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Commented [VP23]: To verify that the hardscape will not exceed 50% of the area and that the plants will cover the other 50% of the area.

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Commented [VP24]: To explain what is required for a presentation on new construction, for accuracy, and for efficiency so that a proposal can be approved in one meeting because it is very clear. The building department requires that detailed plans be submitted for a permit. By adding this language, the ordinance requires the same documentation that other city departments require and saves the owner time and expense by asking him/her to submit the same information.

Commented [VP25]: Online programs can often be several years behind and will not show the current condition or changes.

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Commented [VP26]: The city has six designated interiors which are located in the Downtown historic district and which are publicly accessible.

with all applicable code requirements and is not in need of restoration or rehabilitation, in which case the plans need only address the exterior of the site.

h. Drawings shall comply with the requirements set by the Texas Board of Architectural Examiners for commercial structures.

E. Administrative Review and Approval.

1. The Historic Preservation Officer shall review and approve, approve with modifications or deny all administrative review applications in accordance with the administrative review design guidelines, for the following types of requests:

a. Landscape materials including vegetation, irrigation, and xeriscaping, in the front, rear, side yards and parkways, to include the following:

i. Open spaces, where applicable, including square footage, list of plants, dimensions of new construction including paving, planting, and any installation of masonry and other materials;

ii. Landscaped planted areas, where applicable, including square footage, list of plants, dimensions of existing and new construction including paving, planting, and any installation for masonry or other materials;

iii. Type of landscape or surface material to be replaced; to include a sample of the proposed surface material;

b. New fencing on the front, rear and side yards, to include the following:

i. Location and type of proposed fencing;

ii. Type of proposed fencing including material, dimensions, and color;

iii. Chain-link fence is not an acceptable material for approval under administrative review;

c. Metal coverings and security grilles, for windows and doors, guardrails and handrails for safety, to include photographs and drawings (elevations and sections) and showing the following:

i. Location of proposed security grilles;

ii. Type of proposed security grille including dimensions, material and color;

iii. Guardrails and handrails placed on or in an area where they will not alter, damage, or destroy architectural fabric and made of simple black metal pickets.

d. Exterior accessibility ramps when placed where historic or significant architectural fabric shall be altered requires review by the HLC, to include the following:

i. Location of proposed accessibility ramp;

ii. List of materials, dimensions, and colors;

iii. Shall comply with Texas Accessibility Standards for commercial properties.

e. Skylights, solar panels, HVAC units, and any mechanical, electrical, or plumbing equipment, when placed in non-character-defining facades and are not visible with the front facade; to include the following:

i. Location of proposed skylight, solar panels or HVAC unit or any mechanical, electrical, or plumbing equipment;

ii. List of materials, dimensions, and colors;

iii. Sample of skylight, solar panels, HVAC unit or any mechanical, electrical or plumbing equipment with dimensions, (Include sample from brochure, catalog or manufacturer);

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Commented [VP27]: To clarify that the paving in the front yard, side yard, and parkway will not exceed 50% of the area.

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Commented [VP29]: To make installing an access ramp easier by making sure it complies with code.

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- f. Off-premises and on-premises commercial and residential signs within historic districts in accordance with Chapter 20.18 as applicable; to include the following:
 - i. Location of proposed signage;
 - ii. List of materials and colors;
 - iii. Elevations and sections, drawn to scale, of signage, including total square footage.
- g. Replacement of garage or household exterior doors that match the original doors, to include sample of door from brochure, catalog or manufacturer listing materials, dimensions, and color;
- h. Walkways, driveways, and aprons; include location and materials;
- i. Swimming pools and tennis courts where permitted by sufficient area in the side and rear yard and not visible from the right-of-way;
- j. Routine maintenance, including but not be limited to: painting, re-roofing, repair of walks, driveways, fences;
- k. Placement of fire escapes when placed in non-character-defining facades and where allowed by other city ordinances;
- l. Installation of windows and doors similar to the original in appearance, operation, and purpose, regardless of construction materials and shall include sample, elevations, sections, and/or shop drawings of window and doors from a brochure, catalog or manufacturer, listing materials, dimensions, color, operation, configuration, details, and finish; also include existing and proposed elevations of each façade;
- m. Installation of an accessory structure when placed in non-character-defining facades, not in the front or side yards, and when no other accessory buildings exist on the site. Accessory structure shall not exceed two hundred square feet in size. Roof height shall not exceed height of the main structure. Colors shall complement the existing historic structure;
- n. Installation of outdoor playground equipment when placed in non-character-defining facades and not in the front or side yards;
- o. Painting of previously painted surfaces other than brick or any type of stone or masonry with colors compatible with the historic district. Colors may be denied by the Historic Preservation Office and can be appealed to the Historic Landmark Commission.
- p. Installation of outdoor lighting fixtures and security fixtures when such elements complement the design context of the structure and do not alter, damage, or destroy historic fabric or character defining features. Drawings shall include elevations and sections drawn to scale that show materials, dimensions, color, and installation;
- q. Minor alterations in a non-character-defining facade and not visible from the street. Any alteration found to have a detrimental impact on the historic character of the structure or historic district shall be subject to the requirements for approval for a Certificate of Appropriateness as outlined in Section 20.20.130(C).
- 3. Color photographs showing current conditions of the property shall be submitted in hard copy or e-mail form to the Historic Preservation Office and shall be required to be furnished by the applicant for all administrative review requests. Google Earth or online pictures will not be accepted.
- 4. The applicant may appeal decisions of the HPO to the HLC, through the application process.
- F. Certificate of Appropriateness and Certificate of Demolition. Any and all changes or alterations to landmarks and H-overlay properties, as described in Section 20.20.140(A), that are not eligible for administrative review shall require an application for Certificate of Appropriateness or Certificate of Demolition to be reviewed and approved by the HLC. A complete Certificate of Appropriateness

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- Commented [VP32]: Added to create more opportunities and flexibility for the property owner.
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- Commented [VP34]: This change will align with current city codes and allow the property owner to have a larger structure with an administrative review application.
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- Commented [VP35]: Taken from the guidelines.
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- Commented [VP36]: To clarify where lighting fixtures should be placed so they do the least damage.
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application shall be submitted to the Historic Preservation Office at least fourteen (14) days before the HLC meeting for its review.

G. Historic Landmark Commission Review.

1. The Historic Landmark Commission, upon ten (10) days' notice to the applicant, shall hold a hearing on the application. Upon review, if the HLC finds the proposed work of a nature which will not adversely affect any significant architectural or historical feature of a designated historic landmark, property or site, and is appropriate and consistent with the spirit and purposes of this section, it shall forward a Certificate of Appropriateness to the applicant within fifteen (15) days after the public hearing.
2. If the Historic Landmark Commission finds that the proposed work will adversely affect or destroy any significant architectural or historical feature of the designated historic landmark, property, site resource, or historic interior, or is inappropriate or inconsistent with the spirit and purposes of this section, it shall render a denial of the request and forward the notice of denial to the applicant within fifteen (15) days after the public hearing. The HLC shall state the reason(s) for its disapproval.
3. If no action has been taken by the Historic Landmark Commission within forty-five (45) days of the receipt of a completed application, the application shall be approved as submitted, and a Certificate of Appropriateness shall be issued by the HLC. However, a Certificate of Demolition shall never be issued before the expiration of sixty (60) days of receipt of a completed application.
4. No change shall be made in the application, issuance, or execution of any building permit after the issuance of a Certificate of Appropriateness, without submittal of a request for minor modification as provided for in Section 20.20.150, otherwise, a new application to the Historic Landmark Commission and approval thereof in the same manner as previously provided shall be submitted.
5. After a decision is reached by the Historic Landmark Commission denying an application for a Certificate of Appropriateness, no application for a Certificate of Appropriateness for a given property may be resubmitted within twelve (12) months from date of action by the HLC unless the HLC finds that a substantial change in conditions has occurred, or that applicant has resubmitted in conformance with subsection 3.
6. Applicants aggrieved by a decision of the Historic Landmark Commission may appeal to City Council, using the procedure identified in Section 20.20.190. All fees for an appeal shall be paid in full at the time of submission. If the fee is not paid, the appeal will be deemed incomplete. Once notices for a public hearing have been sent and/or posted, the hearing shall be held unless the applicant withdraws his application in which event no request for the same or similar change shall be accepted for one year at which time a new application including payment of new fees may be filed. No fees are to be refunded in the event of a withdrawal.

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- H. Area of Potential Effect. A Certificate of Appropriateness may also be issued administratively by the HPO using the same criteria and standards as the HLC under subsection G of this section, or administrative approval may be granted under this chapter for the construction, reconstruction, alteration or changes proposed to be made to a site located in an Area of Potential Effect as designated by the City Council, upon the request of a person or entity intending to make application for the ad valorem tax incentive program provided in Section 3.04.035 of this Code. In making a decision to administratively issue a Certificate of Appropriateness under this section, the HPO shall perform every duty and undertake every obligation imposed on the HLC in this section for the situations when the HLC is authorized to issue a Certificate of Appropriateness.

(Ord. 16879 (part), 2008; Ord. 16653 § 2(part), 2007)

(Ord. No. 17233, §§ 1, 2, 11-3-2009)

20.20.090 - Modification of Certificate of Appropriateness.

- A. If an applicant desires to make minor modifications to the Certificate of Appropriateness when preparing final working drawings, he/she may apply to the Historic Preservation Office for a minor modification of the approved Certificate of Appropriateness.
- B. If the Historic Preservation Officer finds the minor modifications are in substantial conformity with the approved Certificate of Appropriateness, the Historic Preservation Officer shall approve the minor modifications and amend the Certificate of Appropriateness.
- C. Changes other than such minor modification shall require a new hearing and new approval in the same manner as for review of the original Certificate of Appropriateness.

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(Ord. 16653 § 2 (part), 2007)

20.20.100 - Economic hardship application procedure.

- A. After receiving written notification from the HLC of the denial of any application, an applicant may commence the economic hardship application process discussed herein at no additional cost. No building permit or demolition permit shall be issued through this procedure unless the HLC makes a finding that, through no fault of his/her own, the owner cannot otherwise realize a reasonable rate of return on, or sell his property at a reasonable price to an individual or entity interested in preserving it.
- B. The applicant and the HLC shall consult in good faith in a diligent effort to seek an alternative that will result in preservation of the property.
- C. The HLC shall hold a public hearing on the application within thirty days from the date the complete application is received by the HLC.
- D. If the HLC approves the application, it shall forward a Certificate of Appropriateness to the applicant within ten (10) days after the public hearing. However, a Certificate of Demolition shall not be provided to the applicant until at least sixty days following the date of submittal of a completed application and no permits for demolition shall be approved by the Historic Preservation Office until sixty (60) days after approval from the HLC.
- E. If the HLC denies the application, it shall forward the disapproved application to the applicant within ten (10) days after the public hearing. The HLC shall state the reasons for its disapproval.
- F. If no action has been taken by the HLC within sixty (60) days of the original receipt of the economic hardship application by the HLC, a Certificate of Appropriateness or Certificate of Demolition shall be deemed to have been issued by the HLC, and the Historic Preservation Officer shall so advise the applicant.
- G. No change shall be made in the application for any building permit after the issuance of a Certificate of Appropriateness without submittal of a new application to the HLC and approval thereof as previously provided.
- H. After a decision is reached by the HLC denying an application, a re-submittal of application shall not be accepted for additional hearing within a twelve-month period from the date of the final decision, unless the HLC determines, after reviewing a written request of the applicant, that there has been a change in conditions sufficient to warrant an earlier rehearing.
- I. Applicants aggrieved by a decision of the HLC may appeal to City Council, using the procedure identified in Section 20.20.190.

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If an applicant claims Unreasonable Economic Hardship, the applicant shall submit a minimum of two detailed cost estimates for proposed work, each from a licensed contractor registered with the city.

Commented [VP43]: Proof of economic hardship is requested when the owner claims that a proposal would be financially difficult. It is in keeping with asking for documentation on any proposed changes.

(Ord. 16653 § 2 (part), 2007)

20.20.110 - Enforcement.

- A. All work performed pursuant to a Certificate of Appropriateness or administrative review shall conform to any requirements included therein. It shall be the duty of the Historic Preservation Officer to inspect any such work to assure compliance. In the event work is found that is not in accordance with the Certificate of Appropriateness or administrative review, the Historic Preservation Officer shall notify the building official or designee, who may issue a stop work order, a citation, or pursue other prosecution in accordance with this Code or any other applicable statute or law. All further work by the applicant shall be subject to the requirements of the city code or other governing statute or law.
- B. If a Certificate of Appropriateness is issued, a project is completed, and if the property qualifies for a tax abatement per Title 3 of this Code, then the Historic Preservation Officer shall inspect the premises on an annual basis to ensure compliance with the Certificate of Appropriateness for the duration of the tax abatement. If the Historic Preservation Officer determines that conditions have changed to make the project noncompliant with the Certificate of Appropriateness, they shall notify the owner in writing and submit a report to the HLC providing details of the alleged noncompliance.
- C. The HLC shall hold a hearing and notify the property of the date, time and place of the hearing so that the property owner may attend and present evidence of compliance with the Certificate of Appropriateness. The HLC shall make a finding, based upon the evidence presented by the Historic Preservation Officer and the property owner, whether or not the project is or is not in compliance with the original Certificate of Appropriateness. If the HLC finds that the project is not in compliance, the Historic Preservation Officer shall notify the taxing authority, and the tax abatement for the project shall cease immediately. The property owner may present an alternate plan in order to comply with the Certificate of Appropriateness, and the HLC may amend and approve the modifications. The property owner may appeal the HLC's decision to the City Council as provided for herein.

D. Any application regarding a violation that was reviewed and/or approved by the HLC shall have a date of completion for the work to be completed. The HLC may decide on thirty (30) to ninety (90) days or more for a violation to be amended, corrected, cured, or repaired. If the violation is not amended, corrected, cured, or repaired within the timeframe decided on by the HLC, the matter shall be referred to the Office of Code Compliance.

E. If a violation has not been corrected or been brought into compliance within the timeframe allotted by the HLC, the Historic Preservation Office shall not approve any permits for the property until such violation(s) is corrected or in compliance. Only applications to correct the violation(s) shall be approved.

(Ord. 16653 § 2 (part), 2007)

20.20.120 - Historic landmark demolition or removal.

A. Application Requirements. A person may file an application for demolition or partial demolition of a designated historic or H-overlay property with the Historic Preservation Officer. The application for demolition or removal of any portion of a designated historic or "H" overlay property shall be in the form provided by the Historic Preservation Officer. The Historic Preservation Officer shall list in the application all required information and documentation that the Historic Preservation Officer deems necessary in order to allow the HLC to make a determination on the request. At a minimum, the Historic Preservation Officer shall include the following requirements in the application:

1. Statement of the reasons for the demolition.
2. A copy of the deed showing ownership of the property.
3. Signature of the property owner.

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4. Detailed plans showing the current condition of the structure.

The Historic Preservation Office shall not process any applications that are incomplete or are missing any required documentation. The HLC shall delay the proposed demolition for a period of at least sixty (60) days from the date of submission of a completed application.

B. Hearing Procedure. The HLC shall consider an application for demolition or partial demolition of a designated historic or "H" overlay property in accordance with the following procedures:

1. Upon receipt of a complete application, the Historic Preservation Office shall place the application in the next available HLC regular meeting for a first public hearing, provided that the Historic Preservation Office shall provide at least ten (10) days notice to the applicant of the public hearing. If the next available HLC regular meeting is within ten (10) days of the Historic Preservation Office receiving a completed application, then the Historic Preservation Office shall place the application for a public hearing on the following HLC regular meeting.

2. At the first public hearing on an application for demolition or partial demolition of a designated historic or "H" overlay property, the HLC shall only hear the evidence presented by the applicant and other interested parties. The HLC may not make a decision on the application until a second public hearing. The Historic Preservation Officer shall set the second public hearing no later than sixty (60) days from the date of the first public hearing.

3. At the second public hearing, the HLC may consider additional evidence presented by the applicant or other interested parties. The HLC will render a decision on the application at the second public hearing. The HLC shall either approve the application, deny the application, require a third public hearing to take place no later than 180 days from the date of the second public hearing, or take no action on the application and send a recommendation to City Council that the property be acquired pursuant to Section 20.20.120(A).

a. If the HLC fails to take action during the second public hearing, then the application will be deemed approved.

b. If the HLC decides to send a recommendation to City Council that the property be acquired and if City Council declines the request or takes no action within sixty (60) days of the second public hearing, then the Historic Preservation Officer shall set the application for a third public hearing.

c. If City Council decides to take action to acquire the property, then the application will be stayed until the acquisition of the property is complete. Once the acquisition of the property is complete then the Historic Preservation Office shall close the application and mark the process as complete. If the negotiations for the acquisition of the property fail, then the applicant may request the Historic Preservation Office to set a third public hearing on the application.

4. If the Historic Preservation Office sets the application for a third public hearing, then the HLC may consider additional evidence by the applicant or other interested parties, however, the HLC shall make a decision to either approve or deny the application. If the HLC fails to take action during the third public hearing, then the application will be deemed approved.

C. Considerations. The HLC may consider the following factors in deciding whether or not to approve an application for demolition or partial demolition of a property designated as historic or H-overlay:

1. Historic value

2. State of repair of the property

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Commented [VP50]: Because the City is a CLG (Certified Local Government), it is required to wait sixty days to issue a demolition permit. During that time, a second hearing would be required to allow for public input.

Deleted: An application for demolition or removal of any portion of a designated historic landmark or H-overlay property shall be filed with the historic preservation officer who shall forward it to the HLC within five days of receipt. The HLC shall then hold a public hearing on the application after at least ten days written notice to the applicant. The HLC shall consider the historic value, state of repair, reasonableness of the cost of restoration or repair, the existing and potential usefulness, including economic usefulness of the building, purposes behind preserving the structure as a historic landmark, neighborhood character, and all other factors it finds appropriate. The HLC shall delay the proposed demolition for a period of at least sixty days from the date of submission of a completed application. After such time period, the HLC may approve or deny the application in whole or in part, or suspend action on it for a period not to exceed six months.

Commented [VP51]: An application for demolition will be placed on the earliest HLC agenda.

Commented [VP52]: Because the City is a CLG (Certified Local Government), it is required to wait sixty days to issue a demolition permit. During that time, a second hearing would be required to allow for public input.

Commented [VP53]: Requests for demolition of buildings usually take two meetings so that the HLC can make a clear decision and so that public input is allowed. Require HLC super majority to overturn the first HLC recommendation at the second meeting.

Deleted: If the HLC determines, based on the evidence presented, that the cost of restoration or repair would render the property incapable of earning a reasonable return, the HLC may recommend to city council, within ten days of the hearing before the HLC, or at the council's next regular meeting, that the property be acquired pursuant to Section 20.20.120(A). Council will have thirty days to state an affirmative intent to negotiate with the property owner and to act on such a purchase within a reasonable time thereafter. If council does not act affirmatively, or the HLC determines that the interest of preserving historical values will not be adversely affected by such demolition or removal or that the interest of preserving historical values can best be served by the removal of the structure to another ...

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3. Reasonableness of the cost of the restoration or repair

4. The existing and potential usefulness, including economic usefulness of the property

5. Purposes behind preserving the structure as a historic resource

6. Loss of historic significance

7. Proposed construction for the site

8. The HLC may require additional information as needed in order to make an informed decision.

D. Appeals. An applicant whose application has been denied may appeal the decision of the HLC to City Council in accordance with the following procedures.

1. Applicant shall file the appeal and pay the appeal fee with the City Clerk within fifteen (15) days of a decision by the HLC to deny an application. The appeal fee will be established annually in the annual budget resolution approved by City Council.

E. Resubmittal of applications. After a decision is reached by the HLC denying an application for a Certificate of Demolition, a re-submittal of an application for such certificate will not be accepted for a twelve-month period from the date of final decision, except upon written request of the applicant indicating that there has been a change in conditions sufficient to warrant an earlier rehearing.

F. Not applicable. Subsections A through E of this Section shall not apply whenever the Chief Building Official or the Fire Chief, or their designee, proceeds under Chapter 18.50. In such case, the Building and Standards Commission, after the appropriate notice and hearing, may order the building or structure, or part thereof, secured, repaired, removed, or demolished without regard to the "H"-overlay designation; but in no event may the Building and Standards Commission take such action unless it determines that the building or structure or part thereof is unsafe and dangerous so as to endanger persons or property or is a fire hazard, and that such damage or hazard is so great and so immediate that subsections A through E of this section should be circumvented to prevent immediate and substantial harm to persons or property. Such a determination by the Building and Standards Commission shall be final except as provided for by state law.

G. Prior to submitting an application for demolition or removal, the applicant shall send written notice of the proposed application via email or certified mail, facsimile transmission or personal delivery to the mayor and City Council, the County Historical Commission, and if the property is located within a Recognized Neighborhood Association ("RNA") boundary, the applicant shall provide written notice to any such RNA. Such notice shall contain the following information:

1. A detailed description of what is being applied for;

2. A method by which the applicant can be contacted; and

3. A statement as to the application's projected impact on the land comprising the geographic boundary of the RNA;

4. A minimum of two cost estimates from licensed contractors, engineers or architects within the state of Texas to preserve or demolish the structure.

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Deleted: If no action has been taken by the HLC within ninety days of original receipt by the HLC of the application, it shall be deemed approved as submitted and a certificate of demolition or a certificate of removal shall be issued by the HLC and the HPO shall so advise the applicant. ¶

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Deleted: After a decision is reached by the HLC denying an application for a certificate of demolition or a certificate of removal, a re-submittal of an application for such certificate will not be accepted for a twelve-month period from the date of final decision, except upon written request of the applicant indicating that there has been a change in conditions sufficient to warrant an earlier rehearing.

Deleted: Subsections A through D of this section shall not apply whenever the building official or the fire chief or their designee proceeds under Chapter 18.50. In such case, the building and standards commission after the appropriate notice and hearing, may order the building or structure or part thereof secured, repaired, removed or demolished without regard to the "H" designation on the building or structure or part thereof; but in no event may the building and standards commission take such action unless it determines that the building or structure or part thereof is unsafe and dangerous so as to endanger persons or property or is a fire hazard, and that such danger or hazard is so great and so immediate that subsections A through D of this section should be circumvented to prevent immediate and substantial harm to persons or property. Such a determination by the building and standards commission shall be final except as provided for by state law.

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H. As part of the submitted application, the applicant shall provide a copy of the written notice sent to each individual or entity and proof of delivery to the Historic Preservation Office and the HLC. Failure to provide written notice or an affidavit attesting hand delivery shall result in the application not being accepted as complete.

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(Ord. 16830 §§ 1, 2, 2008; Ord. 16653 § 2 (part), 2007)

(Ord. No. 17442, § 51, 10-26-2010)

20.20.130 - Prevention of demolition by neglect.

A. Applicability. All historic landmarks and properties with an "H" overlay shall be preserved against detrimental deterioration and kept free from certain structural defects by the owner or legal custodian who shall repair such building, object, site, or structure if it is found to have any of the following defects:

1. Deterioration of roofs or other horizontal members;
2. Deterioration of chimneys;
3. Deterioration or crumbling of stucco or mortar;
4. Ineffective waterproofing of exterior walls, roof or foundations, including broken windows or doors; or
5. Deterioration of any feature so as to create a hazardous condition which could lead to the claim that demolition is necessary for the public safety.

6. Deterioration of any feature so as to create a hazardous condition which will pose a threat to the public safety.

B. Upon the HLC's receipt of a claim of detrimental deterioration of a landmark or property with an "H" overlay, it shall notify the owner in writing, informing the owner of the complaint and specifics of the alleged detrimental deterioration, requesting that the owner appear before the HLC for a fuller and more accurate determination of the existence of detrimental deterioration.

C. If the HLC determines after public hearing that there is detrimental deterioration as described in subsection A, the owner or legal custodian shall be given a reasonable time and opportunity to cure. The owner or legal custodian shall comply with all requirements of requesting a certificate of appropriateness from the HLC.

D. Recommendation of a building's safety shall be made by the Chief Building Official and an engineering consultant hired by the property owner with input from the Historic Preservation Office. The consultant shall submit a report to the city verifying the building's safety or lack thereof.

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E. If the owner ignores the notice from the HLC or fails to respond, the Building and Standards Commission shall be notified. The Historic Preservation Office and the Historic Landmark Commission are authorized to work with a property owner to encourage maintenance and stabilization of the structure and identify resources available before taking enforcement action under this section. If the owner of the property is not responsive and fails to appear before the HLC as requested, the HLC or the

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Deleted: Prior to submitting an application for demolition or removal, the applicant shall send written notice of the proposed application via certified mail, facsimile transmission or personal delivery to the mayor and city council, the county historical commission, and if the property is located within a recognized neighborhood association ("RNA") boundary, the applicant shall provide written notice to any such RNA. Such notice shall contain the following information: ¶
1. A detailed description of what is being applied for; ¶
2. A method by which the applicant can be contacted; and ¶
3. A statement as to the application's projected impact on the land comprising the geographic boundary of the RNA. ¶
As part of the submitted application, the applicant shall provide a copy of the written notice sent to each individual or entity and proof of delivery. Failure to provide written notice, or an affidavit attesting hand delivery shall result in the application not being accepted as complete.

Commented [VP54]: Section was modified so the city can take action when a property has been abandoned.

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Commented [VP55]: Added to address abandoned buildings that pose a danger to the public.

Historic Preservation Office may file a petition with Code Compliance requesting that the city proceed under the city abatement ordinance to require correction of defects or repairs to any structure as stated above so that such structure shall be preserved and protected in accordance with the purposes of this article and the public safety and housing ordinance.

F. The Historic Preservation Office is authorized to notify the owner about the condition of the property constituting a case of demolition by neglect in violation of this chapter. Any such unacceptable, dangerous, unsightly or unsanitary matter in violation of this chapter shall be removed within seven (7) calendar days after the receipt of such notice. Such notice will further state that if the current property condition is not corrected within the seven (7) calendar days from the service of such notice, the City will refer the matter to the Building and Standards Commission, which may, without further notice abate this demolition by neglect by boarding and securing the property, and charge the cost of expense incurred in doing such work to the owner of such property and fix a lien thereon as provided by this article.

Commented [VP56]: It is a state law that only the Building and Standards Commission can request the city to board and secure a property.

G. Such notice shall be in writing and delivered in person or sent by mail (or by any means authorized by state law) to the owner, or to any one or more of the owners if the property is owned jointly or in common at the owner's address as recorded in the Central Appraisal District records of the appraisal district in which the property is located, or to any agency having the authority to lease, rent, sell, manage or take care of the land. If the correction notice cannot be hand delivered at the time of the investigation, or the owner's address recorded in the Central Appraisal District is unknown, notice may be given by publication at least once in a newspaper of general circulation, by posting the notice on or near the front door of each building on the property to which the violation relates, or by posting the notice on a placard attached to a stake driven into the ground on the property which the violation relates, if the property contains no buildings.

H. If the city mails a notice to a property owner in accordance with this section, and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected and the notice is considered as delivered.

I. The person given such a notice or his/her representative shall request a meeting with the Chief Building Official and the Historic Preservation Officer or designee within seven (7) calendar days after the receipt of the notice, to present their reasons for which this ordinance should not be enforced. The meeting shall be attended by the Historic Preservation Office to determine compliance with the guidelines and city codes

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J. If the property owner or his/her representative fails to remove or correct the conditions or any other unacceptable, unsightly or unsanitary matter in violation of this chapter within seven (7) calendar days after the receipt or posting of notice, the department shall ask the Building and Standards Commission to arrange to have the boarding, securing, or removal of any other unacceptable, unsightly

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Commented [VP58R57]: It is a state law that only the Building and Standards Commission can request the city to board and secure a property.

or unsanitary matter in violation of this chapter done and assess the cost of such clean up, disposal or removal and all reasonable expenses at the owner's expense and to take any action as provided by this chapter. The notice shall state the cost to the City or other entity, to board and secure the property, including labor costs, administrative costs, transportation expenses, publication costs, expenses for use of equipment, and materials and other reasonable expenses. The notice shall be sent in writing by the Chief Building Official requesting payment to the city within thirty (30) calendar days of receipt by the property owner. Failure to pay the costs associated with the correction of demolition by neglect will result in a request to City Council to pass a resolution declaring the reasonable expenses which include the cost of clean-up, disposal or removal, labor costs, administrative costs, transportation expenses, publication costs, expenses for use of equipment, and materials and other reasonable expenses, as well as the established authorized fee relating to the preparation of the required legal documents necessary for the creation of and release of lien, plus the cost of recording the resolution, to be a lien on the property payable within ten (10) calendar days after adoption of the resolution, and thereafter bearing ten percent yearly interest until the debt is paid in full. If passed, a copy of the resolution, authenticated by the acknowledgement of the City Clerk, shall be filed for record in the office of the County Clerk. The City Tax Assessor and Collector shall send a bill for the amount with all tax bills on the property until the debt is paid in full.

K. The City may provide a notice to inform the owner at the owner's address as recorded in the appraisal district records of the appraisal district in which the property is located, by mail (or by any means authorized by state law) and a posting on the property, or by personal delivery of correction notice, that if the owner commits another violation of the same kind or nature that poses a condition of demolition by neglect within a twelve- (12) calendar month period from the date of the notice, the City, without further notice, may correct the violations at the owner's expense and assess the clean-up expense against the property. If a violation covered by a notice under this subsection occurs within the one- (1) year period and the city has not been informed in writing by the owner of an ownership change, then the City, without further notice, may take any action as provided by Chapter 342 of the Texas Health and Safety Code and assess its expenses as provided by Section 342.007.

(Ord. 16653 § 2 (part), 2007)

20.20.140 - Penalty for demolition or alteration without a permit.

- A. It is unlawful to construct, reconstruct, structurally alter, remodel, renovate, restore, demolish or raze any historic landmark, property, site, or resource or any resource labeled with an "H" overlay in violation of this chapter. The City Council, through the City Attorney, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful violation and to restrain, correct or abate such violation, to prevent any illegal act, business or maintenance in and about such premises.
- B. In addition to any remedies allowed pursuant to Chapter 20.24 or other law and exercised under subsection A, a person, corporation or entity is liable to the city if the person demolishes, or causes to be demolished, or otherwise adversely affects the structural, physical or visual integrity of a historic landmark without first obtaining a permit from the building services department and a

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certificate of demolition from the HLC as required by this chapter. The structure or property shall have a designated "H" overlay, individually or as part of a historic district.

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C. If the structural, physical or visual integrity of the historic landmark, property, site, or structure is adversely affected to the extent that it may not feasibly be substantially restored to its original level of historic significance, damages are equal to the cost of constructing, using as many of the original materials as possible, a new structure that is a reasonable facsimile of the historic landmark as well as the cost of the attorney's, architect's and appraiser's fees and other costs related to the enforcement of this section. If it is feasible to restore the structural, physical or visual integrity of the historic landmark, property, site, or structure substantially to its former level, the damages are equal to the cost of the restoration, using as many of the original materials as possible and the cost of the attorney's, architect's and appraiser's fees and other costs related to the enforcement of this section.

D. Instead of accepting monetary damages, the City Council may permit the liable person to construct, within a reasonable time and using as many of the original materials as possible, a structure or property that is a reasonable facsimile of the demolished historic landmark, property, site, or structure or to restore, using as many of the original materials as possible, the historic landmark, property, site, or structure and to pay the cost of the attorney's, architect's and appraiser's fees and other costs related to the enforcement of this section.

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E. If a property has any outstanding, active or open violation(s) of the City's Building and Zoning Codes, the Historic Preservation Office shall not approve any permits for the property until such violation(s) is corrected or in compliance. Only work to correct the violations will be approved.

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Commented [VP59]: Added to reduce work for Code Compliance and to give owners incentive to correct violations.

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(Ord. 16653 § 2 (part), 2007)

20.20.150 - Ad valorem tax incentives for historic properties.

- A. The city will provide applications for the ad valorem tax incentives program provided in Section 3.04.035 of this Code to promote preservation and restoration of historic properties.
- B. The city council may identify by resolution one or more areas of the city that abut historic landmarks and districts and include one or more historically significant sites in need of tax relief to encourage their historic preservation, and shall designate and declare those areas as areas of potential effect. Those sites meeting the criteria set forth in Section 3.04.035 of this Code and located in designated areas of potential effect shall be eligible to make application for and receive the tax incentives described in this section and as provided in Section 3.04.035 of this Code.

(Ord. 16879 (part), 2008)

20.20.160 - Notice.

Any notice required to be given under this chapter shall be by deposit in the U.S. Postal Service, postage prepaid, or by e-mail to the addressee at his last known mailing address.

(Ord. 16653 § 2 (part), 2007)

20.20.170 - Severability.

The terms and provisions of this chapter are severable and shall be governed by Section 1.04.060.

(Ord. 16653 § 2 (part), 2007)

20.20.180 - Zoning Board of Adjustment.

This chapter is not to be construed as conferring any jurisdiction on the Zoning Board of Adjustment in matters pertaining to historic landmark preservation.

(Ord. 16653 § 2 (part), 2007)

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20.20.190 - Appeal to the City Council.

Any applicant or the owner of any property located within three hundred (300) feet of any landmark property with an "H" overlay, or the owner of any property within the same historic district as the subject of the appeal, who is aggrieved by a ruling of the HLC concerning that landmark under the provisions of this section, may within fifteen (15) days after the ruling of the HLC, appeal to the City Council by filing written notice of such appeal with the city clerk. Following a public hearing to be held within sixty (60) days of the filing of such notice of appeal, the City Council may, by a super majority (three fourths vote of all members of the governing body) vote of all members of the City Council, uphold or overturn any ruling of the HLC made pursuant to this chapter. Appeals to the City Council may be made by filing written notice of such appeal with the City Clerk and shall be accompanied by the non-refundable fee paid in full. The appeal shall be accompanied by the fee listed in Schedule C as set by Council resolution. No appeal shall be heard until the fee is paid in full. Failure to pay the fee in full at the time of filing the appeal will render the application incomplete.

(Ord. 16653 § 2 (part), 2007)

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- Commented [VP60]:
- Commented [VP61]: Changed to clarify that a majority of City Council shall vote on an appeal. In keeping with appeals for other city departments.
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- Commented [VP63]: A majority of City Council members is required for appeals of ZBA and CPC decisions.
- Commented [VP64]: Appeals shall now be accompanied by a fee. In line with current city codes.

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