City of Houston, Texas, Ordinance No. 2015-967

AN ORDINANCE AMENDING CHAPTERS 10, 33, AND 44 OF THE CODE OF ORDINANCES RELATING TO HISTORIC PRESERVATION; MAKING FINDINGS AND CONTAINING OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; CONTAINING A SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

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WHEREAS, the City Council finds that the conservation, preservation, protection, enhancement, and perpetuation of sites, landmarks and areas or historical, cultural, architectural, paleontological or archaeological interest is a public policy and public necessity, is required to protect and promote the public health, safety and general welfare of the public and the cultural, economic and educational well being of the public, and represents a compelling public interest; and

WHEREAS, the quality and character of a city is not merely its hope for the future development, but also its retention of the elements of its past; and

WHEREAS, in the exercise of this power, the City Council has adopted Article VII of Chapter 33 of the Code of Ordinances, Houston, Texas, (the "Historic Preservation Ordinance") providing for the recognition, protection, enhancement, perpetuation and use of sites, landmarks and areas of historical or archeological interest within the City; and

WHEREAS, the City Council finds that the Historic Preservation Ordinance is necessary and appropriate and is in the public interest as a means to preserve and protect the historic heritage of the City and to protect and promote the health and economic well-being, safety and welfare of the people of the City, and

WHEREAS, the City Council has determined that the Historic Preservation Ordinance should be amended to better protect the historic resources of the City and to ensure the preservation of the public health, safety and welfare of the citizens of the City; **NOW, THEREFORE,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as a part of this Ordinance.

Section 2. That Section 33-201 of the Code of Ordinances, Houston, Texas, is hereby amended by deleting the definitions of "*Construction*," "*Front façade*," and "*Public right of way*."

Section 3. That Section 33-201 of the Code of Ordinances, Houston, Texas, is hereby amended by adding in appropriate alphabetical order the definitions of "*certificate of remediation,*" "*context area*," "*height*," "*historic preservation officer*," "*massing*," "*new construction*," "*street*," and "*typical*," which shall read as follows:

> "*Certificate of remediation* means a current and valid permit issued by the HAHC authorizing the issuance of a building permit for construction, alteration, rehabilitation, restoration, relocation or demolition intended to correct action taken contrary to the requirements of this article, and shall serve as a certificate of appropriateness for the enforcement and violation of this article, and is granted by the same standards that a certificate of appropriateness is granted."
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> "*Context area* means the blockface and the opposing blockface within the district where the proposed activity is located. Context area may include a different geographic area if the commission finds that unusual and compelling circumstances exist or that context area is described differently in design guidelines."
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> "*Height* means the vertical distance from the existing natural grade."
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> "*Historic preservation officer* means a person designated by the director to perform the duties of the director under this article."
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> "*Massing* means the arrangement of the overall shape and volume of a building."
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> "*New construction* means a free-standing building or structure proposed to be constructed within a historic district designated by city

council, whether that building or structure is on the location of a vacant lot or a lot with another structure on it."

"*Street* means a public or private street or roadway that is not an alley or a shared driveway."

"*Typical* means being within commonly occurring values in a group. Extreme values within a group are not necessarily typical of that group."

Section 4. That Section 33-201 of the Code of Ordinances, Houston, Texas, is hereby amended by amending the definitions of "*alteration*," "*contributing structure*," "*demolition*," "*design guidelines*," "*exterior feature*," "*mandatory repair*," and "*ordinary maintenance and repair*" to read as follows:

"*Alteration* means any change to the exterior of a building, structure, object or site. Alteration shall include, but is not limited to, replacing historic material; changing to a different kind, type or size of roofing or siding materials or foundation; changing, eliminating, or adding exterior doors, door frames, windows, window frames, shutters, railings, columns, beams, walls, porches, steps, porte-cocheres, balconies, signs attached to the exterior of a building, or ornamentation; or the dismantling, moving or removing of any exterior feature. Alteration includes expanding an existing structure or the construction of an addition to an existing structure. Alteration includes the painting of unpainted masonry surfaces. Alteration does not include ordinary maintenance and repair, or the addition or replacement of fences that are not otherwise regulated by this article."

"*Contributing structure* means a building, structure, object or site that reinforces, or that has conditions, which, if reversed, would reinforce, the cultural, architectural or historical significance of the historic district in which it is located, and that is identified as contributing upon the designation of the historic district in which it is located. The term also includes any structure that was identified as "potentially contributing" in any historic district."

"*Demolition* means an act or process that destroys, in whole or in part, or permanently impairs the structural integrity of any building, structure, object or site. The term also includes demolition by neglect, which is defined as inaction or a series of inactions that result in the destruction or irreversible deterioration of a building, structure, object, or site."

"*Design guidelines* means an inventory and analysis of historic resources within a geographic area of the city designated or proposed for

designation as one or more historic districts pursuant to the provisions of this article that contains standards for alteration, rehabilitation, restoration, new construction, relocation and demolition of buildings, structures, objects or sites in an historic district, and approved by the city council."

"*Exterior feature* means an element of the architectural character and general arrangement of the external portion of a building, structure or object, including building material, that is visible from a street, as well as those portions of the building that are essential to support the building envelope; including parts of the exterior wall assembly such as siding, wall studs, and interior shiplap; as well as the foundation. The term does not include purely interior structural elements including interior load-bearing walls or interior non-structural elements such as sheetrock."

"*Mandatory repair* means a repair of a building or structure that is necessary to comply with chapter 10 of this Code as evidenced by an order of the hearing official or the building and standards commission or by a citation."

"*Ordinary maintenance and repair* means any work to correct or prevent deterioration, decay or damage to a building, structure, object or site (or any part thereof), provided that the work does not change the design, character, texture or material of any exterior feature or constitute an 'alteration' as defined above. Ordinary maintenance and repair does not include replacement of historic material. Ordinary maintenance and repair does include the leveling of a foundation in a way that does not raise or lower the foundation."

Section 5. That Subsection (b) of Section 33-203 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"(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 shall use any and all available enforcement mechanisms to enforce and require compliance with the provisions of this Code."

Section 6. That Subsection (d) of Section 33-203 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"(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 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."

Section 7. That Section 33-203 of the Code of Ordinances, Houston, Texas, is hereby amended by adding a Subsection (e) to read as follows:

"(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."

Section 8. That Chapter 33 of the Code of Ordinances, Houston, Texas is hereby amended by adding a Section 33-205 which shall read as follows:

"**Sec. 33-205. Historic preservation officer.**

The director shall appoint a qualified city official, or staff person to serve as historic preservation officer ("HPO"). The HPO must have an interest, knowledge and a demonstrated background in the disciplines of architecture, history, urban planning, archeology, or other disciplines related to historic preservation. The director may delegate the responsibilities of the director in this article to the HPO, in which case the HPO shall administer the duties and responsibilities of the director under this article, maintain and hold open for public inspection all documents and records pertaining to the provisions of this article, and review and help coordinate the city's historic preservation activities with other public and private entities."

Section 9. That Section 33-211 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"**Sec. 33-211. Composition; qualifications of members.**

(a) The creation of the Houston Archaeological and Historical Commission is hereby reaffirmed. The HAHC shall consist of 13 members. Each member shall be a person who has knowledge and experience in the archaeological, architectural, cultural, social, economic, ethnic or political history of the city, and must have a known and demonstrated, competence, or knowledge in historic preservation within the city. The mayor shall assign a staff member to serve as a liaison between the HAHC and the mayor's office. The director, or in his absence or inability to act, a deputy director or assistant director of the department shall serve as a non-voting, ex officio member and as executive secretary to the HAHC. The archivist of the Houston Public Library System shall serve as an ex officio member of the HAHC, but shall not have a vote. When HAHC business requires the involvement of other departments, representatives of those departments shall attend meetings of the HAHC upon notice by the executive secretary. The HAHC shall elect its own chair and vice-chair."

(b) The 13 members of the HAHC shall hold specific positions as follows:

(1) Position 1 shall be filled by a professional archaeologist with knowledge of and interest in archaeology of the city.

(2) Position 2 shall be filled by a professional historian with knowledge of and interest in the history of the city.

(3) Position 3 shall be filled by an architectural historian.

(4) Position 4 shall be filled by a person who has knowledge of and interest in the cultural history of the city.

(5) Position 5 shall be filled by a registered architect.

(6) Position 6 shall be filled by a person with commercial interests in a historic district.

(7) Position 7 shall be filled by a professional real estate appraiser certified to perform appraisals for the city.

(8) Position 8 shall be filled by a representative of an organization for remodelers or builders who has knowledge of and interest in restoration, historic building renovation and compatible new construction.

(9) Position 9 shall be filled by a person who has professional knowledge in preservation construction and technology.

(10) Positions 10 through 13 shall be filled by citizen representatives.

(c) At least four members of the HAHC shall own or reside in a historic landmark or contributing structure in a designated historic district designated pursuant to this division.

(d) Members holding Positions 1 through 9 of the HAHC shall be appointed by the mayor, subject to confirmation by the city council. Members holding Positions 10 through 13 shall be appointed by the city council. The terms of each even-numbered position shall end on March 1 of even-numbered years, and the terms of each odd-numbered position shall end on March 1 of odd-numbered years.

(e) Each member shall serve for a term of two years and shall hold over until the member's successor is qualified."

Section 10. That Subsection (b) of Section 33-212 of the Code of Ordinances, Houston, Texas, is hereby amended to delete the phrase "mayor or a member of the mayor's staff who is designated as liaison to the HAHC" and replace it with "director."

Section 11. That Subsection (c) of Section 33-212 of the Code of Ordinances, Houston, Texas, is hereby amended to delete the phrase "but not more than three full consecutive terms."

Section 12. That Section 33-222 of the Code of Ordinances, Houston, Texas, is hereby amended by deleting the final sentence of Subsection (b).

Section 13. That Section 33-222.1 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

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

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

(1) 10 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; 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 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.

(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."

Section 14. That Section 33-223 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"**Sec. 33-223. Property pending designation.**

(a) Upon initiation of an application for designation of a landmark, archaeological site or historic district that satisfies the minimum age criteria of section 33-224(b) of this Code, the building, structure, object or site proposed for designation as a landmark or archaeological site and any building, structure, object or site located in an area proposed for designation as an historic district shall be subject to the requirements of division 4 of this article as though the building, structure, object, site or area had been designated by the city council. If the HAHC denies an application for certificate of non-designation for any property pursuant to section 33-228 of this Code, the property shall also be subject to the provisions of this section.

(b) The protected status provided in subsection (a) above ends on the earliest of the following dates:

(1) The day after an action of the city council or the HAHC rejecting an application for designation;

(2) In the case of an application for designation of a landmark or archaeological site, the day after the withdrawal of the application by the property owner;

(3) In the case of an application for designation of an historic district, the 181st day after the director determines the application is initially complete, or:

a. If the HAHC defers the application once in accordance with section 33-222.1(j)(2), the 211th day after the director determines the application is initially complete;

b. If the HAHC defers the application two or more times in accordance with section 33-222.1(j)(2), the 241st day after the director determines the application is initially complete;

c. If the city council defers the application or remands the application back to HAHC for reconsideration, 60 days will be added to the number of days of the protected status provided for by this subsection.

(4) In the case of an application for designation of an historic district, the day after the director determines that the application fails; or

(5) In the case of the denial of a certificate of non-designation by the HAHC, the 181st day after the decision of the HAHC.

For purposes of this article, an application for designation is initiated immediately upon the occurrence of either the filing of an application for designation by the requisite owners pursuant to section 33-222 or section 33-222.1 of this Code or, in the case of an application initiated by the HAHC, the date a majority of the HAHC votes to authorize the preparation of an application."

Section 15. That Subsection (c) of Section 33-225 of the Code of Ordinances, Houston, Texas, is hereby amended by adding the phrase "or historic district" to the end of the final sentence.

Section 16. That Subsection (d) of Section 33-225 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"(d) The city secretary shall maintain a copy of a map identifying each landmark, protected landmark, and historic district designated by the city council, and additional copies shall be maintained by the director and the building official. The director shall file for recordation in the real property records of the county or counties in which the designated property is located each action of the city council designating a landmark, protected landmark, and historic district. The city secretary shall maintain a copy of a map identifying each archaeological site designated by city council which shall not be made available to the public."

Section 17. That Section 33-226 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"**Sec. 33-226. Notice requirements for public hearings.**

(a) The director shall give notice of a public hearing before the HAHC on the designation of a landmark or archaeological site initiated by the HAHC not less than 30 days before the date of the public hearing to the owner of the property at the name and address as shown on the most

current appraisal district records. If the notice address for the owner as shown on the most current appraisal district records does not coincide with the street address of the property, then the director shall also send a notice addressed occupant to the street address for the proposed landmark or archaeological site. The director shall also publish notice of the public hearing in a newspaper of general circulation in the city not less than 30 days before the date of the public hearing.

(b) The director shall provide notice of a public hearing on the designation of a landmark or archaeological site by letter, first class mail, postage paid, by facsimile transmission or by electronic mail no later than the fifth day before the date of the public hearing to the owner of the landmark or archaeological site.

(c) The director shall give notice of a public hearing before the HAHC on the designation of an historic district not less than 30 days before the date of the public hearing on designation as follows:

(1) Notice shall be given by mail to each property owner within the proposed historic district, as shown on the most current appraisal district records.

(2) Notice shall be published in a newspaper of general circulation in the city; and

(3) Notice shall be posted by sign in at least four locations within the district selected by the director at locations reasonably calculated to be seen easily by residents of the district and where each sign will be visible from at least one street. In addition, where, in the opinion of the director, because of the size, configuration, traffic patterns or other characteristics of the proposed historic district, additional signs would be beneficial in providing notice, the director shall cause an appropriate number of additional signs to be posted. The signs shall conform to specifications prescribed by the director.

(d) Written notice that is given by mail shall be deemed given when it is deposited in the United States mail, properly addressed, postage paid. The affidavit of a person who has knowledge of the fact that notice was mailed constitutes prima facia evidence that notice has been given as required by this section.

(e) Additional notice need not be given if the public hearing is adjourned or continued to another date, provided that the date, time and

place to which the public hearing is adjourned or continued are specified in the public hearing."

Section 18. That Section 33-227 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"**Sec. 33-227. Amendment; changes in boundary.**

(a) Amendment of any designation of any landmark, protected landmark, or archaeological site shall require action by the city council and shall follow the procedures for application, notice, public hearing and recommendation by HAHC used for the designation of the landmark, protected landmark, or archaeological site.

(b) Enlargement of the boundaries of a historic district shall require action by the city council and shall follow the procedures for application, notice, public hearing and recommendation by HAHC used for the designation of a historic district with respect to the property to be added to the district and not the property within the existing district except that the requirements of section 33-224 of this Code shall be applied to the entire district as modified by the enlargement of the boundaries.

(c) Amendment of any classification of a building, structure, object, or site within a historic district may be initiated by the director only upon finding that a building, structure, object, or site is incorrectly classified as contributing or non-contributing or that the existence of unusual or compelling circumstances, such as the presence of significant and irreversible changes not caused by the owner of the building, structure, or object, justifies the changing of the classification of the building, structure, object, or site. The director shall not recommend the change in classification of a building, structure, object, or site that has deteriorated due to any action or negligence of the owner. The director shall present the findings at a regularly scheduled meeting of the HAHC after giving notice to the property owner of the proposed change not later than 15 days before the meeting, The HAHC shall either disapprove the director's recommended change, or approve the change and refer the change to city council for approval.

(d) Nothing herein shall be construed to require the city council to follow all of the procedures used in the designation if the amendment is solely for the purpose of correcting minor technical errors, including, but not limited to, errors in property descriptions, that are necessary to implement the intent of the city council with respect to the designation."

Section 19. That Subsection (a) of Section 33-228 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"(a) The owner or owner's agent of any property may submit an application for a certificate of non-designation with respect to any building, structure, object, site, property or area that has not been designated as a landmark, protected landmark, or structure in an historic district or an archaeological site. Applications shall be filed with the director and shall contain the following information:

(1) The name, address and daytime telephone number of the owner and the applicant, if different from the owner;

(2) The address and general description of the property that is the subject of the application;

(3) A current photograph of the property that is the subject of the application; and

(4) Information demonstrating whether the property is eligible for designation as a landmark or protected landmark or as a contributing structure in an historic district.

(5) For an archaeological site, an assessment from a professional archaeologist that demonstrates whether the archaeological site is eligible for designation as an archaeological site.

The application for a certificate of non-designation shall be accompanied by a nonrefundable fee of $25.00."

Section 20. That Section 33-229 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"**Sec. 33-229. Designation of protected landmark.**

(a) An application for designation of a protected landmark may only be submitted by the property owner. The HAHC shall review each application and shall recommend a property to be designated as a protected landmark if the property:

(1) Meets at least three of the criteria for designation in section 33-224 of this Code;

(2) Was constructed more than 100 years before application for designation was received by the director;

(3) Is listed individually or as a contributing structure in an historic district on the National Register of Historic Places; or

(4) Is recognized by the State of Texas as a Recorded State Historical Landmark.

(b) The recommendation of the HAHC shall be submitted to the city council pursuant to section 33-225 of this Code.

(c) The city secretary shall maintain a copy of a map identifying each protected landmark designated by the city council, and additional copies shall be maintained by the director and the building official. The director shall file for recordation in the real property records of the county or counties in which the designated property is located notice of each action of the city council designating a protected landmark and the form submitted by the owner pursuant to subsection 33-222(c) of this Code."

Section 21. That Subsection (g) of Section 33-236 of the Code of Ordinances, Houston, Texas, is hereby amended by replacing the phrase "building, structure or object" with the phrase "contributing structure."

Section 22. That Section 33-237 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"**Sec. 33-237. Exemptions.**

(a) A certificate of appropriateness is not required for ordinary maintenance and repair, or for the alteration, rehabilitation, restoration, or construction of the following:

(1) Reroofing with in-kind materials with no change to the structure, shape, or pitch of the roof;

(2) An alteration that is obscured from view from the street by the original structure and not merely obscured by fencing,

landscaping, non-historic additions, or other impermanent obstructions;

(3) Gutters, downspouts, storm windows and doors, window screens, screen doors, temporary emergency weatherization features such as plywood coverings over windows, porch ceiling fans, light fixtures, HVAC units, landscaping;

(4) Fences;

(5) Removal of burglar bars, satellite dishes, antennae, solar panels, free-standing signs, and accessibility ramps and lifts;

(6) Installation of solar panels, antennae, satellite dishes, or other roof equipment installed on the rear half of the roof; and installation of free-standing signs; and

(7) Painting non-masonry surfaces, and repainting previously painted masonry surfaces.

(b) A certificate of appropriateness is not required for the reconstruction of the portion of a contributing or noncontributing structure that was completely or partially destroyed by a fire, natural disaster, or other damage not intentionally caused by the owner of the structure only if the reconstruction is built within the same footprint and has the same exterior features as the contributing or noncontributing structure.

(c) A certificate of appropriateness is not required for the demolition of a non-contributing structure in a historic district.

(d) The operation of this section shall constitute an affirmative defense to prosecution under section 33-236 of this Code.

(e) The design guidelines for an individual historic district may require that an alteration exempted by this section require a certificate of appropriateness pursuant to provisions contained in the design guidelines."

Section 23. That Section 33-238 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"**Sec. 33-238. Application.**

No application shall be deemed to be filed unless it is submitted in the form promulgated by the director and contains all required supporting plans, designs, photographs, reports, and other exhibits required by the director. The fee for an application for a certificate of appropriateness shall be as prescribed in the fee schedule and may vary depending on the type of activity proposed."

Section 24. That Section 33-238.1 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"**Sec. 33-238.1. Notice requirements.**

(a) The applicant for a certificate of appropriateness for a landmark, protected landmark, or any contributing structure in an historic district, or for an appeal from a decision of the HAHC, shall give notice of the application for a certificate of appropriateness by posting at least one sign on the property for which the certificate of appropriateness is requested. A sign shall face each street bordering the site; provided, however, that if more than four signs would be required to be posted, the applicant may request the director to approve an alternative number and location of signs. The director shall approve an alternative to the number and location of signs required by this subsection in excess of four upon determining that the alternative will provide maximum visibility and obtain the objectives of this section without unduly burdening the applicant. Each sign required under this subsection shall comply with the following:

(1) For an application for a certificate of appropriateness for demolition, relocation, or for an appeal from the decision of the HAHC, each sign shall be a minimum of four by eight feet in size and shall be posted no more than 15 feet from the street. Each sign shall be posted not less than ten days before the date of the meeting at which the certificate of appropriateness will next be considered. The lettering on each sign shall be legible from the street. The applicant shall use reasonable efforts to maintain each required sign on the site until the close of the meeting at which the application for certificate of appropriateness or appeal is considered. Each sign shall include:

a. The application number and the type of certificate of appropriateness being requested;

b. The date, time, and place of the meeting at which the application or appeal will next be considered, updated to reflect any changes in the date, time, and place of the meeting, including if the applicant's request is deferred, continued, or otherwise postponed;

c. A telephone number of the applicant to call for additional information; and

d. A department telephone number to call for additional information.

(2) For an application for a certificate of appropriateness not mentioned by item (1) of this subsection, each sign shall be the size of a typical yard sign or as prescribed by the director and shall be posted no more than 15 feet from the street. Each sign shall be posted within three days of submission of an application for a certificate of appropriateness. The lettering on each sign shall be legible from the street. The applicant shall use reasonable efforts to maintain each required sign on the site until the close of the meeting at which the application for certificate of appropriateness is considered, if applicable. Each sign shall include:

a. The application number and the type of certificate of appropriateness being requested; and

b. A department telephone number to call for additional information.

(b) Notice under this section is not required for a certificate of appropriateness pursuant to sections 33-241.1(c)(1)-(4)."

Section 25. That Item (3) of Subsection (a) of Section 33-240 of the Code of Ordinances, Houston, Texas, is hereby amended by replacing the phrase "design guidelines shall control" with the phrase "more restrictive criteria shall control."

Section 26. That Section 33-240 of the Code of Ordinances, Houston, Texas, is hereby amended by adding a Subsection (c) to read as follows:

"(c) In reviewing applications for certificates of appropriateness under this article, the HAHC or the director, respectively as appropriate, shall also consider any elements of the proposed activity that may be necessary to enable the property to comply with any other applicable city ordinances or state or federal law so as to facilitate compliance with this ordinance and other applicable laws."

Section 27. That Section 33-241 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"**Sec. 33-241. Same—Exterior alteration, rehabilitation, restoration, and addition.**

The HAHC shall issue a certificate of appropriateness for the alteration, rehabilitation, restoration or addition of an exterior feature of (i) any landmark, (ii) protected landmark, or (iii) any building, structure or object that is part of an archaeological site, or (iv) contributing building in a historic district, upon finding that the application satisfies the following criteria, as applicable:

(1) The proposed activity must retain and preserve the historical character of the property;

(2) The proposed activity must contribute to the continued availability of the property for a contemporary use;

(3) The proposed activity must recognize the building, structure, object or site as a product of its own time and avoid alterations that seek to create an earlier or later appearance;

(4) The proposed activity must preserve the distinguishing qualities or character of the building, structure, object or site and its environment;

(5) The proposed activity must maintain or replicate distinctive stylistic exterior features or examples of skilled craftsmanship that characterize the building, structure, object or site;

(6) New materials to be used for any exterior feature excluding what is visible from public alleys must be visually compatible with, but not necessarily the same as, the materials being replaced in form, design, texture, dimension and scale;

(7) The proposed replacement of exterior features, if any, should be based on accurate duplication of features, substantiated by available historical, physical or pictorial evidence, where that evidence is available, rather than on conjectural designs or the availability of different architectural elements from other structures;

(8) Proposed additions or alterations must be done in a manner that, if removed in the future, would leave unimpaired the essential form and integrity of the building, structure, object or site;

(9) The proposed design for any exterior alteration or addition must not destroy significant historical, architectural, archaeological or cultural material, including but not limited to siding, windows, doors, and porch elements;

(10) The proposed alteration or addition must be compatible with the massing, size, scale, material and character of the property and the context area; and

(11) The distance from the property line to the front and side walls, porches, and exterior features of any proposed addition or alteration must be compatible with the distance to the property line of similar elements of existing contributing structures in the context area."

Section 28. That the Code of Ordinances, Houston, Texas is hereby amended by adding a Section 33-241.1 which shall read as follows:

"**Sec. 33-241.1. Same—Administrative approvals.**

(a) The director shall approve a certificate of appropriateness for the construction of any one, but no combination of the following additions to a contributing structure in a historic district:

(1) A rear addition that:

a. Is not taller than the existing structure;

b. Is set back from the side property lines at least as much as the structural walls of the existing structure;

c. Is not wider than the wall to which it is attached;

d. Does not require the demolition of any portion of the existing structure except for the rear wall to which the addition will be attached;

e. Has a roof pitch that is less than or equal to the existing structure; and

f. Is not constructed on a building that has had an addition approved under this chapter.

(2) A side addition that:

a. Is not taller than the existing structure;

b. Is attached only to one exterior wall of the existing structure and does not extend past the existing rear wall of the side to which it is attached;

c. Is set back from the front of the wall to which it is attached at least thirty percent of the distance between the front of the wall to which it is attached to the rear of the wall to which it is attached;

d. Is not wider than half the distance that the addition is set back from the front of the wall to which it is attached. For example, if the addition is set back 20 feet from the front wall to which it is attached, the addition may not be wider than 10 feet;

e. Does not require the demolition of any portion of the existing structure except for the exterior wall to which the addition will be attached; and

f. Does not deviate from the roof pitch of the existing structure except for cross gable or hip roofs; and

g. Is not constructed on a building that has had an addition approved under this chapter.

(3) A partial second-story addition that:

a. Is constructed on top of a one-story structure;

b. Does not extend outside the footprint of the existing structure;

c. Is set back from the front wall of the existing structure at least half the distance between the front wall of the existing structure and the farthest point of the rear of the existing structure;

d. Has a plate height that does not exceed the plate height of the story beneath the proposed addition;

e. Has a roof pitch that is less than or equal to the existing structure;

f. Is constructed without the removal of any existing exterior walls; and

g. Is not constructed on a building that has had an addition approved under this chapter.

(b) The director shall issue a certificate of appropriateness for the alteration, rehabilitation, or restoration of a non-contributing structure or an addition to a noncontributing structure in an historic district upon finding that the application satisfies the following criteria, as applicable:

(1) For an alteration, rehabilitation, or restoration that does not require the removal or replacement of the structural elements, not including the foundation, within 67 percent of the structure:

a. The proposed activity must recognize the building, structure, object or site as a product of its own time and avoid alterations that seek to create an earlier or later appearance; and

b. The proposed activity must match the architectural features, materials, and character of either the existing noncontributing structure or the contributing structures within the context area.

(2) For an alteration, rehabilitation, or restoration that requires the removal or replacement of the structural elements, not including the foundation, within 67 percent or more of the structure, the director shall refer the application to the HAHC, which shall approve a certificate of appropriateness if the result

of the project conforms to the requirements for new construction in a historic district in section 33-242 of this Code.

(3) For an addition to a noncontributing structure:

a. The distance from the property line to the front and side walls, porches, and exterior features of any proposed addition or alteration must be compatible with the distance from the property line of similar elements of existing contributing structures in the context area; and

b. The noncontributing structure with the constructed addition is compatible with the typical proportions and scale of existing contributing structures in the context area.

(c) The director is authorized to issue a certificate of appropriateness for the following activities if the director finds that the proposed activity will be performed in a manner that satisfies the criteria for alterations, additions, or new construction in this article, as applicable. If the director finds that an application for a certificate of appropriateness pursuant to this subsection does not satisfy the applicable criteria, or that the application does not satisfy the general intent and purposes of this article, the director shall refer the application to the HAHC for consideration:

(1) Removal of a window or door element that was not original to the contributing structure and replacement with a window or door element that:

a. Is appropriate to the historic significance of the structure; and

b. Does not change the size, shape or location of any opening, including the trim, molding or other features associated with the opening, from which the window or door elements are to be removed;

(2) Removal of:

a. Exterior wall cladding that was not an original feature or characteristic of the structure and replacement with appropriate cladding;

b. Non-historic additions, including attached garages or carports;

c. Non-historic decorative elements, such as shutters or brackets; and

d. Non-historic low-profile skylights, canopies, awnings, or signs attached to the building.

(3) Replacement of historic materials that are damaged beyond repair with materials of the same size, shape, material, and pattern;

(4) Installation of:

a. Burglar bars;

b. Accessibility ramps or lifts;

c. Low-profile skylights, shutters, solar panels, antennae, satellite dishes, or other roof equipment installed on the front half of the roof; and

d. Awnings and canopies;

(5) Construction of:

a. Freestanding garages, including garage apartments, freestanding carports, and other secondary structures, that have a footprint of 600 square feet or less, located at the rear of the lot,

b. A rear porch that is not taller than the existing structure and that does not extend beyond the existing side walls of the structure;

(6) Installation of any details including porch elements or detailing that have been partially lost or removed but whose existence has been substantiated by the remaining elements still in existence or historical documentation such as architectural plans or historic photographs; and

(7) Installation of signs attached to the exterior of a building that

a. Do not compromise historic exterior features on the structure;

b. Are 25 square feet or less in total area; and

c. Are installed without damage to significant historic material.

(d) The director shall issue a certificate of appropriateness for repair or reconstruction of those internal structural elements that are essential to support the building's envelope to which they are attached, for example, interior shiplap, if the applicant demonstrates to the satisfaction of the director that the structural repair or reconstruction can be accomplished without harm to the exterior features of the building or structure visible from the right-of-way. In support of an application for repair or reconstruction under this subsection, the applicant shall include a written statement from a structural engineer licensed by the State of Texas that the proposed repair or reconstruction can be accomplished without harm to the exterior features of the building or structure visible from the right-of-way.

(e) If the director does not approve the application for a certificate of appropriateness pursuant to this section within 15 business days of receipt of a complete application, the director shall refer the application to the HAHC for consideration. The HAHC shall review the application according to the criteria for alterations, additions, or new construction, as applicable, or as otherwise provided by this section. The schedule for consideration of an application for a certificate of appropriateness provided by section 33-239 of this Code shall apply to an application considered under this section and the administrative process authorized herein shall not suspend any time required for consideration. The director may promulgate rules for the receipt and processing of applications under this section.

(f) The director may administratively approve an amendment to a certificate of appropriateness approved by the HAHC if the amendment has an insignificant and non-substantive impact on the project for which a certificate of appropriateness was granted and does not affect the historic character of the structure, if applicable.

(g) Design guidelines for an individual historic district may provide that administrative approvals under this section must instead be approved by the HAHC using the criteria of this section, or of this article, as appropriate. Design guidelines for an individual historic district remove the administrative approval of additions provided in subsection (a) of this section and instead

require that additions be approved in accordance with the provisions of section 33-241 of this Code."

Section 29. That Section 33-242 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"**Sec. 33-242. Same—New construction in historic district.**

(a) The HAHC shall issue a certificate of appropriateness for new construction in an historic district upon finding that the application satisfies the following criteria:

(1) The distance from the property line of the front and side walls, porches, and exterior features of any proposed new construction must be compatible with the distance from the property line of similar elements of existing contributing structures in the context area;

(2) The exterior features of the new construction must be compatible with the exterior features of existing contributing structures in the context area;

(3) The scale and proportions of the new construction, including the relationship of the width, overall height, eave height, foundation height, porch height, roof shape, and roof pitch, and other dimensions to each other, must be compatible with the typical scale and proportions of existing contributing structures in the context area unless special circumstances, such as an atypical use, location, or lot size, warrant an atypical scale and proportions;

(4) The height of the new construction must not be taller than the typical height of existing contributing structures in the context area unless special circumstances, such as an atypical use, location, or lot size, warrant an atypical height, except that;

a. Design guidelines for an individual historic district may provide that a new construction with two stories maybe be constructed in a context area with only one-story contributing structures as long as the first story of the new construction has proportions compatible with the contributing structures in the context area, and the

second story has similar proportions to the first story; and

b. A new construction shall not be constructed with more than one story in a historic district that is comprised entirely of one-story contributing structures, except as provided for in design guidelines for an individual historic district.

(b) Nothing in the foregoing shall be construed to require or impose a single architectural style in any historic district."

Section 30. That Section 33-243 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"**Sec. 33-243. Same—Relocation of landmark, protected landmark, or contributing structure.**

(a) The HAHC shall issue a certificate of appropriateness for the relocation of any landmark, protected landmark, or contributing structure only upon finding that the application satisfies one or more of the following criteria:

(1) For a landmark or protected landmark that is not located in a historic district, the structure:

a. Has architectural or historical value independent of its physical location that will not be diminished by relocation;

b. Can be moved without significant damage to its physical integrity; and

c. Will be relocated to an area that is compatible with the historical and architectural character of the landmark or protected landmark.

(2) For a contributing structure located in a historic district that is being located within the same historic district, the relocation must also meet the following criteria:

a. The structure can be relocated without significantly diminishing the integrity of the historic district in which it is located;

b. The structure can be moved without significant damage to its physical integrity;

c. The structure will be located to an area that is compatible with and retains the distinguishing qualities and historical and architectural character of the contributing structure;

d. There are compelling circumstances justifying the relocation of the structure; and

e. The distance from the property line to the front and side walls, porches, and exterior features of the structure on the new location shall be compatible with the distance from the property line of similar elements of existing contributing structures in the context area of the new location.

(3) For contributing structures being relocated outside of the historic district, in addition to the criteria of item (2) of this section, the applicant must also establish that the relocation is necessary to prevent an unreasonable economic hardship pursuant to the criteria of section 33-247(c) of this Code.

(4) The relocation is necessary to protect the landmark, protected landmark, or contributing structure from demolition resulting from a public improvement project;

(b) Alternatively, the HAHC shall issue a certificate of appropriateness for relocation if relocation of the landmark, protected landmark, or contributing structure has been identified as an alternative to demolition pursuant to section 33-247(f) of this Code."

Section 31. That Section 33-246 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"**Sec. 33-246. Same—Excavation.**

(a) The HAHC shall issue a certificate of appropriateness for the excavation of an archaeological site that does not propose to disturb, modify, remove, or destroy archaeological resources upon finding that the application meets the following criteria:

(1) The excavation must be monitored by a professional archaeologist, and conducted so as to protect and preserve archaeological resources affected by, or adjacent to, the excavation; and

(2) The applicant must commit to make reasonable efforts to mitigate and stabilize archaeological resources if they are disturbed.

(b) For a certificate of appropriateness for the excavation of an archaeological site that proposes to disturb, modify, remove, or destroy archaeological resources, the applicant shall provide a scope of work prepared by a professional archaeologist that includes the archaeological significance of the site and the methodology utilized for the excavation, that demonstrates that the site will not be adversely affected by the proposed excavation.

(c) An application under this section shall include a cultural resources review prepared by a professional archaeologist that includes an inventory of the archaeological resources within a 1-mile radius of the archaeological site, as well as any surveys, evidence of test excavations, mitigation measures that will be taken, and a curation plan describing how and where artifacts and archaeological resources and data will be stored."

Section 32. That Section 33-247 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"**Sec. 33-247. Same—Demolition of landmark, protected landmark or contributing structure, or within archaeological site.**

(a) The issuance of a certificate of appropriateness for the demolition of a landmark, a protected landmark, or a contributing structure, or for demolition of a building, structure or object on or in an archaeological site shall be granted only if:

(1) The building, structure, or object has seriously deteriorated to an unusable state and is beyond reasonable repair; and

(2) The HAHC finds, based on the preponderance of credible evidence presented by the applicant, the existence of an unreasonable economic hardship under subsection (c) of this section or the establishment of an unusual and compelling circumstance pursuant to subsection (d) of this section.

(b) An application for a certificate of appropriateness for demolition shall contain the following information:

(1) Photographs and other documented evidence detailing the deteriorated state of the property and the inability to reasonably repair the property;

(2) A certified appraisal of the value of the property conducted by a certified real estate appraiser that takes into account that the property is a landmark, protected landmark or contributing structure in a historic district as well as the two most recent assessments of the value of the property unless the property is exempt from local property taxes;

(3) All appraisals obtained by the owner in connection with the acquisition, purchase, donation, or financing of the property, or during the ownership of the property;

(4) All listings for the sale or lease of the property by the owner within the last year, and a statement by the owner of any bids and offers received and counteroffers given on the property;

(5) Evidence of any consideration by the owner of uses and adaptive reuses of the property;

(6) Itemized and detailed rehabilitation cost estimates for the identified uses or reuses, including the basis of the cost estimates;

(7) Any financial statements showing revenue and expenses incurred for the property;

(8) Complete architectural plans and drawings of the intended future use of the property, including new construction, if applicable;

(9) Plans to salvage, recycle, or reuse building materials if a certificate of appropriateness is granted;

(10) An applicant who is a nonprofit organization shall provide the following additional information:

a. A comparison of the cost of performance of the mission or function of the nonprofit organization in the existing building and in a new building;

b. The impact of the reuse of the existing building on the organization's program, function or mission;

c. The additional cost, if any, attributable to the building of performing the nonprofit organization's function within the context of costs incurred by comparable organizations, particularly in the Houston area;

d. Grants received, applied for or available to maintain or improve the property; and

e. The nonprofit organization's budget for the current and immediately past fiscal years.

(11) Any additional information the director determines is reasonably necessary to the review the application.

(c) Determination of an unreasonable economic hardship shall be based upon the following criteria:

(1) That the property is incapable of earning a reasonable return, regardless of whether the return is the most profitable return, including without limitation, regardless of whether the costs of maintenance or improvement of the property exceed its fair market value;

(2) That the owner has demonstrated that the property cannot be adapted for any other use, whether by the current owner, by a purchaser or by a lessee, that would result in a reasonable return;

(3) That the owner has demonstrated reasonable efforts to find a purchaser or lessee interested in acquiring the property and preserving it, and that those efforts have failed; and

(4) If the applicant is a nonprofit organization, determination of an unreasonable economic hardship shall instead be based upon whether the denial of a certificate of appropriateness financially prevents or seriously interferes with carrying out the mission, purpose, or function of the nonprofit corporation.

(d) Determination of the existence of an unusual or compelling circumstance shall be based upon the following criteria:

(1) That current information does not support the historic or archaeological significance of the building, structure or object or its importance to the integrity of an historic district, if applicable;

(2) Whether there are definite plans for reuse of the property if the proposed demolition is carried out and what effect such plans have on the architectural, cultural, historical or archaeological character of the context area; and

(3) Whether reasonable measures can be taken to save the building, structure or object from further deterioration, collapse, arson, vandalism or neglect.

(e) If the HAHC denies an application for a certificate of appropriateness for demolition, the director and the applicant shall have 90 days for which to explore alternatives to demolition. The applicant may not appeal the decision of the HAHC during this period. It shall be the duty of an applicant for a certificate of appropriateness for demolition to participate in good faith in a diligent effort to identify alternatives to demolition. The HAHC, the director and the applicant may consult with recognized historic preservation organizations and other civic groups, public agencies and interested citizens to determine the feasibility of:

(1) Public or other acquisition of the property, structure, building or object;

(2) Relocating one or more of the structures or features of the property if to do so would preserve its historic or architectural value and that the property meets the criteria for relocation in section 33-243 of this Code; or

(3) Any other reasonable means of preserving the property, structure, building or object's historic or architectural value."

Section 33. That Section 33-248 of the Code of Ordinances, Houston, Texas, is hereby deleted and reserved.

Section 34. That Section 33-249 of the Code of Ordinances, Houston, Texas, is hereby deleted and reserved.

Section 35. That Section 33-250 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"**Sec. 33-250. Ninety-day waiver certificate.**

(a) The director shall not issue a 90-day waiver certificate for any protected landmark or for any property located within the OSWPHD.

(b) The director shall not issue a 90-day waiver certificate for any property located within any historic district other than a place of worship.

(c) Only for landmarks and archaeological sites located outside of historic districts, and places of worship within an historic district, if for any reason a certificate of appropriateness has not been issued on or before the ninetieth day following the scheduled submittal deadline at which a complete application for a certificate of appropriateness was received by the director, then the applicant, upon request to the director, shall be entitled to the immediate issuance of a 90-day waiver certificate, which shall for all purposes be the equivalent of a certificate of appropriateness.

(d) Before the expiration of the 90 days, the applicant shall consult with department staff to explore alternatives to the actions proposed by the applicant to mitigate the reasons for which the certificate was denied. Notwithstanding the foregoing, any landmark or architectural site for which a 90-day waiver certificate is granted pursuant to the provisions of this section shall not be eligible for any tax exemptions or other financial benefit authorized by the city council for the property based on its designation pursuant to this article.

(e) An application for a certificate of appropriateness may be filed before, at the same time as or after the filing of an application for a building

permit, but the 90-day period provided for in this section shall not begin until a completed application for a certificate of appropriateness is filed with the director. An applicant for a building permit may request the building official to review and process the application for a building permit during the 90-day period provided for in this section, but no building permit shall be issued until the applicant for the building permit presents a certificate of appropriateness or a 90-day waiver certificate issued pursuant to this section."

Section 36. That Section 33-251 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"**Sec. 33-251. Emergency action, securing dangerous buildings; mandatory repair.**

(a) Nothing in this division shall limit the ability of the city to demolish, to order the demolition of, or to order any other action with respect to, any building, structure or object that the building standards official, as that term is defined in article IX of chapter 10 of this Code, determines to be an imminent danger to the health, life or safety of any person. No certificate of appropriateness shall be required for any action required by the city pursuant to division 7 of article IX of chapter 10 of this Code, or the securing of a building required by the city pursuant to article IX of chapter 10 of this Code.

(b) The building standards official shall not issue an order for, authorize, or set a hearing before the hearing officer or the building and standards commission for, the demolition of a building, structure, or site for which a certificate of appropriateness is required by this article without first obtaining a certificate of appropriateness from the HAHC.

(c) The director shall issue a certificate of appropriateness for mandatory repair of a landmark, protected landmark, or of a building, structure or object within an historic district or archaeological site upon application and review of the order or citation requiring the mandatory repair if the director finds that the proposed mandatory repair is necessary to comply with the order or citation and will not result in a change in the architectural, historical, archaeological or cultural character of the landmark, protected landmark, or of the building, structure or object in the historic district or archaeological site that existed prior to the issuance of the order or citation. The director shall consider the criteria in section 33-241 in reviewing the application and making the findings required by this section.

(d) If the director does not issue a certificate of appropriateness for mandatory repair within three working days following receipt of the

application or a later date mutually agreeable to the applicant and the director, or if the director denies the application, the application shall be submitted to the HAHC for consideration as if it were an application for a certificate of appropriateness for alteration, rehabilitation, restoration or construction pursuant to section 33-241 of this Code."

Section 37. That Section 33-253 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"**Sec. 33-253. Appeal.**

(a) The Historic Preservation Appeals Board ("HPAB") is hereby created. The HPAB shall consist of 5 members and shall consist of two former members of the planning commission, two former members of the HAHC, and one citizen representative who has not served on either commission. Each member shall have extraordinary knowledge and experience in the archaeological, architectural, cultural, social, economic, ethnic or political history of the city, and must have a known and demonstrated interest, competence, or knowledge in historic preservation within the city. Members of the HPAB shall be appointed by the mayor, subject to confirmation by the city council. Each member shall serve for a term of two years and shall hold over until the member's successor is appointed. A member may be appointed to serve consecutive terms. The director, or in his absence or inability to act, a deputy director or assistant director of the department shall serve as a non-voting, ex officio member and as executive secretary to the HPAB. Three members of the HPAB shall constitute a quorum; however, in the event of vacancies on the HPAB, a majority of the members of the HPAB shall constitute a quorum. The HPAB shall elect its own chair and vice-chair. The mayor shall assign a staff member to serve as a liaison between the HPAB and the mayor's office. The HPAB shall adopt rules, procedures, and schedules for meetings as are necessary or convenient to accomplish the purposes of this article, and shall meet as needed when notified by the director of an appeal from a decision of the HAHC.

(b) An applicant aggrieved by a decision of the HAHC with respect to any certificate of appropriateness may appeal to the HPAB by filing a written notice of appeal, stating the grounds for the appeal, with the director within ten days following the date the HAHC renders its decision, or in the case of an application for a certificate of appropriateness for demolition, the notice of appeal may be filed with the director not earlier than 90 days after the denial of a certificate of appropriateness by the HAHC as provided for in section 33-247(f) of this Code and not later than 120 days after the denial by

HAHC. The director shall notify the members of the HPAB of the receipt of a notice of appeal and shall schedule a meeting of the HPAB to consider the appeal.

(c) The HPAB shall consider the appeal within 45 days after a notice of appeal is filed with the director. The HPAB shall consider the application, the findings of the HAHC, written comments from the public, and any evidence presented at the meeting at which the appeal is considered. The HPAB shall reverse or affirm the decision of the HAHC based upon the criteria applicable to the certificate of appropriateness. If the HPAB does not make a decision on the appeal within 45 days after a notice of appeal is filed with the director, the decision of the HAHC with respect to the application for the certificate of appropriateness shall be deemed affirmed.

(d) The director shall provide the applicant with notice of the time and place of the meeting at which each appeal will be considered by mail no less than ten days before the date of the meeting.

(e) An applicant aggrieved by a decision of the HPAB may appeal to the city council. The city council shall consider the appeal at its first regularly scheduled meeting for which the required notice can be given. The city council shall consider the appeal under the provisions of Rule 12 of Section 2-2 of this Code. At the conclusion of the city council's review of the matter, the city council shall reverse or affirm the decision of the HPAB. The decision of the city council shall be final and exhaust the applicant's administrative remedies."

Section 38. That Section 33-254 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"**Sec. 33-254. Demolition by neglect.**

(a) The owner of a contributing structure located within an historic district or of a protected landmark shall not permit the contributing structure or protected landmark to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural feature. This section applies to a structure regardless of whether it is occupied or vacant. An owner shall prevent or repair the following when necessary:

(1) A deteriorated or inadequate foundation;

(2) Defective or deteriorated floor supports or floor supports that are insufficient to carry the loads imposed with safety;

(3) Ceilings, roofs, ceiling or roof supports, or other horizontal members which sag, split, or buckle due to defect or deterioration, or are insufficient to support the loads imposed with safety;

(4) Fireplaces and chimneys which bulge, or settle due to defect or deterioration, or are of insufficient size or strength to carry the loads imposed with safety;

(5) Deteriorated, crumbling, or loose exterior stucco, mortar, or siding;

(6) Leaks and other conditions that allow the penetration of water into the structure; and

(7) Damage caused by termites and other pests that contribute to the deterioration of the structure.

(b) The director shall investigate complaints regarding deteriorated or poorly maintained contributing structures and may refer complaints to the appropriate city department for investigation. If needed, the director will notify the property owner of the findings of any investigation and repairs required to comply with this article. If repairs are required, the property owner must develop a plan acceptable to the director to remedy the contributing structure or protected landmark within a specified amount of time, including plans to obtain any required certificates of appropriateness and other city permits. Failure to prepare a plan acceptable to the director or to comply with the provisions of an approved plan shall be a violation of this article."

Section 39. That Section 33-255 of the Code of Ordinances, Houston, Texas, is hereby amended by replacing the word "one" with "two" and replacing the word "year" with "years."

Section 40. That Division 5 of Article VII of Chapter 33 of the Code of Ordinances, Houston, Texas, is hereby amended in its entirety to read as follows:

"DIVISION 5. DESIGN GUIDELINES

Sec. 33-266. Application.

(a) The applicants for the designation of an historic district may prepare and submit proposed design guidelines as part of the application. If the applicants do not submit proposed design guidelines, the director shall prepare design guidelines for consideration by city council within one year after the creation of an historic district.

(b) The HAHC or city council may direct the director to prepare design guidelines for one or more historic districts for which no design guidelines have been adopted in accordance with subsection (a) of this section if the HAHC or city council finds that the adoption of design guidelines would benefit the review of certificates of appropriateness for the historic district. The director shall prepare design guidelines for the historic district in accordance with the following:

(1) The director shall conduct one or more public meetings within or near the historic districts for which design guidelines are proposed to enable the public to provide input on the proposed guidelines;

(2) The director shall mail notice to all property owners within the historic districts for which design guidelines are proposed not less than 15 days before each public meeting; and

(3) The director shall present design guidelines to the HAHC within one year of the request for design guidelines, or if the director is unable to do so, the director shall report on the progress of the design guidelines to the HAHC and include a timeline for completion of the design guidelines.

(c) The director shall present design guidelines to city council for consideration for the Heights East, Heights West, and Heights South historic districts within sixteen months of the passage of Ordinance No. [editor shall insert ordinance number], after which time, the design guidelines previously submitted to the director shall be automatically adopted for any of the districts mentioned in this section for which design guidelines have not been adopted by city council.

Sec. 33-267. Requirements.

(a) The purpose of design guidelines is to provide guidance on how to interpret the criteria of this article within individual historic districts.

(b) The proposed design guidelines shall contain:

(1) A map and description of the proposed historic district, including boundaries; photographs of buildings in the district; an inventory of the age, setting, character and architectural, cultural or historical significance of structures in the district; and objectives to be achieved in the historic district;

(2) A statement of the architectural, cultural or historical significance of the proposed historic district and a description of structures and features to be preserved; and

(3) A set of specific standards that illustrate compliance and noncompliance with the criteria for certificates of appropriateness for demolition, new construction, alteration, rehabilitation, restoration and relocation that are tailored to the specific characteristics and features of the district for which the design guidelines are written. These standards may be stricter than the provisions of this article, and shall not be more lenient except as provided for by this article.

(c) The proposed design guidelines shall not contain any standards for reviewing applications for certificates of appropriateness that allow for activity specifically prohibited by the criteria for certificates of appropriateness in this article, except as provided for by this article. Design guidelines shall not provide for alternative rules and regulations except as provided for in this article.

Sec. 33-268. Approval; effect of approval; amendment.

(a) The director shall present the proposed design guidelines for adoption to the HAHC, who shall conduct a public hearing on the adoption of the design guidelines. The director shall mail notice to all property owners within the historic districts to be affected by the design guidelines not less than 15 days before the public hearing before the HAHC. At the public hearing, interested parties may comment in person or in writing on the proposed design guidelines. At the close of the public hearing, the HAHC shall vote to disapprove, defer, or recommend that city council approve the proposed design guidelines in the form presented to the HAHC or as

amended by HAHC during the public hearing. The director shall present any recommended design guidelines to city council as soon as is reasonably possible.

(b) The city council shall consider the recommendation of the HAHC and shall vote to approve or disapprove the design guidelines in the form in which they are recommended by the HAHC. If city council disapproves the design guidelines, the director shall revise the design guidelines in accordance with any suggested changes made by city council, and resubmit the design guidelines to HAHC in accordance with the provisions of subsection (a) of this section as soon as is reasonably possible. After approval by city council, the HAHC shall use the criteria within the design guidelines for granting or denying applications for certificates of appropriateness for applicable activities within the boundaries of the historic district.

(c) Amendments to design guidelines that have been approved by city council shall be considered in accordance with the process for the adoption of design guidelines in this section.

(d) A copy of the design guidelines is to be maintained in the office of the city secretary and on the website of the department."

Section 41. That Section 44-5 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"**Sec. 44-5. Tax relief for the restoration or preservation of historical sites.**

(a) Scope. The city council may, by ordinance, grant tax relief in the form of an exemption from ad valorem taxation to any "historic site," which for purposes of this section means a structure that has been designated as a landmark, protected landmark, or as a contributing structure in a historic district pursuant to article VII of chapter 33 of this Code ("Historic Preservation Ordinance").

(b) Eligibility. A property is eligible for tax exemption under this section in accordance with the following:

(1) The tax exemption is only being sought for eligible work under subsection (e) of this section;

(2) The eligible work performed must be at a cost of at least 25 percent of the "base value," which for purposes of this section means the assessed value of the historic structure or improvements, not including the value of any land associated with the historic site;

(3) The eligible work is performed not earlier than five years before the application for tax exemption; and

(4) The eligible work is performed pursuant to a certificate of appropriateness granted by the Houston Archaeological and Historical Commission ("HAHC").

(c) Application. An application for tax exemption under this section shall be filed with the director of the Finance Department, or his designee ("director of finance") in the form prescribed by the director of finance, and shall contain documentary evidence, including photographs and other documentation, of:

(1) All completed work for which a tax exemption is sought;

(2) Itemized accounting of eligible costs, shown as distinct from any ineligible costs, associated with any interior and exterior construction for which a tax exemption is sought; and

(3) Compliance with the requirements of any certificates of appropriateness issued pursuant to the Historic Preservation Ordinance.

Any application that does not contain sufficient documentary evidence under this section, including insufficiently itemized accounting of eligible costs as show distinctly from ineligible costs, shall be rejected by the director of finance and considered incomplete.

(d) Procedure. The director of finance shall establish and promulgate procedures for the implementation of the exemption granted under this section, the review of applications for tax exemption pursuant to this section, including deadlines for submission and consideration of applications required for a tax exemption to be effective for the next tax year. The director of finance shall calculate the projected tax exemption in accordance with this section, and forward the recommendation and projected tax exemption to city council. The city council shall approve an application for tax exemption upon receipt of a recommendation and a projected tax exemption from the director of finance.

(e) Eligible work. The following work qualifies for tax exemption under this section:

(1) Restoration performed pursuant to a certificate of appropriateness granted under the Historic Preservation Ordinance;

(2) Repair or reconstruction of the historic portion of the structural components, which includes parts of a building such as walls, partitions, floors, ceilings; windows and doors; all components of a central air conditioning or heating system, whether within or adjacent to a building, including motors, compressors, pipes and ducts; plumbing and plumbing fixtures, such as sinks and bathtubs; electric wiring and lighting fixtures; chimneys; stairs, escalators, and elevators; interior sprinkler systems; fire escapes; and other components relating to the operation or maintenance of a building;

(3) Interior remodeling of the historic portion of the structure's paint, flooring, permanent coverings such as paneling or tiling;

(4) Professional services such as architectural, engineering, and other development fees; and

(5) Construction management and labor, materials, and reasonable overhead.

(f) Ineligible work. The following work does not qualify for tax exemption under this section:

(1) Appliances, consumer and industrial machinery, including machinery needed for the preparation and storage of food;

(2) Furniture, including cabinetry and countertops;

(3) Decks, fencing, retaining walls, swimming pools, and any exterior work such as sidewalks, driveways, and landscaping;

(4) Acquisition costs;

(5) Demolition and relocation costs;

(6) All costs, both exterior and interior, associated with the construction of a new addition or new construction, as those terms are defined in the Historic Preservation Ordinance;

(7) Work done outside the scope of a certificate of appropriateness required by the Historic Preservation Ordinance; and

(8) Work done pursuant to a certificate of remediation issued by the HAHC.

(g) Annual review of tax exemption. The director of finance shall conduct an annual review of each property granted an exemption under this section and may recommend revocation of the tax exemption granted under this section to city council if:

(1) The historic site is or has been the subject of a certificate of appropriateness issued pursuant to sections 33-247 or 33-250 of this Code;

(2) The owner of a historic site exceeds the scope of a certificate of appropriateness or takes any action without a certificate of appropriateness required by article VII of chapter 33 of this Code;

(3) The owner causes the property to be demolished by neglect under section 33-254 of this Code or as a dangerous building under chapter 10 of this Code; or

(4) City taxes assessed against the property are delinquent, as confirmed by the director of finance.

(h) Calculation of tax exemption. An exemption granted hereunder by the city council shall exempt the historic structure or improvements not including the value of any land associated with this historic site from ad valorem taxation and shall be computed on the following basis:

(1) If the said qualifying expenditures are at least 25 percent but less than 100 percent of the base value, then the exemption for each tax year on the assessed value of the structure shall be equal to the amount of the qualifying expenditures; or

(2) If the said qualifying expenditures are 100 percent or more of the base value of the improvements, then the exemption for

each tax year shall be one hundred percent of the assessed value of the historic structure or improvements not including the value of any land associated with this historic site.

In any event, however, the exemption granted to any historic site pursuant to this section shall be subject to a limitation in the form of a maximum dollar amount. The maximum dollar amount shall be the assessed value of the historic structure in the year following demonstration of completion of the restoration or preservation work and demonstration of the qualifying expenditures to the director of finance. The amount of the exemption allowed on a historic structure shall not exceed the aforesaid maximum dollar amount in any tax year for the duration of the exemption period.

(i) Term. An exemption granted under this section shall begin on January 1 of the year following the date that the director of finance makes the determination that the owner of the historic site has met all of the requirements of this section for an exemption. The duration of the exemption shall be for a period of 15 years if the restoration project receives no financial incentive from the city funded by municipal hotel occupancy taxes, or ten years if the restoration project receives a financial incentive from the city funded by municipal hotel occupancy taxes. The exemption shall be automatically continued as of January 1 of each year succeeding the year the exemption was first granted for the duration of the ten- or 15-year period. The exemption shall be continued in the event of a transfer of an ownership interest or a portion of an ownership interest in the historic structure during such ten or 15-year period.

(j) Recordation. A person who has an ownership interest in property that has been granted a historic site exemption from ad valorem taxation shall record a copy of the ordinance providing for such exemption in the form prescribed by the city attorney in the real property records of the county in which the property is located. Failure on the part of the applicant to deliver a copy of such recorded ordinance, showing the date of recordation in the appropriate real property records, to the director of finance within 90 days of the date of passage of the ordinance providing for a tax exemption shall cause the expiration of the exemption at the end of such 90-day period.

(k) Recapture. Tax receipts and tax certificates issued for any historic site receiving tax relief pursuant to this section shall be clearly marked: "Historic site—Subject to recapture of additional taxes under Code of Ordinances." Each year during which the property is granted tax relief, the director of finance shall note on his records the valuation which would have been made and the taxes that would have been due had the historic site not

qualified for tax relief under this section. If the historic site is subsequently damaged, demolished, or destroyed, or if the tax exemption is revoked under this section, then the property shall be subject to a recapture of taxes and subject to penalties and interest calculated under pertinent provisions of the Texas Tax Code. The additional tax shall be equal to the total amount of tax relief granted under this section over the life of the structure.. Such additional taxes shall be deposited in the Historic Preservation Fund. Until paid, there shall be a lien for additional taxes, penalty, and interest on the property granted tax relief under the provisions of this section. An obligation to pay recaptured taxes is extinguished by operation of force majeure. Force Majeure means: fires, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts, riots, and the acts of superior governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application, bankruptcy or an event that merely makes performance more difficult, expensive or impractical.

(l) A historic site for which an exemption has expired or has been withdrawn, revoked, or terminated may not requalify for a tax exemption under this section. Only one tax exemption at a time under this section may apply to a property.

(m) Notwithstanding any other provision of this code, a structure that has been designated as a landmark or as a contributing structure in a historic district pursuant to the Historic Preservation Ordinance and that is owned by the State of Texas or a political subdivision thereof is entitled to an exemption equal to 100 percent of the assessed value of the historic structure and the land necessary for access and use of such structure. If an application for an exemption pursuant to this subsection is granted prior to the adoption of the ad valorem tax rate for the tax year in which the application is granted, the exemption shall be effective as of January 1 of that tax year. If such an application is granted after the adoption of the ad valorem tax rate for the tax year in which the application is granted, the exemption shall be effective as of January 1 of the tax year following the date the application was granted. An exemption granted pursuant to this subsection shall remain effective until the property is sold."

Section 42. That Section 10-374 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"**Sec. 10-374. Administrative hearing.**

(a) If a property other than a dwelling is in violation of this division, the building official shall schedule a public hearing before the hearing officer to present evidence of the violation and to request any relief authorized by this article.

(b) If a dwelling is in violation of this division, the neighborhood protection official shall schedule a public hearing to present evidence of the violation and to request any relief authorized by this article. The hearing shall be scheduled before the commission unless the commission is unable to conduct the hearing on a date and at a time reasonably necessary to protect the health and safety of any occupants of the property or of the public in general, in which case the hearing shall be scheduled before the hearing officer.

(c) Neither the building official or the neighborhood protection official shall schedule a public hearing before the hearing officer or the commission to request any relief authorized by this article that involves the demolition of a landmark, protected landmark, archaeological site, or a building, structure, or object in a historic district, as those terms are defined in article VII of chapter 33 of this Code, without first obtaining a certificate of appropriateness as required by article VII of chapter 33 of this Code."

Section 43. That if any provision, section, subsection, sentence, clause or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their applicability to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 44. That the City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the city for

the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 552 of the Texas Government Code, and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 45. That the City Attorney is hereby authorized to direct the publisher of the Code of Ordinances, Houston, Texas, (the "Code") to make sure such nonsubstantive changes to the Code as are necessary to conform to the provisions adopted in this Ordinance, and also to make such changes to the provisions adopted in this Ordinance to conform them to the provisions and conventions of the published Code.

Section 46. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect on the thirtieth day next following the date of its passage and approval by the Mayor, except that the amendments to Section 44-5 of the Code of Ordinances in **Section 41** of this Ordinance shall not take effect for the current tax year but shall take effect on January 1, 2016.

PASSED AND APPROVED this 7th **day of** October**, 2015.**

Mayor of the City of Houston

Prepared by Legal Dept. GWD
SOI September 29, 2015 Assistant City Attorney
Requested by Patrick Walsh, P.E. Director, Planning & Development Department
L.D. File No. 0421000048002

AYE	NO	
✓		**MAYOR PARKER**
••••	••••	**COUNCIL MEMBERS**
✓		STARDIG
✓		DAVIS
✓		COHEN
✓		BOYKINS
✓		MARTIN
✓		NGUYEN
✓		PENNINGTON
✓		GONZALEZ
✓		GALLEGO
✓		LASTER
✓		GREEN
✓		COSTELLO
✓		ROBINSON
✓		KUBOSH
✓		BRADFORD
✓		CHRISTIE
CAPTION	ADOPTED	