

Historic Preservation Ordinance Issues Statement

January 28, 2015



**PLANNING &
DEVELOPMENT
DEPARTMENT**

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

This item is closed out.

2. Exemptions (Section 33-237)

This item is closed out.

3. Exterior Features (Section 33-201)

This item is closed out.

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

Proposed Change (11/10/2014): It is general consensus that Design Guidelines, which have been developed with significant public engagement, reviewed and recommended for approval by the HAHC, and adopted by the City Council, will provide valuable information that will inform the decisions made by applicants, staff and the HAHC. In preparing a recommendation for the Committee, staff has compiled some information on the subject (see attachment entitled Design Guidelines Information). From this information, staff has developed several questions they believed were important to the discussion:

- Should Design Guidelines be completed for every district created before 2010? By what measure are districts selected or prioritized?
- Who participates in the Guidelines development process? What constitutes a Stakeholder? How are all the district stakeholders engaged? How is adequate public participation measured?
- How detailed should the guidelines be? Can they be more/less restrictive than the Code? What should be the timeline for completing them?
- What role does the Commission or City Council play in the creation process? Can the public request either body to amend Guidelines?

Based on the information compiled, as well as conversations with the Committee and comments from the public, staff has this recommendation:

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

- *The amount of CofA activity in the district,*
- *The degree to which additional guidance would be beneficial to the property owners in the district, and*
- *The degree to which the guidelines would assist the staff and Commission in decision-making on applications.*
- *The Department shall conduct a process that is open and transparent, which allows for input from all interested parties. It shall present a set of draft guidelines to the Commission within one year of the Commission's directive. If the department cannot complete the guidelines process within one year, the Director shall report back to the commission, providing a schedule for completion.*
- *The Department shall present the draft guidelines to the Commission at a public hearing. The Commission shall consider the guidelines and shall determine whether to recommend to City Council that they be adopted. Upon the recommendation of the Commission, the Director shall present the guidelines to City Council.*

Upon adoption, in the event of a conflict between the criteria in this division and the design guidelines, the design guidelines shall control (Sec 33-240(a)).

The amendment process will follow the process currently found in Sec 33-268.

Committee Discussion (11/10/2014): The Committee began their discussion by agreeing that Guidelines should not take precedence over the Code language; they should be subordinate to it. Guidelines should illustrate what the Code requires. If the guidelines end up being rules, then Design Standards would be a better name.

The Committee asked why the Design guidelines created by Jonathan Smulian are no longer used. Staff explained that those guidelines were created before the 2010 changes to the Code and that they include some recommendations that are contrary to those changes. There had been instances where applicants became confused by the Guidelines and staff believed that it was best to remove them from distribution. Those Guidelines certainly contain some relevant material and will be a good starting point for future guidelines.

There was discussion that the guidelines should be clarification, not different from what the Code says. However, some committee members stated that they preferred specificity – a pattern book for allowable changes. Concern was expressed that these Guidelines should not encourage people to build right up to the edge of the rules. The ordinance does not allow property owners to build the biggest house on the lot – it requires that it be compatible with contributing historic structures and character.

The Committee agreed that the public process is crucial. There should be input from all stakeholders. There was discussion about what makes someone a stakeholder and some committee members believe that it includes builders and architects that may not presently own property in the districts. Other members of the committee believed that only property owners should be considered stakeholders.

Public Comment (11/10/2014): Various members of the public had these comments:

- Character is irreplaceable. Guidelines should be guidelines that give leniency on either side. Not standards. Have one set that covers all districts and specific addendums per district.
- Guidelines must be specific. Property owners must know what they can do.

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- The Old Sixth Ward's Design guidelines may be amended by the HAHC and property owners in that district request that the committee not change that. They do not want to be grouped with other districts.

Proposed Change (12/01/2014):

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

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

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

The Guidelines should encourage behavior that supports the Ordinance's intent. The overriding goal should be to preserve the character of the district. The guidelines should allow adequate flexibility so as to encourage diversity of construction while still adhering to the requirement that such construction be compatible and contribute to the historic character of the district.

The Department shall present the draft guidelines to the Commission at a public hearing. The Commission shall consider the guidelines and shall determine whether to recommend to City Council that they be adopted. Upon the recommendation of the Commission, the Director shall present the guidelines to City Council.

The Design Guidelines shall conform to the Criteria in the Code.

Upon adoption, in the event of a conflict between the criteria in this division and the design guidelines, the criteria shall control (Sec 33-240(a)).

The amendment process will follow the process currently found in Sec 33-268.

Committee Discussion (12/01/2014): The Committee continued to discuss the role and contents of the Design guidelines. They questioned whether the DGs should be "best practices" or include more detail. It was agreed that DGs should not be a vehicle for weakening the ordinance; they should illustrate what the code says. There was continued debate on how to deal with potential conflicts in direction. Does the code stipulate that the more restrictive should apply? Staff pointed out that certain aspects of the OSW and Starkweather, DGs have language that is more restrictive than the Code. Specifically, in the Starkweather DGs, it says: "*New construction that is taller or wider than Contributing homes in the neighborhood is not allowed.*" and "*Additions to the side of the house may not be taller than the original house and should be located toward the rear of the house.*"

Public Comment (12/01/2014): The guidelines need to provide ranges of measurements. Don't make the rules that are "more stringent" take precedence; doing so can be a trap for restricting what a homeowner can do.

Proposed Change (12/15/2014):

The Commission may direct the Department to complete Design Guidelines for one or more districts. In

determining which districts should have design guidelines and/or in prioritizing the order in which the guidelines will be created, the Commission will consider:

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

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

The Guidelines should encourage behavior that supports the Ordinance's intent. The overriding goal should be to preserve the character of the district. The guidelines should allow adequate flexibility so as to encourage diversity of construction while still adhering to the requirement that such construction be compatible and contribute to the historic character of the district.

The Department shall present the draft guidelines to the Commission at a public hearing. The Commission shall consider the guidelines and shall determine whether to recommend to City Council that they be adopted. Upon the recommendation of the Commission, the Director shall present the guidelines to City Council.

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

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

The amendment process will follow the process currently found in Sec 33-268.

Committee Discussion (12/15/2014):

The committee proposed changing the statement regarding conflict between the Code and the Design Guidelines to read: ***Upon adoption, in the event of a conflict between the criteria in this division and the design guidelines, the ~~more restrictive~~ Design Guidelines shall control (Sec 33-240(a)).***

The Committee discussed the process for creating Design Guidelines and recommended a professional be retained to work with the community to create Guidelines that were workable and illustrated the code without weakening it. Staff explained that the Design Guidelines for the three districts created after the 2010 change had been developed with the help of a professional consultant and that staff had every intent of using a professional to develop future Guidelines. The committee agreed that using consultants was a good idea.

With this latest change, this issue has been closed out.

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).

Proposed Change (01/12/2015):

- Change the terminology "Proposed District" to "Survey Area" throughout the application procedures. Use a consistent "support form" instead of "response cards", "cards" or "ballots"
- Remove the limitation that the Survey area shall not include more than 400 tracts of land, or if a proposed district falls entirely within one platted subdivision, the boundaries may include up to 500 tracts
- Specifically allow the Director to modify the boundaries of the Survey area into one or more Proposed Districts, based on the response of the support forms
- Create a process by which properties adjacent to and outside a district may be added upon petition

Committee Discussion (01/12/2014):

The Committee generally agreed with the recommendations from the staff. There was concern about how much the district shape could change after the survey area ends. It was suggested that if a District shape is significantly altered before it is sent to the HAHC for review, then the HAHC should have the option to defer the decision for more public comments. In that case, it would be necessary for the 180 days to be extended. The Committee agreed that the Commission should be able to extend the time if necessary. The other issue the Committee discussed is that no response on a survey card means "no." They discussed whether it should be counted as a "yes" or whether it should be neutral. Commissioner Mod was going to request information from the THC to see how it is handled in most other cities.

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

This item is closed out.

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

This item is closed out.

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: Clarify the definition of a Shall Approve to accomplish the following:

- Make Shall Approves an administrative approval by the Director.
- Limit the number of Shall Approves per structure to one for the life of the structure.
- Clarify that #4 is not a separate criterion, but instead a required part of each of the three Shall Approve scenarios.

Current Language:

The HAHC shall issue a certificate of appropriateness for the alteration, rehabilitation, restoration, or addition to a contributing structure in an historic district upon finding that the application satisfies the criteria in subsection (a) or the following criteria, as applicable. The HAHC shall approve an application for an addition to a contributing structure that satisfies the following criteria:

- (1) An addition taller than any point of the roof of the structure conforms to the following standards:*
 - a. The addition does not encroach into the front half of the existing structure, measured from the front façade of the existing structure to the farthest point of the rear of the existing structure from the front façade;*
 - b. The plate height of the addition does not exceed 1.25 times the plate height of the existing structure; and*
 - c. The roof of the new addition does not deviate from the roof pitch of the existing structure.*
- (2) For new additions that are not taller than any part of the roof of the structure and are adjacent to the sides of the front façade of the existing structure, the new addition conforms to the following standards:*
 - a. The addition does not encroach into the front thirty percent of the total depth of the existing structure, measured from the front façade of the existing structure to the farthest point of the rear of the existing structure from the front façade;*
 - b. The addition is not wider, as measured from the side adjacent to the front façade, than half of the distance that the addition is actually set back from the front facade. For example, if an addition is set back forty percent of the total depth of the existing structure from the front façade, the addition may not be wider than twenty percent of the total length of the existing structure; and*
 - c. The roof of the new addition does not deviate from the roof pitch of the existing structure except for cross gable roofs.*
- (3) For new additions that are not taller than any point of the roof of the existing structure and do not encroach past the farthest point of the rear of the existing structure from the front façade, the roof of the new addition does not deviate from the roof pitch of the existing structure except for cross gable roofs.*
- (4) No original building materials are removed from the portion of the structure from the front façade to the addition.*

Proposed Language:

The Director may approve a certificate of appropriateness for one of the following additions to a contributing structure in a historic district. Only one of the following additions may be approved for each structure over the life of that structure.

- (1) For a new partial second story addition on top of a one-story structure that does not extend outside the footprint of the existing structure and conforms to the following standards:
 - a. The addition does not encroach into the front half of the existing structure, measured from the front façade of the existing structure to the farthest point of the rear of the existing structure
 - b. The plate height of the addition does not exceed the plate height of the existing structure;
 - c. The roof pitch of the new addition does not exceed the roof pitch of the existing structure; and
 - d. No other alterations are proposed for the structure except removal of roof materials at the location the addition connects to the structure, as well as removal of inappropriate materials and replacement with appropriate materials.
- (2) For new side additions adjacent to only to one side of the existing structure, that does not extend past the existing rear wall of that side and conforms to the following standards:
 - a. The addition does not encroach into the front thirty percent of the total depth of the existing structure, measured from the front façade of the existing structure to the farthest point of the rear of the existing structure;
 - b. The addition is not wider, as measured from the side adjacent to the front façade, than half of the distance that the addition is actually set back from the front facade. For example, if an addition is set back forty percent of the total depth of the existing structure from the front façade, the addition may not be wider than twenty percent of the total length of the existing structure;
 - c. The roof pitch of the new addition does not deviate from the roof pitch of the existing structure; and
 - d. No other alterations are proposed for the structure except removal of materials at the location the addition connects to the structure, as well as removal of inappropriate materials and replacement with appropriate materials.
- (3) For a new addition no taller or wider than the existing structure that begins at the existing rear wall of the structure and conforms to the following standards:
 - a. The addition does not encroach into the existing structure
 - b. The roof pitch of the new addition does not deviate from the roof pitch of the existing structure; and
 - c. No other alterations are proposed for the structure except removal of materials at the location the addition connects to the structure, as well as removal of inappropriate materials and replacement with appropriate materials.

Committee Discussion (10/13/2014): The committee agreed that there is a great deal of confusion regarding this item. They also determined that the Shall Approves require a longer discussion and deferred this discussion until a later time.

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

This item is closed out.

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.

Comments from the committee: (Elliott) The Commission should take the environment into consideration when considering COA applications. Refer to Criterion 4 for Alterations: The proposed activity must preserve the distinguishing qualities or character of the building, structure, object or site and its environment.

Comments from the committee (10/27/2014): (Elliott) expressed concern that the Code might need to address criteria for additions/alterations to existing non-contributing structures.

Proposed Change (12/01/2014):

- (a) 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:
- (9) The proposed design for any exterior alteration or addition must not destroy significant historical, architectural or cultural material that are important in defining the building’s historic character (including siding, windows, doors, etc.);
 - (10) The proposed design shall be compatible with the massing, size, scale, material and character of the property and the area in which it is located and architectural features to protect the historic integrity of the property and its environment;
 - (11) The setback of any proposed addition or alteration must be compatible with the typical setbacks of existing contributing structures along the blockface and opposing blockface(s); and
 - ~~(11) The proposed activity will comply with any applicable deed restrictions.~~

Committee Discussion (12/01/2014): The committee noted that the criteria does not include the word “height.” Staff explained that it was included in the words “massing, size, scale.” The committee discussed the need for adding the word “height” but decided that no change was needed. Height is covered by size.

Comments from the public: The word “Typical” needs definition.

Proposed Change (12/15/2014):

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

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- (10) The proposed design shall be compatible with the massing, size, scale, material and character of the property and the area in which it is located;
 - (11) The setback of any proposed addition or alteration must be compatible with the typical setbacks of existing contributing structures along the blockface and opposing blockface(s); and
 - ~~(11) The proposed activity will comply with any applicable deed restrictions.~~

Committee Discussion (12/15/2014): The Committee voiced significant concern for how CofA applications would be considered in the time period between now and the establishment of Design Guidelines. It was suggested that one solution might be to develop a policy document to be used as guideline in the interim. Specifically, that policy document could address the issue of massing and how the criteria are applied to it. How is massing demonstrated by the applicant? Should there be a standard way of illustrating the appearance from the street. Staff suggested that most applicants can provide a three-dimensional rendering that illustrates the structure's appearance from six feet above the center of the street. This proves helpful, but is not a failsafe way of viewing the structure as it provides only one line of sight.

The Committee discussed the formula suggested by a member of the public early in the Committee discussion.

"Most have resolved the confusion by establishing a frontal plane area of the existing condition that indicates a constructed area as a percentage of the total frontal plane of the lot width times the existing building height. Proposed additional taller construction is allowed up to the typical height as long as the percentage of the total constructed area is no greater than the original existing percentage. New construction to the side of an existing structure could be allowed as long as the height was not increased. If the height is also increased, the additional constructed area frontal plane of the new construction to the side would also be included in the maximum percentage calculation."

Staff agreed to review this standard against recent non-controversial applications and provide the results at the next meeting.

Proposed Change (01/12/2015):

The committee has raised an excellent point about the consideration of Certificates of Appropriateness in the time between now and when the Design Guidelines are completed. Staff agree that additional illustration of the Code is appropriate and will enhance the existing Online Historic Preservation Manual. We will present the enhancements to the HAHC within the first months of this year.

Staff has compared the formula provided by Kent Marsh with the additions that were on the December, 2014 agenda. The results are attached in a document entitled "Frontal Plane Analysis." Upon careful review of the formula and the results, staff believes that while the Frontal Plane Analysis can provide significant benefit, it will be challenging to find a single formula that works across all districts. Staff recommends that any formula be developed as part of the Design Guidelines for specific districts.

As a result of this analysis, staff recommends the committee reconsider changes proposed on December 15, 2014, as follows:

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

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- (10) The proposed design shall be compatible with the massing, size, scale, material and character of the property and the area in which it is located;
 - (11) The setback of any proposed addition or alteration must be compatible with the typical setbacks of existing contributing structures along the blockface and opposing blockface(s); and
 - ~~(11) The proposed activity will comply with any applicable deed restrictions.~~

Committee Discussion (01/12/2014):

The Committee generally agreed with this proposal. Commissioner Hellyer reiterated that it will be incumbent on the HAHC to ensure that the Design Guidelines do not weaken the ordinance.

This item is closed out.

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

Issue: Two of the five criteria for New Construction refer to land uses whose definitions 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.

Comments from the committee: (Elliott) Consider whether it is appropriate to compare the height of a new two-story structure to contributing two-story structures if two-story structures are not typical for the district.

Comments from the public: The word “Typical” needs definition.

Proposed Change (12/01/2014):

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 new construction must match the typical setbacks of existing contributing structures along the blockface and opposing blockface;
- (2) The exterior features of new construction must be compatible with the exterior features of existing contributing structures in the historic district along the blockface and opposing blockface; and
- (3) The proportions of the new construction, including height, width, scale, and roof pitch, must be compatible with the typical proportions of existing contributing structures along the blockface and opposing blockface.

~~(4) The height of the eaves of a new construction intended for use for residential purposes must not be taller than the typical height of the eaves of existing contributing structures used for residential purposes in the historic district; and~~

~~(5) The height of new construction intended for use for commercial purposes must not be taller than the typical height of the existing structures used for commercial purposes in the historic district.~~

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

Committee Discussion (12/01/2014): The committee discussed the need for a working definition of typical. Is it the average, the mean, or within a range? If something happens once in the district, is it typical? One suggestion was to add a criterion for: *“the height of the eaves and ridges of the new construction may be no taller than the eaves and ridges of contributing structures on the blockface.”* The committee discussed the difference between the words “blockface”, “district” and “nearby area.” Which should be used? Does using “blockface” preclude a two story home from being constructed on a block with only one story houses? In addition, there was discussion about how side setbacks are treated, especially on the corner lots. It was agreed upon that the side of a corner should be in line with the side setbacks on other corner lots along that block. The Director acknowledged that more work is needed on this issue.

Comments from the public: The committee should consider using blockface when there are contributing structures on that block, but the entire district when there are none. Massing, scale and side setback should be considered equally important – especially on corner lots.

Proposed Change (12/15/2014):

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 new construction must match the typical setbacks of existing contributing structures in the historic district;
- (2) The exterior features of new construction must be compatible with the exterior features of existing contributing structures in the historic district;
- (3) The proportions of the new construction, including height, width, scale, and roof shape and pitch, must be compatible with the typical proportions of existing contributing structures in the historic district.
- (4) The height of the eaves and ridge of new construction that includes any residential use intended for use for residential purposes must not be taller than the typical height of the eaves and ridge of existing contributing structures used for residential purposes in the historic district; and
- (5) The height of new construction intended for use for non-residential commercial purposes must not be taller than the typical height of the existing structures used for commercial purposes in the historic district.

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

Note: Add a definition for typical to the definitions page.

Committee Discussion (12/15/2014): The Committee discussed the difference between “typical structures in the historic district” versus “typical structures along the blockface.” The Director explained that there had been considerable public comments on this issue. Changing the word to blockface allowed for

more contextual review but created a criteria that tended to be more restrictive than what it is currently. He stated that he believed that maintaining the language that referenced historic districts was in keeping with the intent of this review. Generally, the committee was satisfied with using “historic district,” and allowing Design Guidelines to take it further if the community desired.

The Committee discussed Criteria #5 at length and suggested this change: “...typical height of the existing structure that does not include residential use.” .

The Committee was in agreement that the intent should be for the heights of structures to be compared with like-type structures. For instance, structures that look like a house should have heights typical of other structures that look like a house. Structures that look to be commercial should have heights no greater than other contributing structures that look commercial. Staff agreed to develop language that said that. The Committee expressed concern that the criteria not allow a commercial building be built in the middle of a residential street.

For the definition of typical, the Committee suggested that it be “mode minus 10% of the extremes, measured by finished floor.” The Design Guidelines should define what finished floor should be.

Proposed Change (01/12/2014): After listening to the committee discussion and comments from the public, staff understands that context is an important consideration when reviewing applications for Certificates of Appropriateness for new construction. Staff proposes that the best way to consider context is to compare new construction against contributing structures in the immediate vicinity, ergo on the blockface. However, this change is not intended to prevent the construction of a two-story structure on a blockface that has only one-story contributing structures. Therefore staff recommends the following:

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 new construction must match the typical setbacks of existing contributing structures along the blockface and opposing blockface;
- (2) The exterior features of new construction must be compatible with the exterior features of existing contributing structures in the historic district along the blockface and opposing blockface; and
- (3) The proportions of the new construction, including height, width, scale, and roof pitch, must be compatible with the typical proportions of existing contributing structures along the blockface and opposing blockface.
- ~~(4) The height of the eaves of a new construction intended for use for residential purposes must not be taller than the typical height of the eaves of existing contributing structures used for residential purposes in the historic district; and~~
- ~~(5) The height of new construction intended for use for commercial purposes must not be taller than the typical height of the existing structures used for commercial purposes in the historic district.~~

~~Nothing in the foregoing shall be construed to prevent a two-story structure from being constructed on a blockface with only one-story contributing structures on the blockface or opposing blockface, unless otherwise stated in a district's Design Guidelines.~~

Proposed Change (01/28/2014): Throughout its discussion of this issue, the Committee has weighed the difference between “Blockface” and “District” and has been unable to come to a conclusion. Each option has its own advantages and each poses its own set of challenges. Neither option is without

complications. As an alternative, staff is proposing a third option to be considered as a compromise between the two initial considerations.

OPTION A: *Historic District*

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 new construction must match the typical setbacks of existing contributing structures in the blockface;
- (2) The exterior features of new construction must be compatible with the exterior features of existing contributing structures in the historic district;
- (3) The proportions of the new construction, including height, width, scale, and roof shape and pitch, must be compatible with the typical proportions of existing contributing structures in the historic district;
- (4) The height of the eaves and ridge of new construction that includes any single-family residential use must not be taller than the typical height of the eaves and ridge of existing contributing structures originally used for single-family residential purposes in the historic district;
- (5) The height of the eaves and ridge of new construction for a use identified as religious and educational under section 26-492 of this Code must not be taller than the typical height of the eaves and ridge of existing contributing structures originally used for religious or educational purposes in the historic district. If no existing contributing structures originally used for religious or educational purposes exist within the historic district, the HAHC may determine the appropriate height based on an evaluation of the unique characteristics of the historic district; and
- (6) The height of new construction intended for use other than single-family residential, religious or educational must not be taller than the typical height of the existing structures used for a purpose other than single-family residential, religious or educational in the historic district.

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

OPTION B: *Blockface:*

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 new construction must match the typical setbacks of existing contributing structures along the blockface and opposing blockface;
- (2) The exterior features of new construction must be compatible with the exterior features of existing contributing structures along the blockface and opposing blockface; and
- (3) The proportions of the new construction, including height, width, scale, and roof pitch, must be compatible with the typical proportions of existing contributing structures along the blockface and opposing blockface.

Nothing in the foregoing shall be construed to prevent a two-story structure from being constructed on a blockface with only one-story contributing structures on the blockface or opposing blockface, unless otherwise stated in a district's Design Guidelines.

OPTION C: *Immediate Vicinity*

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 new construction must match the typical setbacks of existing contributing structures along the blockface and opposing blockface;
- (2) The exterior features of new construction must be compatible with the exterior features of existing contributing structures within adjacent blocks (or) within the surrounding nine-block area; and
- (3) The proportions of the new construction, including height, width, scale, and roof pitch, must be compatible with the typical proportions of existing contributing structures within adjacent blocks (or) within the surrounding nine-block area.

Nothing in the foregoing shall be construed to prevent a two-story structure from being constructed on a blockface with only one-story contributing structures on the blockface or opposing blockface, unless otherwise stated in a district's Design Guidelines.

Definition of Typical (applies to all options):

Typical means a range of measurements commonly found within the identified area for the height, setback, or other physical features of contributing structures and excludes the extremes on both ends.

OR

Typical means a range of measurements commonly found within the identified area for the height, setback, or other physical features of contributing structures. The range shall be one standard deviation from the existing contributing structures with the same number of stories within the historic district.

In both cases, the definition of typical may be modified to accommodate unique characteristics of a historic district upon adoption of design guidelines for the historic district.

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 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.

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 upon finding that the application satisfies one or more of the following criteria:

- (1) The landmark, protected landmark, or contributing structure:
 - a. Has architectural or historical value independent of its physical location that will not be diminished with relocation;

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- b. Can be moved without significant damage to its physical integrity;
 - c. Will be relocated to an area that is compatible with the historical and architectural character of the landmark, protected landmark, or contributing structure; and
 - d. If located in an historic district, can be relocated without significantly diminishing the integrity of the historic district in which it is located.

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

(3) The applicant has established an unreasonable economic hardship pursuant to the criteria of [section 33-247\(c\)](#) of this Code; or

(4) The applicant has established unusual or compelling circumstances pursuant to [section 33-247\(d\)](#) of this Code.

(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.

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 subject to the establishment by the applicant of an unreasonable economic hardship or the establishment of an unusual and compelling circumstance.

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

- (1) A certified appraisal of the value of the property conducted by a certified real estate appraiser;
- (2) The assessed value of the land and improvements thereon according to the two most recent assessments 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 of the property for sale or rent that are less than a year old at the time of the application;
- (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;
- (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;

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- 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.
- (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, without regard to whether the return is the most profitable return, including without limitation, whether the costs of maintenance or improvement of the property exceed its fair market value;
 - (2) 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 efforts to find a purchaser or lessee interested in acquiring the property and preserving it 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 surrounding 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 determines by a preponderance of credible evidence that the applicant has demonstrated an unreasonable hardship or that an unusual or compelling circumstance exists, the HAHC shall issue a certificate of appropriateness for demolition.
- (f) If the HAHC does not issue a certificate of appropriateness for demolition pursuant to subsection (a), the director and the applicant shall explore alternatives to demolition. 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; or
 - (3) Any other reasonable means of preserving the property, structure, building or object's historic or architectural value.

13. Allow for a Certified Local Government

Issue: The city is not currently designated as a Certified Local Government. The benefits of being designated a CLG are:

- 1) Eligibility for matching grants (he said range of \$5 – 40,000) for historic resources/building surveys and
- 2) Training and technical support from Texas Historical Commission.

In Texas, a city or a county may apply to become a Certified Local Government (CLG). To qualify as a CLG, a local government must:

- Enforce state or local legislation that protects historic properties
- Establish a qualified review commission composed of professional and lay members
- Maintain a system for surveying and inventorying historic properties
- Provide for public participation in the historic preservation process, including recommending properties to the National Register of Historic Places.

Approach: The application for designation as a CLG is attached (see attachment entitled Texas Historical Commission). It is currently unclear what, if any, specific Code changes are required in order to become a Certified Local Government. Staff will continue discussions with the Texas Historical Commission and make recommendations at the next meeting of the committee.

Committee Discussion (10/13/2014): The committee agreed to defer this discussion until a later time.

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. It is unclear exactly what expenses are included in the calculation. Currently, , home additions above and beyond preservation of the existing structure receive tax exemption benefits – including kitchen appliances and granite countertops. 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.

Committee Discussion (10/27/2014): (Mod) The City should follow the eligibility requirements for state and federal guidelines. Essentially, the idea is that if you turn the structure upside down, anything that falls out would not count. That means that new kitchens and bathrooms do count. However, additions do not. (Elliott) Check whether land value is included. The committee asked to have a report from the City identifying the location and value of applications for tax exemptions that have been granted in recent years. The committee expressed dissatisfaction with the idea that property owners who had received a CofA after exceeding an approved scope of work would be eligible for tax exemptions. See Issue # 18 (Enforcement) for options on this issue.

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

This issue is closed out.

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)

This item is closed out.

18. Enforcement (Section 33-203)

Issue: The City does not have a fully coordinated system to enforce the Code and respond to violations of it. In addition, the current structure of fines provides little incentive for compliance. Finally, in situations where a property owner exceeds the scope of a CofA, and the action leaves the historic structure in jeopardy due to weather or potential structural failure, the Commission often has no choice but to grant a CofA in order to allow the construction to be completed. This may allow bad actors to willingly damage buildings, knowing that there can be no penalty for doing so.

Approach: Fully research and work with other City enforcement offices to develop a coordinated approach to enforcement. Research other Texas cities to determine the maximum penalties for violations. Explore the creation of a “Corrective” CofA that will allow construction on the structure to continue, so that the historic material is protected, but will not allow the owner to benefit from the tax benefits of exceeding the scope.

19. Deferrals (Section 33-239)

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

Issue: Currently, the code requires applicants to post a sign on the property for demolition and relocation only. As a result, neighbors are often unaware that an application for a CofA for additions or alterations of contributing structures has been submitted. This significantly limits the public’s ability to provide comment to the HAHC. This situation may be exacerbated with the movement of some CofA applications to Administration Approvals.

Approach: Consider requiring the placement of a sign on the property for all CofA applications, including those identified in Issue 1 of this paper.

Comments from the public: Demolition is defined as “an act or process that destroys in whole or in part any building, structure, object or site.” CofAs that allow the removal of any part of the structure are allowing for “partial demolition” and require the same posted notice as full demolitions.

21. Painting brick (Section 33-201)

This issue is closed out.

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