

Historic Preservation Ordinance Review Committee

Final Report April 20, 2015



**PLANNING &
DEVELOPMENT
DEPARTMENT**

Index of Issues

Issue	Page Number	Date Discussed	Date Closed Out
1. Administrative Approvals (Section 33-241(d))	2	10/13/2014, 10/27/2014, 11/10/2014	11/10/2014
2. Exemptions (Section 33-237)	2	10/13/2014, 10/27/2014	10/27/2014
3. Exterior Features (Section 33-201)	3	11/10/2014	11/10/2014
4. Design Guidelines (Sections 33-266-268)	3	11/10/2014, 12/01/2014 12/15/2014	12/15/2014
5. Designating a Historic District (Section 33-222.1)	4	01/12/2015, 02/04/2015	02/04/2015
6. Change the designation of a structure located in a historic district (Section 33-201 and 33-222.1)	4	10/13/2014	10/27/2014
7. Designating a structure as a Landmark or Protected Landmark (Section 33-229)	4	10/13/2014	10/13/2014
8. Shall Approve Criteria (Section 33-241(b)(1-4))	4	10/13/2014, 01/12/2015, 01/12/2015, 02/04/2015	02/04/2015
9. Certificate of Appropriateness application requirements (Sections 33-222 and 33-238)	5	10/27/2014	10/27/2014
10. Criteria for alterations and additions (Section 33-241)	5	12/01/2014, 12/15/2014, 01/12/2015	01/12/2015
11. Criteria for new construction (Section 33-242)	5	12/01/2014, 12/15/2014, 01/12/2015, 01/28/2015 02/11/2015, 02/25/2015 03/18/2015	03/18/2015
12. Criteria for relocation and/or demolition (Sections 33-243 and 33-247)	7	01/28/2015, 02/04/2015	02/04/2015
13. Allow for a Certified Local Government	7	10/13/2014, 10/27/2014 02/11/2015	02/11/2015
14. Tax exemption policies for historic sites (Chapter 44 Section 44-5)	7	10/27/2014, 11/10/2014 02/25/2015, 03/18/2015	03/18/2015
15. Historic Commission (Section 33-211 and 33-212)	8	10/13/2014, 10/27/2014	11/10/2014
16. Appeals (Section 33-253)	8	02/04/2015, 02/25/2015 03/18/2015	03/18/2015
17. The penalty for illegal demolition (Section 33-203)	9	10/27/2014, 11/10/2014	11/10/2014
18. Enforcement (Section 33-203)	9	03/18/2015	03/18/2015
19. Deferrals (Section 33-239)	9	12/15/2014	12/15/2014
20. Required notification for CofA applications (Section 33-238.1)	9	02/25/2015	02/25/2015
21. Painting brick (Section 33-201)	10	12/01/2014	12/01/2014
22. Application fees and penalties (Section 33-238)	10	12/15/2014	12/15/2014
23. Alterations of non-contributing structures (Section 33-241c)	10	03/18/2015	03/18/2015

1. Administrative Approvals (Section 33-241(d))

Add these to Administrative Approval items (requiring a small yard sign as public notice, see Issue #20 for description of sign):

- Freestanding garages, including garage apartments, freestanding carports, and secondary structures with a footprint of less than 600 square feet, located at the rear of the lot
- Shall approve additions
- Installation of rear porches not wider or taller than the existing rear wall
- Alterations to non-contributing structures
- Installation of signs and awnings to commercial buildings that do not compromise or cover historic features, are appropriately scaled for the building and are less than 25 square feet in sign area, are not internally illuminated, and are affixed without damaging significant historic material
- Solid non-masonry fences over four feet (48") in height that are located in front of the structure's front wall. Solid is defined as less than 50% transparent.

Add these to Administrative Approval items (not requiring public notice):

- Removal of non-historic additions, including attached garages or carports, comprised of non-historic materials
- Repair or replacement of existing historic damaged siding materials with materials of the same size, shape, material and pattern
- Burglar bars
- Removal of non-historic and non-appropriate decorative elements such as shutters, brackets, awnings, or signs
- Installation of ramps or lifts for accessibility purposes
- Skylights, solar panels, antennas, satellite dishes, or other roof equipment that are at the rear half of the structure and are installed without damaging significant historic material
- Minor changes to previously approved COAs
- Extension of soon-to-expire Certificate of Appropriateness or renewal of expired Certificate of Appropriateness for up to one additional year from the original expiration date (i.e. maximum extension is two years from date of COA approval) no revision to original approved scope of work allowed with staff administrative approval

2. Exemptions (Section 33-237)

Current exemptions include: landscaping, HVAC units, light fixtures, porch ceiling fans, roofs

Add these to the list of exemptions:

- Change "Roofs" to "Re-roofing with in-kind materials and no change to roof structure"
- Additions totally obscured from view from the public right of way by the original structure (not to include impermanent obstructions such as fences, landscaping or other non-contributing structures)
- Fences that are:
 - a) located in front of the front façade of a structure and are at least 50% transparent or no taller than four feet; or
 - b) located at or behind the front façade of a structure

-
- Gutters and downspouts
 - Storm windows and doors
 - Screen windows and doors
 - Installation of temporary emergency weatherization features such as plywood coverings on windows
 - Painting, except for painting over masonry (stone and brick)

3. Exterior Features (Section 33-201)

Add language in Section 33.202c and in Section 33-236 to clarify that ship lap removal may affect the stability of the structure's exterior, and that an applicant should not to remove shiplap unless the applicant have a structural engineer affirm that adequate measures have been planned for so as to not damage the structural integrity of the structure.

4. Design Guidelines (Sections 33-266-268)

The Commission may direct the Department to complete Design Guidelines for one or more districts. In determining which districts should have design guidelines and/or in prioritizing the order in which the guidelines will be created, the Commission will consider:

- The amount of CofA activity in the district,
- The degree to which additional guidance would be beneficial to the property owners in the district, and
- The degree to which the guidelines would assist the staff and Commission in decision-making on applications.

The Department shall conduct a process that is open and transparent, which allows for input from all interested parties. It shall present a set of draft guidelines to the Commission within one year of the Commission's directive. If the department cannot complete the guidelines process within one year, the Director shall report back to the commission, providing a schedule for completion.

The Guidelines should encourage behavior that supports the Ordinance's intent. The overriding goal should be to preserve the character of the district.

Because the ordinance is broad in nature, the purpose of Design Guidelines is to clarify the intent of the ordinance and to interpret the ordinance for individual historic districts.

- The Design Guidelines shall conform to the Criteria in the Code.
- The Design Guidelines can be more restrictive than the Code, but not less so.
- Upon adoption, in the event of a conflict between the criteria in this division and the design guidelines, the Design Guidelines shall control (Sec 33-240(a)).
- More than one historic district can be covered by one set of Design Guidelines, at the discretion of the HAHC.

5. Designating a Historic District (Section 33-222.1)

- Change the approval threshold from 67% of “tracts in the district” to 67% of “returned support forms.” The Director should make every effort to obtain the highest number of responses possible and shall consider the number of responses in developing a recommendation to create the district.
- Give the Director 30 days, instead of 15, to notify property owners in a survey area of a community meeting.
- Encourage more compact and cohesive districts by allowing the Director to create a district with non-contiguous parts.
- If the survey area presented to the Commission for approval is not similar in shape and size to the survey area voted on by the property owners, the Commission should extend the 180 day protections for up to two 30 day periods in order to obtain additional public comment.
- Rename “proposed district” to “survey area” and “card” to “support form.”
- Remove the limitation that a district cannot contain more than 400 tracts.
- Create a process by which properties adjacent to and outside a district may be added upon petition.

6. Change the designation of a structure located in a historic district (Section 33-201 and 33-222.1)

- Allow staff to work with the property owner to propose changes in classification to HAHC and City Council based on new information not present at the time of classification or error.
- There should be no change in classification due to neglect by owner.
- No property status change will be presented to the HAHC without allowing the property owner to participate in the public hearing on the change. Prior to any change in classification being presented to the HAHC, staff should notify property owners at least 15 days in advance of the HAHC public hearing.

7. Designating a structure as a Protected Landmark (Section 33-229)

Change criteria for designation from “built before 1905” to “was constructed more than 100 years ago”

8. Shall Approve Criteria (Section 33-241(b)(1-4))

The Committee had considerable discussion about this issue. The Committee discussed whether Shall Approve criteria should be removed, based on the fact that they are confusing, rarely used and in direct conflict with the 11 criteria for Alterations and Additions. In the end, the committee decided that they should be left in but that the following changes should be made:

- Make Shall Approves an administrative approval by the Director.
- Limit the number of Shall Approves per structure to one for the life of the structure.
- There are three types of Shall Approves: rear addition, side addition and an additional floor (often called camelback).
- For additional floor additions (camelbacks) change the requirement to read that plate height of the addition does not exceed the plate height of the original structure.
- Clarify that no original building materials are removed from the portion of the front façade of the structure to the addition for any of the three types of Shall Approves.

-
- Add language clarifying that Shall Approves are an exception to the 11 Criteria and that meeting the criteria for a Shall Approve does not imply that the 11 criteria for alterations and additions have been met.

9. Certificate of Appropriateness application requirements (Sections 33-238 and 33-247)

The Committee agrees to give the Director authority to determine what must be included in an application. They decided to combine the two sections that describe application requirements and structure it in the following way:

1. Applications shall be in a form prescribed by the director and shall contain the following information and other information as deemed appropriate by the director:
2. All applications must include:
 - (1) The name, address and daytime telephone number of the owner and the applicant, if different from the owner;
 - (2) The signature of the property owner;
 - (3) The address and general description of the property that is the subject of the application;
 - (4) A description of the work intended to be done, the materials to be used and the changes to be made
 - (5) Current photographs of the subject of the application; and
 - (6) If any plans and specification are required to secure a building permit, a copy of the plans and specifications shall be submitted with the application for certificate of appropriateness.

10. Criteria for alterations and additions (Section 33-241)

The Committee recommends changing the criteria in the following way:

1. Separate criterion #9 into two distinct criteria and add clarifying language as follows:
 - (9) The proposed design for any exterior alteration or addition must not destroy significant historical, architectural or cultural material, including but not limited to siding, windows, doors, and porch elements;
 - (10) The proposed design shall be compatible with the massing, size, scale, material and character of the property and the area in which it is located;
2. Remove Criterion #11. The issue of whether a project meets a deed restriction is more appropriately covered in the affidavit on the building permit application.

11. Criteria for new construction (Section 33-242)

This was the most difficult discussion the Committee conducted. They discussed it on several occasions and asked for extensive research and analysis of other cities' processes and criteria. There were differing opinions on this issue. In the end, the Committee developed a primary option (option 1, below), but encouraged further public input and consideration on an alternative (option 2):

OPTION 1

- The new construction must match the typical setbacks of existing contributing structures on the blockface and opposing blockface
- The exterior architectural features of new construction must be compatible with the exterior features of existing contributing structures in the historic district
- The proportions of new construction, including height, width, scale, roof shape and roof pitch, must be compatible with the typical proportions of existing contributing structures in the in the surrounding area. Upon demonstrating that unusual circumstances exist, the HAHC may consider a larger surrounding area in determining compatibility.
- A two story structure may be considered appropriate on a blockface with only one-story contributing structures as long as the new construction is in proportion to the surrounding existing structures and unless otherwise stated in a district's Design Guidelines. Design guidelines may develop greater specificity for factors to consider in determining compatibility for new construction in individual districts.

OPTION 2

- The new construction must match the typical setbacks of existing contributing structures on the blockface and opposing blockface;
- The exterior features of new construction must be compatible with the exterior features of existing contributing structures in the historic district;
- The proportions of new construction, including height, width, scale, roof shape and roof pitch, must be compatible with the typical proportions of existing contributing structures in the surrounding area; and
- The height of new construction shall be no taller than the typical height of all contributing structures in the district, except under the following exceptional circumstances in which the height of new construction may exceed the typical height:
 - a) where the lot is in a location or is of a size associated with taller contributing structures in the historical pattern of development in the district (i.e. larger lots, corner lots, lots on particular streets or areas of the district); or
 - b) where the new construction will be adjacent to one or more atypically tall structures (whether contributing or not).

The Committee offered additional considerations, as follows:

- The Committee generally felt that the ordinance should provide high-level guidance and that detailed interpretations should be left to Design Guidelines or, in the absence of such Guidelines, guidance published by staff.
 - a) One example of this guidance is on the meaning of “no taller than the typical height”. This phrase can be interpreted by staff (absent Design Guidelines) as “not exceeding the 80 percentile of

heights" of all contributing structures in the district or it could be defined specifically just in the design guidelines. The Committee noted that inclusion of the word "all" prohibits the current practice of using a subset of contributing structures to determine typical height in the district. Some members of the Committee felt this practice is inappropriate and inconsistent with the ordinance.

- b) Other areas for possible exceptions to the height limitation that have been discussed are, 1) where one or more atypically tall contributing structures are present on the same blockface; 2) where only a minority portion of the proposed roof height, set back from the right of way, is taller; 3) where though the structure is atypically tall, because of other reduced proportions of the structure and the dimensions of the first floor plate, the structure is not incompatible with the district or detrimental to the character of the district.

12. Criteria for relocation and/or demolition (Sections 33-243 and 33-247)

- Create separate criteria for relocating Landmarks and protected Landmarks, contributing structures within a district, and contributing structures outside the district
- Allow relocation outside the district only if applicant proves unreasonable economic hardship or unusual or compelling circumstances
- Increase the documentation required from the owner to consider unreasonable economic hardship and unusual or compelling circumstances
- If the request for demolition is denied by the HAHC, the applicant must work with the Director to explore alternatives. No appeal of a denied CofA application for demolition may be allowed within 90 days of the CofA denial.

13. Allow for a Certified Local Government

The Houston code has been reviewed by the Texas Historic Commission. The one suggestion from the THC was that Houston should add language creating a Historic Preservation Officer. Although, the staff at THC suggested such amendment, they were clear that it was optional. Currently, the city has personnel designated as the Historic Preservation Officer without such language being spelled out in the code.

14. Tax exemption policies for historic sites (Chapter 44 Section 44-5)

The Committee spoke with Mayor's office staff who administers this program. While it is not part of Chapter 33 the committee recommends that the following changes to the code and policy be made at the earliest time possible:

- The code should follow the National Park Service standards in terms of allowable expenses.
- Tax exemptions should be allowed for improvements and restoration of the historic structure. The value/cost of additions should not be included in the calculation

-
- The minimum investment threshold should be reduced from 50% to 25% of the value of the structure to allow smaller restorations to qualify.
 - Provide for the grandfathering of any CofAs granted or any tax exemption granted prior to the changes.

15. Historic Commission (Section 33-211 and 33-212)

The Committee recommends the following changes to the structure of the HAHC:

- Add language requiring that all HAHC members shall have a known and demonstrated interest, competence, or knowledge in historic preservation within the city and or the county.
- Target one of the positions toward a person with experience with historic construction technology.
- Remove the term limit provision to be consistent with other Boards and Commissions. This removal is especially warranted for the HAHC since many positions require highly specific backgrounds and can be hard to fill.

16. Appeals (Section 33-253)

The Committee had a significant amount of discussion on this item as well. They were in agreement that the existing system does not support the ordinance and that the solution is a combination of policy and code changes. The Committee focused on one option (Option 1 below); however, the Committee encouraged further consideration and input on three alternatives (Options 2, 3 and 4):

OPTION 1

- Establish a process with the Planning Commission where the Commission receives a more detailed briefing on the appeal than is currently done in the public meeting. This briefing should occur prior to the public meeting. Allow the Planning Commission to uphold the decision of the HAHC, overturn the decision of the HAHC and grant the CofA, or direct the HAHC to reconsider the item. For decisions that either grant the CofA or direct the HAHC to reconsider the item, the Planning Commission shall identify the reasoning behind the Planning Commissions finding that the HAHC's decision should be reversed or reconsidered, based on the ordinance criteria.

OPTION 2

- Create a new Board of Appeals that is comprised of five members who have knowledge and experience in the area of historic preservation. This Board will meet on an as-needed basis, to hear appeals.

OPTION 3

- Eliminate the Planning Commission component of the appeal process and have the appeal go straight to City Council on the record.

OPTION 4

- Change what actions the Planning Commission may take to the following: 1) Uphold the HAHC's decision to deny the project (this decision could be appealed to City Council), or 2) Direct the HAHC to reconsider the item, with findings stating how, in the Planning Commission's view, the project meets

criteria. Should the HAHC deny the project a second time, the applicant may appeal directly to City Council.

Regardless of the construct of the appeal process, the Committee agreed on the following:

- Prohibit the introduction of new materials at the appeal. If new material is available, it is appropriate for the material to be presented to the HAHC for reconsideration before the item is granted an appeal.
- Provide the neighborhood with adequate notice of the appeal by requiring the placement of a sign on property similar to signs required for relocation and/or demolition. The sign shall be in place for a minimum of 10 days prior to the Planning Commission meeting. This would require that notification of the date of the appeal be provided to the applicant at least 15 days in advance of the meeting.
- As a policy (non-code) recommendation, there should be regularly scheduled inter-commission training sessions between Planning Commission and HAHC.

17. The penalty for illegal demolition (Section 33-203)

The Committee recommends that an appropriate penalty would be a two-year moratorium on reconstruction and requiring that any new building to be built within same footprint and with no more square footage than the building that was demolished (as determined from HCAD records and any other available documentation) and meet the criteria for New Construction.

18. Enforcement (Section 33-203)

The Committee recommends:

- Add a mechanism that will give the HAHC another option to allow the project to be completed quickly and create a path that encourages the restoration of inappropriate modifications without interfering with the city's ability to issue citations.
- Provide that, should a property owner be required to make payment of damages, when historic fabric has been destroyed and cannot be fixed, such payments should be placed in the Historic Preservation Fund.
- Violations shall make the project ineligible for tax exemption.

19. Deferrals (Section 33-239)

The Committee agreed that deferrals play an important role in providing the Commission with a thorough review of the project application and that they should not be prohibited.

20. Required notification for CofA applications (Section 33-238.1)

The Committee is recommending that a small sign (similar in size to a MLS/MBL sign) be required to be placed in the front yard upon application for a Certificate of Appropriateness. The sign shall note that an application has been filed and will provide the website and phone number where more information may

be obtained. The sign will serve two notification purposes: for passers-by of the application and city building inspectors of increased requirements on the building permit due to the property's adherence to the Historic Code.

21. Painting brick (Section 33-201)

See Issue #3. *The list of exclusions now reads: Painting, except for painting over masonry (stone and brick)**

22. Application fees and penalties (Section 33-238)

The Committee recommends removing the prohibition of application fees. In doing so, the Committee was not establishing a fee, but simply opening the door if City Council wanted to do so in the future.

23. Alterations of non-contributing structures (Section 33-241c)

The Committee recommends that alterations and additions to non-contributing structures should match architectural features, materials, and character of the existing noncontributing structure. If an addition is proposed, final project should match setbacks and be in proportion and scale, including height and width, with contributing structures in the historic district.