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# Historic Preservation Ordinance

## Issues Statement

September 29, 2014



PLANNING &  
DEVELOPMENT  
DEPARTMENT

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

**Issue:** Currently, only 4 types of projects can be approved administratively by the Director. There are a number of relatively straightforward project types that are widely recognized as appropriate, but currently are required to receive HAHC approval. This approval necessitates significant and unnecessary investment of time as well as effort and expense on the part of the applicant, staff, and the HAHC. In 2013, the Department approved 18 out of the 400+ Certificate of Appropriateness applications administratively. So far in 2014, there have been approximately 12.

**Approach:** Broaden the scope of Administrative Approvals to: 1) Speed up the application process for applicants wishing to do minor, appropriate work; 2) Reduce number of applications HAHC must review monthly, allowing them to focus on the more complex projects; 3) Reduce significant staff and applicant time used to prepare applications for HAHC review.

### 2. Exemptions (Section 33-237)

**Issue:** The current ordinance allows an exemption from the need for a COA for some simple modifications; however, the ordinance leaves out this exemption for a number of simple modifications to several common features found on properties in the district.

**Approach:** Consider adding burglar bars, antennas, satellite dishes, fences and reroofing with in-kind materials as exempted items.

### 3. Exterior Features (Section 33-201)

**Issue:** The ordinance defines Exterior Features as “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 public right-of-way.” It is unclear from this definition that the “building material” includes the entire wall assembly, including shiplap. This is critical because removal of interior shiplap has a significantly negative impact on the structural integrity of the exterior wall. In some prior instances, the removal of interior shiplap has caused irreparable damage to contributing structures.

**Approach:** Consider whether the code should be amended to ensure that the structural integrity of the structure is preserved.

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

**Issue:** The current language requires that all Historic Districts created after the 2010 amendments have design guidelines. It sets forth the timeline and process for creating the guidelines and obtaining HAHC and Council approval. While it does not prohibit design guidelines for districts created prior to 2010, it does not set out a process for the creation of them. Furthermore, there is no process for the revising or amending design guidelines once adopted by Council. Finally, the ordinance is not clear if guidelines can be more or less stringent than the ordinance.

**Approach:** As there has been growing interest in the creation of design guidelines for districts that pre-

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date the 2010 ordinance change, the committee should consider providing a process for creating guidelines in those districts.

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

**Issue:** Administration of the process for creating recent historic districts illustrated some aspects of the Code that create confusion and could lead toward a district that is less than optimal. Examples include the limitation on the number of lots that can be included in an application, imprecise terminology, and confusion on what the Director's authority is regarding the configuration of the District following the survey period. In addition, some members of the community have expressed an interest in ensuring new district boundaries are more logical and cohesive.

**Approach:** Clarify terminology. Determine whether there should be a limitation that a district cannot contain more than 400 tracts. Clarify whether the Director may create more than one proposed district based on the returned support forms. Also, consider creating a process to add adjacent properties to existing districts upon petition by property owner(s).

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

**Issue:** There is currently no allowance for amending inaccurate classifications of structures in historic districts. For example, a structure may be misidentified in a district inventory, or new information comes to light that causes the original classification to come into question. Also, a contributing structure can become noncontributing through inappropriate or unapproved alterations. Finally, in at least one district, buildings that were less than 50 years old at the time of designation were classified as noncontributing even though they were built within the period of significance and do in fact contribute to the character and integrity of the district.

**Approach:** Research other cities' designation standards. Consider creating a process to change the classification of a structure in a historic district.

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

**Issue:** One way for a structure to qualify for protected landmark designation is to have been "constructed before 1905." As time progresses, that will require that structures be older and older in order to be designated based on age.

**Approach:** Consider changing the criteria to read "constructed more than 100 years ago."

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

**Issue:** There are three types of projects that, when they meet very narrowly defined criteria, *shall be approved* by the HAHC. The criteria are unclear and have been misinterpreted by applicants.

**Approach:** Examine the criteria and clarify exactly what is allowed in order to be considered a Shall Approve. Consider whether Shall Approves are necessary and, if so, should they be eligible for administrative approval.

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## 9. Certificate of Appropriateness application requirements (Sections 33-222 and 33-238)

**Issue:** The ordinance is highly specific on what is required to be submitted with an application for a Certificate of Appropriateness. However, there are occasions where more or less information is necessary to complete an informed analysis of the applications. For example, existing application requirements for demolition and relocation call for the same level of documentation for both a determination of ‘economic hardship’ as well as under ‘unusual and compelling circumstances; however, different information is needed for these circumstances.

**Approach:** Consider changes that allow the Director to adopt administrative procedures and determine the application requirements, as needed.

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

**Issue:** Several criteria for alterations and additions are unclear. Currently, Criterion 9 requires that the Houston Archaeological and Historical Commission make two somewhat distinct findings in order to authorize a Certificate of Appropriateness. First, that an alteration or addition does not destroy significant historical exterior elements, and second, that the alteration or addition is compatible with the existing neighborhood. In addition, Criterion 10 is unclear that “existing setback” means “existing setback for contributing structures.” Finally, it is often difficult to assess whether Criterion 11 has been met.

**Approach:** Consider revising Criteria 9, 10, and 11 to provide more clarity.

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

**Issue:** Two of the five criteria for New Construction refer to land uses whose definition are unclear. Criteria 4 and 5 address the overall height of a structure, depending on whether the structure is “used for residential purposes” or “used for commercial purposes.” There is no criterion that addresses a structure that is used for any other type use than those two (for instance, a new church or school.). This creates confusion as to how to review projects that might not be obviously residential or commercial in use. A few examples of structures that cause problems for staff to review are mixed-use structures. Finally, it is currently possible to apply for a new construction COA for sites that already have a contributing structure.

**Approach:** Examine the criteria and revise so that it addresses all types of structures that could be constructed in the historic districts, and resolves confusion regarding definitions of land uses that correspond to various criteria. Consider adding criterion that a new construction application may be accepted only if a buildable site is available; if there is currently a contributing building on the site, the application will not be accepted until demo/relocation has been approved.

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

**Issue:** The loss of contributing structures through demolition or relocation has a detrimental impact on an historic district. The existing criteria for both of these actions provides limited direction to staff on how to review applications based on “economic hardship” or “unusual or compelling circumstances.”

**Approach:** Research other cities’ criteria for reviewing these applications. Consider revising review

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criteria language to assist the applicant, staff and the Commission to make more informed decisions based on better information. Clarify the difference between relocating a structure on-site versus relocating it off-site.

### **13. Allow for a Certified Local Government**

**Issue:** Changes to the ordinance are needed to make the city eligible for CLG status, and therefore eligible for state/federal preservation grants and technical assistance.

**Approach:** Consider language that allows the city to become a Certified Local Government.

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

**Issue:** The city's current tax exemption program is intended to provide an incentive toward preservation activities. Currently, however, home additions above and beyond preservation of the existing structure receive tax exemption benefits. In addition, in some cases, homeowners who have violated COA requirements become eligible for the exemption, since the HAHC may grant a retroactive COA in order to prevent further deterioration of the historic structure. Finally, the code includes inconsistent terminology between chapters. Ch. 44-5 requires that qualifying work done to 'potentially contributing' structures have the effect of reversing incompatible alterations, although 'potentially contributing' has been eliminated as a building classification under Ch 33.

**Approach:** Consider changes to the tax exemption qualifying expenditures and eligibility requirements.

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

**Issue:** The requirements for positions 6 and 8 are unclear. The Commission is one of very few commissions that has term limits. Adding additional technical expertise or background on the commission could also be considered.

**Approach:** Consider revising the description of positions 6 and 8, eliminating term limits, and adding technical expertise to the commission.

### **16. Appeals (Section 33-253)**

**Issue:** Currently, applicants may appeal a decision made by the HAHC to the Planning Commission and ultimately as a Rule 12 appeal to the City Council. Appellants frequently introduce new information at Planning Commission that was not provided to HAHC for their review.

**Approach:** Consider revising the process.

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

**Issue:** The penalty for illegal demolition is currently a 2 year prohibition on permit issuance. This may be inadequate.

**Approach:** Consider increasing the penalty.