

# Historic Preservation Ordinance Issues Statement

February 11, 2015



**PLANNING &  
DEVELOPMENT  
DEPARTMENT**

## Index of Issues

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

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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)

This item 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,

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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 issued 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 agreed to request information from the THC to see how it is handled in most other cities.

**Public Comment:** It is unfair to the residents of an area to count no response as a No vote. The 67% was negotiated at the Council table and it would be unfair to change it now.

**Committee Discussion (02/04/2015):** Commissioner Mod reported her findings from the Texas Historical Commission. She related that comparing the THC’s process and approval criteria is not valuable because the programs are “apples and oranges.” The Committee discussed reducing the threshold of support from 67% to 51%, but decided against it. The Committee suggested that only returned support forms be counted. They reiterated that the most important thing to consider was creating a district with a more cohesive and rational boundary.

**Recommendation (02/11/2015):** After the deadline for returning cards has passed, the director will determine if 67 percent of the support forms favor the designation of the district. If so, the application will be considered final and the boundaries of the survey area shall be the boundaries of the proposed historic district. If the director determines that less than 67 percent of the returned forms support the designation of the district, he/she may modify the boundaries to create the district out of non-contiguous areas. If the HAHC believes they need additional time to consider the district and/or to received additional public comment, they may vote to extend the 180-day protect for an additional 30 days. They may extend the protection for a maximum of two 30-day periods. The Director shall make every attempt to create a district with compact and rational boundaries.

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.

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## 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;**

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- 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.

**Proposed Change (02/04/2015):**

The Director ~~may~~ shall 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 second floor 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

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- 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~~ 20 feet from the front façade, the addition may not be wider than ~~twenty percent of the total length of the existing structure~~ 10 feet;
  - 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:
- d. The addition does not encroach into the existing structure
  - e. The roof pitch of the new addition does not deviate from the roof pitch of the existing structure; and
  - f. 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 (02/04/2015):** The Committee discussed whether the Shall Approves criteria is necessary at all. There have been only a handful of applications for them in recent years. Commissioner Hellyer advocated keeping them as they are a way that small projects can be assured of approval in a shorter time. Staff reminded the Committee that the Shall Approves have been moved to Administrative Approvals under item #1. The Committee admitted that there is confusion about whether a project that meets the Shall Approve criteria is deemed to meet the 11 criteria established for alterations and additions. Staff explained that Shall Approves are an exception to the 11 Criteria and do not meet them.

**Public Comments (02/04/2015):** members of the public in attendance agreed that there is confusion about why a small addition might meet one of the Shall Approves but would not meet the 11 criteria for alterations and additions.

**Proposed Change (02/11/2015):**

The Director shall 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.

- (4) 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:
- e. 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

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- f. The dimension of the plate height of the second floor addition does not exceed the dimension of the plate height of the existing structure;
  - g. The roof pitch of the new addition does not exceed the roof pitch of the existing structure; and
  - h. 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.
- (5) 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:
- e. 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;
  - f. The addition is not wider, as measured from the side adjacent to the front façade, than half of the distance that the addition is set back from the front facade. For example, if an addition is set back 20 feet from the front façade, the addition may not be wider than 10 feet;
  - g. The roof pitch of the new addition does not deviate from the roof pitch of the existing structure; and
  - h. 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.
- (6) 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:
- g. The addition does not encroach into the existing structure
  - h. The roof pitch of the new addition does not deviate from the roof pitch of the existing structure; and
  - i. 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.

## 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)

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

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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

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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.

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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.

**Committee Discussion (01/12/2015):** The Committee had extensive conversation about the blockface vs. district comparison. They weighted each alternative and considered the results and effects of each. There was no clear-cut recommendation. They suggested that Staff conduct more research on how other cities handle this issue.

**Public Comments (01/12/2015):** Two individuals commented that comparing the height of new construction with the typical heights of contributing structure on the blockface was too restrictive. They suggested that the benchmark should be the District.

**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;

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- (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.

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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.

**Committee Discussion (01/28/2015):** The Director presented the three options, as well as one additional option transmitted separately (identified as Option D). In addition, staff presented hypothetical maps illustrating the effects of the options in a variety of scenarios. Staff explained that some applicants want the comparison to be on the blockface because they are building a house next door to one of the largest houses in the District and blockface allows them to build taller. After considerable conversation, the Committee identified a consensus as such:

- 1) Setbacks should be compared to setbacks along the blockface.
- 2) Exterior features should be compatible within the Historic District. The term "exterior features" should be changed to "architectural elements."
- 3) Consider the definition of typical to be the first one listed (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.)
- 4) *Include in the final language that "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 (02/11/2015):** Based on the Committee conversations, public comment and review of other city's ordinances, staff recommends this language.

1. The new construction must match the typical setbacks of existing contributing structures on 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;
3. The proportions of new construction, including width, scale, roof shape and roof pitch, must be compatible with the typical proportions of existing contributing structures in the surrounding area;
4. The height of new construction may not exceed the typical height of existing contributing buildings in the surrounding area.

In determining the surrounding area, the Commission shall first consider the immediate blockface/opposing blockface. The commission may consider a broader geographic area within the historic district, greater than blockface/opposing blockface, when it deems it appropriate and necessary to achieve compatibility with the surrounding historic context consistent with the spirit of the ordinance.

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

Design guidelines may develop greater specificity for factors to consider in determining compatibility for new construction in individual districts.

## 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.

### Proposed Change (02/04/2014):

#### 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) For landmarks and protected landmarks:
    - a. Has architectural or historical value independent of its physical location that will not be diminished with relocation;
    - 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; and
    - d. If located in an historic district, can be relocated without diminishing the integrity of the historic district in which it is located.
  - (2) For contributing structures being relocated within the historic district
    - a. Can be moved without significant damage to its physical integrity; and
    - b. Will be relocated to an area that is compatible with and retains the distinguishing qualities, historical and architectural character, and integrity of the contributing structure and the district.
  - (3) For contributing structures being relocated outside of the historic district
    - (a) The applicant has established an unreasonable economic hardship pursuant to the criteria of section 33-247(c) of this Code; or
    - (b) The applicant has established unusual or compelling circumstances pursuant to section 33-247(d) 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 or natural event.

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- (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. 33-244. Same—Relocation of noncontributing structure.**

The HAHC shall issue a certificate of appropriateness for the relocation of a noncontributing structure within or into an historic district upon finding that the application satisfies the criteria in section 33-242 of this Code as if it were new construction.

**Sec. 33-245. Same—Relocation of a building, structure or object on archaeological site.**

The HAHC shall issue a certificate of appropriateness for the relocation of a building, structure or object within, into or out of an archaeological site upon finding that the application satisfies the following criteria:

- (a) The relocation will not destabilize any archaeological resources within or on the archaeological site; and
- (b) The relocation will comply with the requirements of section 33-246 of this Code.

**Sec. 33-246. Same—Excavation.**

The HAHC shall issue a certificate of appropriateness for the excavation of an archaeological site upon finding that the application meets the following criteria:

- (a) The excavation must be conducted so as to protect and preserve archaeological resources affected by, or adjacent to, the excavation; and
- (b) The applicant must commit to make reasonable efforts to mitigate and stabilize archaeological resources if they are disturbed.

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

The HAHC shall issue 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 upon demonstration based on a preponderance of credible evidence of an unreasonable economic hardship or unusual or compelling circumstance exists.

- (a) Determination of an unreasonable economic hardship shall be based upon the following criteria:
  - (1) The property is incapable of earning a reasonable return, without regard to whether the return is the most profitable return;
  - (2) 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) 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.

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- (b) Determination of the existence of an unusual or compelling circumstance shall be based upon the following criteria:
- (1) The owner has established that the structure or property has undergone significant and irreversible changes that have caused it to lose its historic, cultural, architectural or archeological significance, and its importance to the integrity of the district.
  - (2) Such changes were not caused either directly or indirectly by the owner, and were not due to intentional or negligent destruction or a lack of maintenance rising to the level of a demolition by neglect.
  - (3) For property located within a historic district, the applicant has identified definite plans for reuse of the property if the proposed demolition or relocation is carried out and such plans are compatible with the architectural, cultural, historical or archaeological character of the surrounding area.
- (c) If the HAHC does not issue a certificate of appropriateness for demolition pursuant to subsection (a), the director and the applicant shall have 90 days for which to explore alternatives to demolition. The applicant may not pursue a remedy through an appeal of the HAHC decision 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 upon demonstrating that the property meets the criteria for relocation in 33-243; or
  - (3) Any other reasonable means of preserving the property, structure, building or object's historic or architectural value.

**Committee Discussion (02/04/2015):** The Commission expressed concern that removing the requirements for application materials will confuse the applicant. Staff agreed to be very clear in the applications what evidence and documentation will help the applicant demonstrate their assertions for unreasonable economic hardship and unusual or compelling circumstance.

This item is closed out.

### 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

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- 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.

**Proposed Change (02/11/2015):** We have heard back from the Texas Historic Commission and they advise that our ordinance meets the criteria for being able to apply for a CLG.

This item is closed out.

#### 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

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Planning Commission that was not provided to HAHC for their review. When reversing a denial decision of the HAHC, the Planning Commission is not required to identify how the application meets ordinance requirements.

**Approach:** Consider revising the process.

**Proposed Change (02/04/2014):**

- When reversing a denial decision of the HAHC, the Planning Commission shall be required to identify how the application meets ordinance requirements.
- The appellant must give public notices in accordance with 33-238.1. (a sign posted on the property in question) not less than 15 days before the meeting.
- The appellant may not provide any new evidence to the Commission that was not provided in the original application to the HAHC.
- Consider whether the Planning Commission continues to be the appropriate appellant body for HAHC decisions.
- Maintain the ability of an appellant to appeal the decision of the Appeals Board to City Council.

**Committee Discussion (02/04/2015):** The Committee discussed at length whether the Planning Commission was the appropriate body to hear the appeals of the HAHC. They identified several recent Planning Commission actions that give them pause. The general consensus was that the Planning Commission is not well trained in the principles of historic preservation. Conducting additional joint training sessions was suggested. Commissioner Elliot shared a matrix showing the appeals route for other decisions in the City and the language in the Texas Historic Commission standard ordinance. He asserted that there are several other good bodies that could hear appeals. Commissioner Mod suggested an Appeals Board be established. The Board could be a 5-member Board made up of both Historic and planning Commission members, the sole purpose of which is to hear appeals of the HAHC. Commissioner Edminster suggested that the Planning Commission might not know the issues associated with historic preservation but that they are well acquainted with property rights. No decision was made on this issue.

**Public Comment (02/04/2015):** One member of the public suggested that the Planning Commission be given the option to return the item to the HAHC. Another speaker suggested that the Planning Commission be allowed to rule on process only, not whether the project meets the criteria – that is not within their skill-set. Another speaker cautioned the Committee about moving appeals away from the Planning Commission – it feels as though that would take property rights away.

**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

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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)**

This issue is closed out.

**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)**

This issue is closed out.