

Historic Preservation Ordinance Issues Statement

February 25, 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)	2	10/13/2014	10/27/2014
7. Designating a structure as a Landmark or Protected Landmark (Section 33-229)	2	10/13/2014	10/13/2014
8. Shall Approve Criteria (Section 33-241(b)(1-4)	2	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)	2	10/27/2014	10/27/2014
10. Criteria for alterations and additions (Section 33-241)	2	12/01/2014, 12/15/2014, 01/12/2015	01/12/2015
11. Criteria for new construction (Section 33-242)	2	12/01/2014, 12/15/2014, 01/12/2015, 01/28/2015 02/11/2015, 02/25/2015	
12. Criteria for relocation and/or demolition (Sections 33-243 and 33-247)	8	01/28/2015, 02/04/2015	02/04/2015
13. Allow for a Certified Local Government	8	10/13/2014, 10/27/2014 02/11/2015	02/11/2015
14. Tax exemption policies for historic sites (Chapter 44 Section 44-5)	8	10/27/2014, 11/10/2014 02/25/2015	
15. Historic Commission (Section 33-211 and 33-212)	9	10/13/2014, 10/27/2014	11/10/2014
16. Appeals (Section 33-253)	9	02/04/2015, 02/25/2015	
17. The penalty for illegal demolition (Section 33-203)	10	10/27/2014, 11/10/2014	11/10/2014
18. Enforcement (Section 33-203)	10		
19. Deferrals (Section 33-239)	11	12/15/2014	12/15/2014
20. Required notification for CofA applications (Section 33-238.1)	11	02/25/2015	
21. Painting brick (Section 33-201)	11	12/01/2014	12/01/2014
22. Application fees and penalties (Section 33-238)	11	12/15/2014	12/15/2014

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)

This item is closed out.

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)

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This item is closed out.

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 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.

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;

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- (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

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- (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.

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.

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

Proposed Change (02/25/2015):

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; and
3. The proportions of new construction, including height, width, scale, roof shape and roof pitch, must be compatible with the typical proportions of existing contributing structures in the in the surrounding area. Upon demonstrating that unusual circumstances exist, such as an unusually large lot size, the HAHC may consider a larger surrounding area in determining compatibility.

A two story structure may be considered appropriate on a blockface with only one-story contributing structures so long as the new construction is in proportion to the surrounding existing structures and unless otherwise stated in a district's Design Guidelines.

Examples of how would this be interpreted in the absence of Design Guidelines?

- On a block of one-story contributing structures: Look at the block and allow a two-story only if the foundation heights, porch eave height, first floor plate height are not taller than the contributing structures on the blockface.
- On a block of one and two-story contributing structures with dis-similar heights: Look at all of the above dimensions plus the ridge heights. Use the entire sample as typical.

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

This item is closed out.

13. Allow for a Certified Local Government

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.

Proposed Change (02/25/2015): A member of the Economic Development staff has been asked to attend the meeting in order to answer Committee questions. Recommendations may be formed after a full discussion with staff.

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. 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 Plannign 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 th e Plannign 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.

Proposed Change (02/25/2015):

- Prohibit the introduction of new materials at the appeal. If new material is available, it is appropriate for the material to be presented to the HAHC for reconsideration before the item is granted an appeal
- An appeal to the Planning Commission's shall be limited in scope to procedural matters only (did the HAHC follow the correct procedure?). The Planning Commission shall refrain from making decisions based on any other factors. Staff will continue the practice of including a transcript of the HAHC in all appeals sent to the Planning Commission.
- If the Planning Commission determines that the HAHC failed to follow the appropriate process, the Commission may vote to send the item back to the HAHC.
- If the Planning Commission upholds the decision of the HAHC, an appeal to the City Council is still available.

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)

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. In addition, it is difficult for COH Building Inspectors to recognize that a property is under the purview of Chapter 33 and additional notification will assist them in more target review of the construction.

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.

Proposed Change (02/25/2015): Require that an applicant place a small sign (2' X 3') in their front yard, notifying the public that an application for a CofA has been made (exact required language to be determined). The sign must be posted by the application deadline for that month's HAHC meeting. The sign shall remain in the front yard throughout construction as a means to notify the COH building inspector that additional requirements may have been placed on the permit.

21. Painting brick (Section 33-201)

This issue is closed out.

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

This issue is closed out.