

**Chapter 33, Articles I and Article VII. Ordinance Redline Impacted Code Sections
Public Comment Draft--Not Approved by the City Attorney
For Discussion Purposes Only
Document Date: 4.19.18**

Article I. – IN GENERAL

Sec. 33-3. - Duties.

The department, under the supervision of the director, is charged with the responsibility for the preparation of all plans, drawings and reports on all matters within the jurisdiction of the department and shall perform such other duties as may be assigned by the commission and the city council. The director, or designee, in the capacity of the planning official, shall use any and all available enforcement mechanisms to enforce and require compliance with the provisions of this Code assigned to the department.

Article VII. - HISTORIC PRESERVATION

Sec. 33-201. Definitions.

Planning official means one or more staff members of the Planning and Development Department who have been trained in and are authorized to conduct code enforcement activities, or such staff members of the permitting department.

Sec. 33-202. Scope

(g) Obtaining a certificate under this article shall not be interpreted to excuse or relieve any person, property owner, or contractor from compliance with any state laws or other ordinances of the city as the same shall apply.

Sec. 33-203. - Enforcement and penalties; remedies cumulative; other action not limited.

- (a) The procedures set forth in this article are cumulative of all other remedies available to the city relating to the subject matter hereof. Specifically, the city attorney may institute any legal action necessary to enforce this article or enjoin or otherwise cause the abatement of any violations hereof, including legal action necessary to recover damages or require restoration or reconstruction under section 315.006 of the Texas Local Government Code. The city council finds that alteration, rehabilitation, restoration, construction, relocation or demolition of any building, structure, object or site that is subject to the provisions of this article without a certificate of appropriateness as required under this article adversely affects the structural, physical or visual integrity of the building, structure, object or site.
- (b) The building official shall not issue a building permit for any activity that requires a certificate of appropriateness pursuant to this article unless the applicant for the building permit presents a certificate of appropriateness or a 90-day waiver certificate issued pursuant to section 33-250 of this Code. The building official or planning official shall use any and all available enforcement mechanisms to enforce and require compliance with the provisions of this Code.
- (c) Any person who violates any provision of this article shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than \$50.00 nor more than \$500.00 for each violation. Each day during which any violation of this article continues shall constitute a separate offense.
- (d) If a landmark or protected landmark, archaeological site, or a contributing structure located in an historic district is demolished without a certificate of appropriateness required by this article or, in the

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case of a landmark or archaeological site only, a 90-day waiver certificate issued pursuant to section 33-250 of this Code, or is ordered to be demolished by the city for public safety reasons after the property owner has received notice of neglect pursuant to section 33-254 of this Code, the building official shall not issue a building permit, and no other person shall issue any other city permit, for the site where the landmark, protected landmark or structure was formerly located for a period of two years after the date of the demolition. After the period of two years after the date of demolition has elapsed, the HAHC may approve a certificate of appropriateness for new construction on the site of the demolished structure only if the size and dimensions of the new construction are substantially similar, and not larger, than the demolished structure. After a period of ten years after the date of demolition has elapsed, the HAHC may approve a certificate of appropriateness for new construction on the site of the demolished structure without the limitation imposed by this section. New construction approved pursuant to this section shall not be eligible to receive a certificate of appropriateness for demolition or relocation before ten years after the date of demolition.

- (e) If activity that requires a certificate of appropriateness is performed outside the scope of a certificate of appropriateness, which for purposes of this section shall include work done without a certificate of appropriateness, the building official shall not issue a permit, and no other person shall issue any other city permit, except as required to perform work required under a certificate of remediation under this subsection, for the site where the activity occurred until either:
- (1) The commission issues a certificate of appropriateness for the work that was performed outside the scope of a certificate of appropriateness; or
 - (2) The commission finds that the work that was performed outside the scope of a certificate of appropriateness does not satisfy the criteria of this article and issues a certificate of remediation for the work that was performed outside the scope of a certificate of appropriateness; and the commission may, as a condition of granting the certificate of remediation, also require that the applicant repair, reconstruct, or restore all or part of the work that was done without a certificate of appropriateness prior to the issuance of any permits besides those required for the reconstruction or restoration, using as many historically appropriate or salvage materials as are reasonably available.

Sec. 33-206. Fees.

(a) The fees for this article are set forth in the city fee schedule. Payment of any applicable fees when due is a condition of the processing of any application or action required by this article. The director may, from time to time, with the assistance of the department of finance, pursuant to city policies and procedures, prepare and submit for city council approval fees that shall be paid by an applicant or individual for services performed by the city in accordance with the administration or enforcement of this article.

(b) Unless otherwise specified in the city fee schedule, application fees shall be doubled for work performed without prior authorization or approval required by this article.

(c) Fees are due at the time an application is submitted for review. Fees are non-refundable.

Secs. 33-206~~207~~—33-210. - Reserved.

Sec. 33-222.1 - Application for designation of an historic district.

- (a) Application for designation of an historic district shall be initiated by either:

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- (1) Ten percent of the owners of tracts in the proposed district; or
 - (2) The HAHC upon instructing the director to prepare an application for designation.
- (b) The application for designation of an historic district shall be filed with the department in the form prescribed by the director, and shall be subject to the following rules:
- (1) The application shall include:
 - a. A map indicating the boundaries of the proposed historic district;
 - b. A description and a photograph of each of the properties in the proposed district;
 - c. A written statement outlining the historical, cultural, or architectural significance of the proposed district which shall address each of the applicable criteria for designation contained in section 33-224 of this Code;
 - (2) The application shall identify with respect to each building, structure, object or site within the proposed historic district whether it is proposed for designation as a contributing structure or a noncontributing structure;
 - (3) The boundaries of the proposed district must comprise a continuous land mass without out tracts inside of it;
 - (4) Tracts of publicly owned land, utility easements, and streets ~~shall not be counted towards determining support for or against the designation of an historic district, but may be included within the historic district regardless whether or not they were counted towards determining support under section 33-222.1 (f) of this Code;~~ and
 - (5) If a tract of land is owned by more than one person, only the signature of one owner is required to indicate support for initiating an application in accordance with this section.
- (c) The director shall review each application for initial completeness. Upon determining that the application includes the items required by subsection (b) of this section, the director shall determine that the application is initially complete, and the director shall schedule and conduct at least one public meeting on the application for the historic district. The director shall give notice of the public meeting in accordance with subsection (d) of this section, including procedures for giving notice of any additional public meeting.
- The director shall establish rules for the conduct of public meetings, and shall endeavor to conduct the meeting within or near the proposed historic district, subject to the availability of appropriate space for public assembly. The director will present information on the proposed application and the process for approval at the public meeting.
- (d) The director will establish the process for notice and for determining the evidence of support of the application, which shall include the following:
- (1) Within 30 days after determining the application is initially complete, the director shall mail a notice to the owners of each property within the proposed historic district as indicated on the most current appraisal district records. The director shall endeavor to give notice to a civic association registered with the city whose area is included, in whole or in part, in the proposed district.
 - (2) The notice shall include the following:
 - a. The date, time, and location of the public meeting described in subsection (c) of this section;
 - b. Any other information the director determines may be useful to the property owners.
- (e) After the final public meeting, the director shall mail notice to the owners of all property within the proposed historic district. The notice shall include a response form to be returned by the property

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owner which shall indicate whether the property owner does or does not support designation of the historic district. The response form must be placed in the U.S. mail with proper postage affixed and postmarked or delivered to the director not later than the thirtieth day after the date on the notice.

- (f) After the deadline for returning response forms mailed in accordance with subsection (e) has passed, the director shall determine if owners of 67 percent of all the tracts in the proposed district support the designation of the district in accordance with the following rules:
 - (1) If a tract of land is owned by more than one person, only the signature of one owner is required for determining public support by returned response forms in accordance with this section; ~~and~~
 - (2) ~~Tracts of publicly owned land, utility easements, and streets that are included within the boundaries of the proposed district shall not be counted toward determining support for or against the designation of an historic district; and-~~
 - (3) Publicly owned land shall be counted as supportive of the designation of a historic district except when a response form, indicating otherwise, is returned in accordance with this section. indicating otherwise.
- (g) If the director is able to make the determination required by subsection (f) of this section, the application will be considered final and the boundaries of the proposed district shall be the boundaries of the proposed historic district. If the director is not able to make this determination, then the director shall either:
 - (1) Modify the boundaries of the proposed historic district if the modification will result in boundaries of one or more historic districts containing one or more non-contiguous areas where the response forms for owners of 67 percent of the tracts support designation of the proposed historic district. If the director modifies the boundaries, the application shall be considered final, the boundaries of the reduced proposed district shall be the boundaries of the proposed historic districts, and any property excluded from the proposed district shall be ineligible for inclusion within a historic district for a period of one year from the date the director modifies the boundaries of the proposed district pursuant to this item; or
 - (2) Determine that the application fails and that no further action will be taken by the HAHC. If an application fails pursuant to this section, the director shall mail notice to the owners of all property within the proposed historic district that the application has failed and that no further action will be taken. Any property within the proposed district is ineligible for inclusion within a historic district for a period of one year from the date of the determination pursuant to this section.
- (h) If the director determines that an application is final, the director shall give notice to all property owners within the proposed district of a hearing before the HAHC in accordance with the provisions of section 33-226 of this Code. The notice shall include the boundaries of one or more proposed historic districts.
- (i) The director may conduct a public workshop for the HAHC on any application for designation of a historic district in which the director reviews the application, the results of response forms received by the department, the boundaries of the proposed districts as modified in accordance with subsection (g) of this section, and any other information the director determines is relevant to the application.
- (j) The HAHC will conduct a public hearing on each final application for designation of a historic district. Following the public hearing, the HAHC may:
 - (1) Approve the proposed boundaries and forward them to city council for approval;
 - (2) Amend the boundaries in accordance with the provisions of this article, in which case the HAHC may defer the application and continue the public hearing to a later meeting; or
 - (3) Disapprove the application, after which no further action shall be taken.