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# *Historic Preservation Ordinance*

## *Proposed Revisions*

*June 26, 2015*



**PLANNING &  
DEVELOPMENT  
DEPARTMENT**

To all interested parties:

The Planning & Development Department (P&D) is pleased to release the proposed changes to Chapter 33, Historic Preservation for public comment. These proposed changes are the result of many hours of work by the HPO Review Committee.

The HPO Review Committee was established in 2014 by Mayor Parker in order to review and recommend improvements to the existing historic preservation code. In her charge to the Committee, she instructed them to

“...correct and clarify targeted items and create greater consistency for the applicants and for the Commission. The amendments should provide applicants with additional options for a streamlined approval, provide the Commission with improved guidance on which to base their decision and create a more efficient/user-friendly process.”

These draft recommendations are the result of a committee process that was open and transparent. All meetings were held in the City Council Annex chambers in the evening to encourage greater attendance by the public. They were recorded, streamed and rebroadcast through the HTV. All notes and handouts were posted on the Planning Department’s webpage (<http://www.houstontx.gov/planning/historic-preservation/Historic-Preservation-Ordinance-Review>) and distributed by email to interested parties. Each meeting included time for public comment.

Distribution of these proposed changes marks a milestone in the review process and moves it into the next phase. For the next month, the Department will be listening to comments to this draft. Comments from the public may be submitted in a number of ways: telephone (832-393-6556), U.S. mail (HPO Review, Planning & Development Dept., PO Box 1562, Houston, TX 77251-1562), or email ([historic.ordinance@houstontx.gov](mailto:historic.ordinance@houstontx.gov)). The staff is also available to meet with any interested groups or individuals to collect their comments.

The HAHC will hold a public hearing at the conclusion of their July 22, 2015 regularly scheduled meeting held in the Annex Council Chambers. P&D will develop a revised draft based on all of the public comments and present it to the Commission at their August 27, 2015 meeting. Following that meeting, the Commission’s recommendation will be forwarded to the administration for city council consideration.

## ARTICLE VII. HISTORIC PRESERVATION

### DIVISION 1. GENERALLY

#### Sec. 33-201. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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

*Archaeological* means relating to the study of past human behavior through use of material remains of historic and prehistoric origin.

*Archaeological site* means property or a location designated by the city council on which there exists material remains of past life or past life activities that occurred on the property or at the location.

*Block* means one or more lots, tracts, or parcels of land bounded by streets, easements, rights-of-way, or other physical features or a combination thereof.

*Blockface* means the portion of a block that abuts a street.

*Building* means any structure used or intended for supporting or sheltering any use or occupancy.

*Building permit* means an official document or certificate issued by the building official authorizing performance of a specified activity, including the alteration, restoration, rehabilitation, construction, relocation or demolition of a building, structure or object.

*Certificate of appropriateness* means a current and valid permit issued by the HAHC or the director, as applicable, authorizing the issuance of a building permit for construction, alteration, rehabilitation, restoration, relocation or demolition required by this article.

*Certificate of remediation* means a current and valid permit issued by the HAHC authorizing the issuance of a building permit for construction, alteration, rehabilitation, restoration, relocation or demolition intended to correct action taken contrary to the requirements of this article, and shall serve as a certificate of appropriateness for the enforcement and violation of this article, and is granted by the same standards that a certificate of appropriateness is granted..

~~*Construction* means the act of expanding an existing building, structure or object or the erection of a new building, structure or object on a lot, site or other property.~~

*Contributing structure* means a building, structure, object or site that reinforces, or that has conditions, which, if reversed, would reinforce, the cultural, architectural or historical significance of the historic district in which it is located, and that is identified as contributing upon the designation of the historic district in which it is located. The term also includes any structure that was identified as "potentially contributing" in any historic district ~~designated prior to October 13, 2010~~.

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

*Designation* means the formal recognition by the city council of a building, structure, object, site or district as historically, architecturally, culturally or archaeologically significant to the city, state, nation or region.

*Design guidelines* means an inventory and analysis of historic resources within a geographic area of the city designated or proposed for designation as ~~an one or more~~ historic districts pursuant to the provisions of this article that contains standards for alteration, rehabilitation, restoration, new construction, relocation and demolition of buildings, structures, objects or sites in an historic district, and approved by the city council.

*Excavation* means to expose, uncover, or remove by digging, cutting or hollowing out.

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

~~*Front façade* means the elevation of a building that is parallel to an adjacent public right-of-way. On a corner lot, or lot adjacent to more than one public right-of-way, the front façade is the elevation that contains the main entrance to the building.~~

*HAHC* means the Houston Archaeological and Historical Commission.

*Height* means the vertical distance from the existing natural grade.

*Historic district* means a geographical area designated by the city council that possesses a significant concentration, linkage or continuity of buildings, structures, objects or sites united by historical, cultural, architectural or archaeological significance to the city, state, nation or region.

*Historic preservation officer* means a person designated by the director to perform the duties of the director under this article.

*Landmark* means any individual building, structure, object or site designated by the city council for its historical, cultural, architectural or archaeological significance in the city, state, nation or region.

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

*New construction* means a free-standing building or structure proposed to be constructed within a historic district designated by city council, whether that building or structure is on the location of a vacant lot or a lot with another structure on it.

*Noncontributing structure* means a building, structure, object or site that does not reinforce the cultural, architectural, or historical significance of the historic district in which it is located, and is identified as noncontributing upon the designation of the historic district in which it is located.

*Nonprofit organization* means an entity organized for religious or not-for-profit purposes that holds a determination letter from the Internal Revenue Service that it is exempt from taxes under section 501(a) of the Internal Revenue Code of 1986, as amended, by virtue of section 501(c)(3) of that Code.

*Object* means a material thing of a functional, aesthetic, cultural, historical or scientific value that may be moveable by nature or design, yet related to a specific setting or environment.

*Old Sixth Ward Protected Historic District* or *OSWPHD* means the protected historic district established by the city council pursuant to division 6 of this article.

*Ordinary maintenance and repair* means any work to correct or prevent deterioration, decay or damage to a building, structure, object or site (or any part thereof), ~~including but not limited to~~

~~painting or adding or replacing fences~~, provided that the work does not change the design, character, texture or material of any exterior feature or constitute an 'alteration' as defined above. Ordinary maintenance and repair does not include replacement of historic material.

Massing means the arrangement of the overall shape and volume of a building.

*Paleontological* means relating to the study of all fossil remains of organisms that existed in the past.

*Place of worship* means a building, structure, object or site, owned by a nonprofit religious organization for a period of ten years prior to the later of October 13, 2010 or the date an application for designation of an historic district that includes the building, structure, object, or site is filed with the department and that is used primarily for worship or conducting religious services. A place of worship does not include ancillary buildings used for administration, schools, living quarters, or meeting halls not primarily used for worship. An organization may establish that it is a nonprofit religious organization through a determination letter from the United States Internal Revenue Service that the organization is tax-exempt pursuant to Section 501(c)(3) of the Internal Revenue Code or other equivalent evidence.

*Planning commission* means the planning commission of the city.

*Plate height* means the distance from the subfloor of a building to the top of the framed wall.

*Protected landmark* means a landmark whose owner has elected to permanently protect the landmark by foregoing the 90-day waiver certificate authorized by this article.

~~*Public right-of-way* means an area dedicated to the public for the passage of people or goods.~~

*Qualified curatorial association* means an organized and permanent non-profit institution, essentially educational or aesthetic in purpose, with professional staff, that owns and utilizes tangible objects, cares for them, and exhibits them to the public on some regular schedule, provided that the institution meets the requirements of the Council of Texas Archaeologists' Guidelines (Curation Standards and Procedures), 1992 edition, as may be amended or updated from time to time.

*Real property records* means the applicable records of a county in which conveyances of real property are recorded.

*Rehabilitation* means the act or process of returning a building, structure, object or site to a state of utility that makes possible an efficient contemporary use while preserving those portions or exterior features that are historically, architecturally and culturally significant.

*Relocation* means any change in the location of a building, structure or object.

*Restoration* means the act or process of accurately recovering the form and details of a building, structure, object or site and its setting as it appeared at a particular period of time by means of the removal of later work, or by the replacement of missing earlier work or both.

*Roof pitch* means the slope of a roof surface expressed in inches of vertical rise per twelve inches of horizontal distance.

*Site* means property upon which a significant event occurred, including, but not limited to, any land, building or natural resource where prehistoric or historic occupations or activities occurred and the location of buildings and structures, whether standing, ruined, demolished or relocated, where the location retains historical, architectural or archaeological value and integrity.

*Structure* means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

*Surrounding area* means the blockface and the opposing blockface within the district where the proposed activity is located. Surrounding area may include a different geographic area if the commission finds that unusual and compelling circumstances exist or that surrounding area is described differently in design guidelines.

*Street* means a public or private street or roadway.

Survey area means the proposed boundaries of a historic district.

*Tract* means a contiguous parcel of land under common ownership.

*Working day* means a day other than a Saturday, Sunday or official city holiday.

### **Sec. 33-202. Scope.**

(a) The provisions of this article apply to the alteration, rehabilitation, restoration, construction, relocation and demolition of any building, structure, object or site that is designated as a landmark or protected landmark or that is located within an historic district or an archaeological site and to the excavation of any archaeological site.

(b) Nothing in this article shall be construed to authorize the city to regulate the use of any building, structure or property.

(c) Nothing in this article shall be construed to authorize the city to regulate the interior characteristics of any building or structure, provided that any change in the interior characteristics of a landmark, protected landmark, or contributing structure in an historic district that has the effect of changing any exterior feature shall be subject to the terms of this article. Other provisions of this Code, the Construction Code, the Fire Code or state or federal law or regulation that are applicable to any building, structure, object or site that is subject to the provisions of this article shall continue to apply.

(d) This article does not abrogate or annul any restrictive covenant contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the county real property records, map records or deed records. Any property designated as a landmark, protected landmark, or archaeological site or included within an historic district shall remain subject to the provisions of any restrictive covenants applicable to the property, and the restrictive covenants shall remain fully enforceable.

(e) The provisions of this article shall apply to buildings, structures, objects or sites that are owned by the United States of America, the State of Texas or a political subdivision of the State of Texas; provided such entities are not otherwise exempted from this article by law.

(f) Prior to any amendment of this article, the HAHC shall conduct one public hearing to solicit public comments on the proposed amendments. The HAHC may make recommendations to the city council with respect to the proposed amendments. The provisions of this subsection shall not apply to any amendment to correct clerical errors or to make nonsubstantive changes in this article.

### **Sec. 33-203. Enforcement and penalties; remedies cumulative; other action not limited.**

(a) The procedures set forth in this article are cumulative of all other remedies available to the city relating to the subject matter hereof. Specifically, the city attorney may institute any legal action necessary to enforce this article or enjoin or otherwise cause the abatement of any violations hereof, including legal action necessary to recover damages or require restoration or reconstruction under section 315.006 of the Texas Local Government Code. The city council finds that alteration, rehabilitation, restoration, construction, relocation or demolition of any building, structure, object or site that is subject to the provisions of this article without a certificate of appropriateness as required under this article adversely affects the structural, physical or visual integrity of the building, structure, object or site.

(b) The building official shall not issue a building permit for any activity that requires a certificate of appropriateness pursuant to this article unless the applicant for the building permit presents a certificate of appropriateness or a 90-day waiver certificate issued pursuant to section 33-250 of this Code. The building official shall use any and all available enforcement mechanisms to enforce and require compliance with the provisions of this Code.

(c) Any person who violates any provision of this article shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than \$50.00 nor more than \$500.00 for each violation. Each day during which any violation of this article continues shall constitute a separate offense.

(d) If a landmark or protected landmark, archaeological site, or a contributing structure located in an historic district is demolished without a certificate of appropriateness required by this article or, in the case of a landmark or archaeological site only, a 90-day waiver certificate issued pursuant to section 33-250 of this Code, or is ordered to be demolished by the city for public safety reasons after the property owner has received ~~two or more~~ notices of neglect pursuant to section 33-254 of this Code, the building official shall not issue a building permit, and no other person shall issue any other city permit, for the site where the landmark, protected landmark or structure was formerly located for a period of two years after the date of the demolition. After the period of two years has completed, the HAHC shall not approve a certificate of appropriateness for new construction on the site of the demolished structure unless the size and dimensions of the new construction are substantially similar, and not larger, than the demolished structure.

(e) If activity that requires a certificate of appropriateness is performed outside the scope of a certificate of appropriateness, which for purposes of this section shall include work done without a certificate of appropriateness, the building official shall not issue a permit, and no other person shall issue any other city permit, except as required to perform work required under a certificate of remediation under this subsection, for the site where the activity occurred until either:

- (1) The commission issues a certificate of appropriateness for the work that was performed outside the scope of a certificate of appropriateness; or
- (2) The commission finds that the work that was performed outside the scope of a certificate of appropriateness does not conform satisfy the criteria of this article and issues a certificate of remediation for the work that was performed outside the scope of a certificate of appropriateness; and the commission may, as a condition of granting the certificate of remediation, also require that the applicant repair, reconstruct, or restore all or part of the work that was done without a certificate of appropriateness prior to the issuance of any permits besides those required for the reconstruction or restoration, using as many historically appropriate or salvage materials as are reasonably available.

#### **Sec. 33-204. Article supplemental.**

The provisions of this article shall be cumulative of all other ordinances, laws and applicable regulations.

#### **Sec. 33.205. Historic Preservation Officer.**

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

**Secs. 33-~~205206~~—33-210. Reserved.**

### ***DIVISION 2. HOUSTON ARCHAEOLOGICAL AND HISTORICAL COMMISSION***

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

(a) The creation of the Houston Archaeological and Historical Commission is hereby reaffirmed. The HAHC shall consist of 13 members. Each member shall be a person who has knowledge

and experience in the archaeological, architectural, cultural, social, economic, ethnic or political history of the city, and must have a known and demonstrated, competence, or knowledge in historic preservation within the city. The mayor shall assign a staff member to serve as a liaison between the HAHC and the mayor's office. The director, or in his absence or inability to act, a deputy director or assistant director of the department shall serve as a non-voting, ex officio member and as executive secretary to the HAHC. The archivist of the Houston Public Library System ~~and the directors of general services and public works and engineering~~ shall serve as an ex officio members of the HAHC, but shall not have a vote. When HAHC business requires the involvement of other departments, representatives of those departments shall attend meetings of the HAHC upon notice by the executive secretary. The HAHC shall elect its own chair and vice-chair.

- (b) The 13 members of the HAHC shall hold specific positions as follows:
  - (1) Position 1 shall be filled by a professional archaeologist with knowledge of and interest in archaeology of the city.
  - (2) Position 2 shall be filled by a professional historian with knowledge of and interest in the history of the city.
  - (3) Position 3 shall be filled by an architectural historian.
  - (4) Position 4 shall be filled by a ~~representative of a cultural history organization~~person who has knowledge of and interest in the cultural history of the city.
  - (5) Position 5 shall be filled by a registered architect.
  - (6) Position 6 shall be filled by a ~~representative of an organization for commercial businesses with~~person who has knowledge of and interest in restoration, historic building renovation and compatible new construction.
  - (7) Position 7 shall be filled by a professional real estate appraiser certified to perform appraisals for the city.
  - (8) Position 8 shall be filled by a representative of an organization for remodelers or builders ~~with~~who has knowledge of and interest in restoration, historic building renovation and compatible new construction.
  - (9) Position 9 shall be filled by a person who has professional knowledge in preservation construction and technology.
  - ~~(9-10)~~ Positions ~~9-10~~ through 13 shall be filled by citizen representatives.
- (c) At least four members of the HAHC shall own or reside in a historic landmark or contributing structure in a designated historic district designated pursuant to this division.
- (d) Members holding Positions 1 through 9 of the HAHC shall be appointed by the mayor, subject to confirmation by the city council. Members holding Positions 10 through 13 shall be appointed by the city council. The terms of each even-numbered position shall end on March 1 of even-numbered years, and the terms of each odd-numbered position shall end on March 1 of odd-numbered years.
- (e) Each member shall serve for a term of two years and shall hold over until the member's successor is qualified.

### **Sec. 33-212. Meetings; vacancies; removal.**

- (a) The HAHC shall adopt a regular meeting schedule and a schedule of submittal deadlines for applications filed pursuant to this article.
- (b) A position on the HAHC shall be considered to be vacant if the member appointed to that position is absent from HAHC meetings three times within the period of a year, unless those absences are judged to be excusable by the mayor or a member of the mayor's staff who is designated as liaison to the HAHC.

(c) A vacancy in any position shall be filled in the manner provided for original appointments, and the person so appointed shall serve for the remainder of the unexpired term. A member may be appointed to serve consecutive terms, ~~but not more than three full consecutive terms.~~

(d) Seven members of the HAHC shall constitute a quorum; however, in the event of vacancies on the HAHC, a majority of the members of the HAHC shall constitute a quorum. The executive secretary shall be counted for purposes of determining the presence of a quorum. Other ex officio members of the HAHC shall not be counted for purposes of determining the presence of a quorum.

### **Sec. 33-213. Service without pay.**

Members of the HAHC shall serve without compensation.

### **Sec. 33-214. Responsibilities.**

In addition to other responsibilities specified in this article, the responsibilities of the HAHC shall be as follows:

- (1) Adopt such rules of procedure for meetings and proceedings of the HAHC as are necessary or convenient to accomplish the purposes set out in this article;
- (2) Actively pursue and encourage the creation and maintenance of a list and maps of buildings, structures, objects, sites and areas in the city having special archaeological, historical, paleontological and historical architectural interest or value. The HAHC shall place particular emphasis upon evaluating and incorporating into the list and maps the findings of studies and surveys already completed;
- (3) Identify buildings, structures, objects, sites and areas of the city that have the potential for designation as landmarks, protected landmarks, historic districts or archaeological sites and, where authorized by this article, initiate the process for the designation of landmarks, historic districts and archaeological sites;
- (4) Increase public awareness of the value of archaeological, historical, paleontological and historical architectural conservation by facilitating and participating in public educational programs and by recommending updates to the conservation program;
- (5) Make recommendations to the city council concerning the availability and utilization of grants from federal and state agencies, private groups and individuals, and the utilization of budgetary appropriations to promote the conservation of significant archaeological, historical, paleontological or historical architectural sites or structures in the city;
- (6) Evaluate and comment upon decisions by city departments and agencies affecting archaeological, historical, paleontological or historical architectural resources;
- (7) Assist the city in working with the Texas Historical Commission, the Texas Antiquities Committee, the Texas State Historic Preservation Officer, the Harris County Historical Commission, and other appropriate federal, state and local agencies;
- (8) Facilitate efforts of persons wishing to donate archaeological, historical, paleontological or historical architectural artifacts, materials, structures, objects or sites to the public in placing those resources with qualified curatorial associations;
- (9) Evaluate the effectiveness of the design guidelines in achieving the goals of this article and recommending changes to the design guidelines, if appropriate;
- (10) Report annually to the city council the results of its work in these areas;
- (11) Make recommendations regarding the furnishing of City Hall in a manner that is consistent with its original furnishings, architectural style, and period of construction;

- (12) Assist in locating suitable new and used items of city hall furniture for acquisition by donation or city purchase;
- (13) Facilitate the donation of funding for City Hall furnishings and the donation of appropriate items of City Hall furnishing from private sources, provided that the committee may not directly receive donations and that any donations be made directly to the city;
- (14) Accomplish any other relations responsibilities that may be requested by city officials; and
- (15) Perform any other duties that the city council authorizes the HAHC to perform.

### **DIVISION 3. DESIGNATION OF LANDMARKS, PROTECTED LANDMARKS, HISTORIC DISTRICTS AND ARCHAEOLOGICAL SITES**

#### **Sec. 33-221. Designation.**

(a) The city council may designate buildings, structures, objects and sites as landmarks and protected landmarks, may designate areas as historic districts, may designate sites as archaeological sites, and may define, amend and delineate the boundaries of any landmark, protected landmark, historic district or archaeological site as provided in this article.

(b) To encourage public participation and the resultant preservation of historical, cultural and archeological resources, the city council shall be authorized to offer owners of properties considered for designation tax exemptions and other incentives that the city council may determine appropriate, at the time of the proposed designation.

(c) Prior to action by the city council, the HAHC shall review each application for designation and make a recommendation with respect to the application, but designation shall be made only by the city council.

#### **Sec. 33-222. Application for designation of a landmark, archaeological site or protected landmark.**

(a) Application for designation of a landmark or an archaeological site shall be initiated by either:

- (1) The owner of the property for which the application is made or the owner's authorized representative; or
- (2) The HAHC upon instructing the director to prepare an application for designation. Within ten working days following the action of the HAHC initiating an application, the director shall mail notice to the owner of the property or the owner's agent, as shown on the most recent city tax roll, that the HAHC has initiated an application.

(b) Application for designation of a protected landmark shall be initiated by the owner of the property proposed for designation. ~~Application may be made in conjunction with an application for designation of a landmark or at any time after the city council has designated the property as a landmark.~~

(c) The application for designation of a landmark, protected landmark, or archaeological site shall be filed with the department in the form prescribed by the director. The application shall include a description and photographs of the property or properties and shall address each of the applicable criteria for designation contained in section 33-224 of this Code. The application for designation of a protected landmark shall include an instrument suitable for recording in the real property records, in a form approved by the city attorney, signed by the owner indicating that the 90-day waiver provision of section 33-250 of this Code shall not apply to the protected landmark and that the property is subject to the demolition by neglect provisions of section 33-254 of this Code.

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

- (a) Application for designation of an historic district shall be initiated by either:
- (1) Ten percent of the owners of tracts in the ~~proposed district~~survey area; or
  - (2) The HAHC upon instructing the director to prepare an application for designation.
- (b) The application for designation of an historic district shall be filed with the department in the form prescribed by the director, and shall be subject to the following rules:
- (1) The application shall include:
    - a. ~~a~~A map indicating the boundaries of the ~~proposed historic district~~survey area;
    - b. ~~a~~a description and a photographs of each of the properties in the ~~proposed district~~survey area;
    - c. A written statement outlining the historical, cultural, or architectural significance of the survey area which ~~and~~ shall address each of the applicable criteria for designation contained in section 33-224 of this Code;
  - (2) The application shall identify with respect to each building, structure, object or site within the ~~proposed historic district~~survey area whether it is proposed for designation as a contributing structure or a noncontributing structure;
  - ~~(3) The boundaries of the proposed district 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;~~
  - (4) The ~~proposed boundaries of the district~~survey area must comprise a continuous land mass without ~~holes~~out tracts inside of it.;
  - (4) Tracts of publicly owned land, utility easements, and ~~public rights-of-way~~streets shall not be counted towards determining support for or against the designation of an historic district, but may be included within the historic district; and
  - (5) If a tract of land is owned by more than one person, only the signature of one owner is required to indicate support for initiating an application ~~or for determining public support by returned cards~~ in accordance with this section.
- (c) The ~~department~~director shall review each application for initial completeness. Upon determining that the application includes the items required by subsection (b) of this section, the director shall determine that the application is initially complete, and the director shall schedule and conduct at least one public meeting on the application for the historic district.~~proposed historic district unless the director determines in her sole discretion that one or more additional meetings is necessary.~~ The director shall give notice of the public meeting in accordance with subsection (d) of this section, including procedures for giving notice of any additional public meeting.
- The director ~~will~~shall establish rules for the conduct of public meetings, and ~~will~~shall endeavor to conduct the meeting within or near the ~~proposed historic district~~survey area, subject to the availability of appropriate space for public assembly. The director will present information on the proposed application and the process for approval at the public meeting.
- (d) The director will establish the process for notice and for determining the evidence of support of the application, which shall include the following:
- (1) Within ~~15-30~~ days after determining the application is initially complete, the director shall mail a notice to ~~the owners of each~~ property within the ~~proposed historic district~~survey area as indicated on the most current appraisal district records. The director shall endeavor to give notice to a civic association ~~registered with the department~~ whose area is included, in whole or in part, in the proposed district.

- (2) The notice shall include the following:
- a. The date, time, and location of the public meeting described in subsection (c) of this section;
  - b. Any other information the director determines may be useful to the property owners.

(e) After the final public meeting, the director shall mail notice to the owners of all property within the ~~proposed historic district~~ survey area. The notice shall include a ~~card~~ survey form to be returned by the property owner which shall indicate whether the property owner does or does not support designation of the historic district. The ~~card~~ survey form must be placed in the U.S. mail with proper postage affixed and postmarked or delivered to the director not later than the thirtieth day after the date on the notice.

(f) After the deadline for returning ~~cards~~ survey forms mailed in accordance with subsection (e) has passed, the director ~~will determine if~~ shall determine if survey forms were returned for more than 50 percent of the tracts within the survey area and also whether ~~owners of 67 percent of tracts for which survey forms were returned indicate all the tracts in the proposed district~~ support the designation of the district in accordance with the following rules:

- (1) ~~—If a tract of land is owned by more than one person, only the signature of one owner is required for determining public support by returned survey forms in accordance with this section; and~~
- (2) ~~Tracts of publicly owned land, utility easements, and steets that are included within the boundaries of the survey area shall not be counted toward determining support for or against the designation of an historic district.~~

(g) ~~If the director is able to make the determination required by subsection (f) of this section, 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 the owners of less than 67 percent of tracts the returned forms in the proposed historic districts~~ survey area support the designation of the district is not able to make this determination, then the director shall either:

- (1) Modify the boundaries of the ~~proposed historic district~~ survey area if the modification will result in boundaries of one or more historic districts containing one or more non-contiguous areas in which all survey forms were returned from at least 50 percent of the area of the land within the survey area, and where the owners of 67 percent of the ~~tracts returned survey forms indicated~~ support for designation of ~~the a~~ proposed historic district. If the director modifies the boundaries, the application ~~will~~ shall be considered final, ~~the boundaries of the reduced survey area shall be the boundaries of the proposed historic districts, and any property excluded from the survey area shall be ineligible for inclusion within a historic district for a period of one year from the date the director modifies the boundaries of the survey area pursuant to this item;~~ or
- (2) Determine that the application fails and that no further action will be taken by the HAHC. ~~If an application fails pursuant to this section, The the~~ director shall mail notice to the owners of all property within the ~~proposed historic district~~ survey area that ~~the application has failed and that no further action will be taken. Any property within the survey area is ineligible for inclusion within a historic district for a period of one year from the date of the determination pursuant to this section.~~ the public hearing before the HAHC has been cancelled

(g) ~~—If a historic district is designated with modified boundaries, any property excluded from the modified boundaries of the district, as applicable, is ineligible for inclusion within a proposed district for one year from the date of the determination of the director in section (f)(1) of this section. If an application fails, all property within the proposed district is ineligible for inclusion within a proposed historic district for one year from the date of the determination of the director in section (f)(2) of this~~

~~section. (h) If the director determines that an application is final, the director shall give notice to all property owners within the survey area of a hearing before the HAHC in accordance with the provisions of section 33-226 of this Code. The notice shall include the boundaries of one or more proposed historic districts.~~

~~(i) The director may conduct a public workshop for the HAHC on any application for designation of a historic district in which the director reviews the application, the results of survey forms received by the department, the boundaries of the proposed districts as modified in accordance with subsection (g) of this section, and any other information the director determines is relevant to the application.~~

(i) The HAHC will conduct a public hearing on each final application for designation of a historic district. Following the public hearing, the HAHC may:

~~(1) recommend Approve that the proposed boundaries and forward them to city council for approval;~~

~~(2) Amend the boundaries in accordance with the provisions of this Article, in which case the HAHC may defer the application and continue the public hearing to a later meeting; or~~

~~(3) Disapprove the application, after which no further action shall be taken. of the proposed historic district be amended in accordance with the intent and general purpose of this article.~~

### Sec. 33-223. Property pending designation.

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

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

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

~~(2) In the case of an application initiated by the HAHC, the day after an action of the HAHC recommending against the designation;~~

~~(3) In the case of an application for designation of a landmark or archaeological site initiated by the property owner, the day after the withdrawal of the application by the property owner;~~

~~(4) In the case of an application for designation of an historic district initiated by property owners, the 181st day after the director determines the application is initially complete, or:~~

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

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

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

- (54) In the case of an application for designation of an historic district ~~initiated by property owners~~, the day after the director determines that the application fails; or
- (65) In the case of the denial of a certificate of non-designation by the HAHC, the 181st day after the decision of the HAHC.

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

~~Note—The amendment does not apply to applications currently received and pending, specifically Heights South, Woodland Heights and Glenbrook Valley.~~

### Sec. 33-224. Criteria for designations.

(a) The HAHC, in making recommendations with respect to designation, and the city council, in making a designation, shall consider one or more of the following criteria, as appropriate for the type of designation:

- (1) Whether the building, structure, object, site or area possesses character, interest or value as a visible reminder of the development, heritage, and cultural and ethnic diversity of the city, state, or nation;
- (2) Whether the building, structure, object, site or area is the location of a significant local, state or national event;
- (3) Whether the building, structure, object, site or area is identified with a person who, or group or event that, contributed significantly to the cultural or historical development of the city, state, or nation;
- (4) Whether the building or structure or the buildings or structures within the area exemplify a particular architectural style or building type important to the city;
- (5) Whether the building or structure or the buildings or structures within the area are the best remaining examples of an architectural style or building type in a neighborhood;
- (6) Whether the building, structure, object or site or the buildings, structures, objects or sites within the area are identified as the work of a person or group whose work has influenced the heritage of the city, state or nation;
- (7) Whether specific evidence exists that unique archaeological resources are present; and
- (8) Whether the building, structure, object or site has value as a significant element of community sentiment or public pride.

(b) Notwithstanding the foregoing, no building, structure, object or site less than 50 years old shall be designated as a landmark, protected landmark, or archaeological site, and no area in which the majority of buildings, structures or objects is less than 50 years old shall be designated as an historic district, unless it is found that the building, structure, object, site or area is of extraordinary importance to the city, state or nation for reasons not based on age.

**Sec. 33-225. Procedures for designation of landmark, historic district and archaeological site.**

(a) The HAHC shall review each final application for designation of a landmark, historic district, and archaeological site and shall conduct a public hearing on each application. The director shall make a record of the public hearing. The HAHC shall consider the application and evidence presented at the public hearing. After due consideration, the HAHC shall determine whether to recommend the designation, provided, however, that if the HAHC does not act with respect to an application for designation within 60 days of the public hearing before the HAHC on the designation, the HAHC shall be deemed to have recommended the designation. The recommendation of the HAHC, which shall include the basis for the recommendation, shall be in writing. If the HAHC recommends against designation upon consideration of the application, the application shall be disapproved and no recommendation shall be submitted to the city council.

(b) The director shall submit the recommendation of the HAHC for designation and the application to the city council.

(c) The city council shall consider an application for designation after receiving a recommendation from the HAHC and shall decide whether to designate the property.

(d) The city secretary shall maintain a copy of a map identifying each landmark, historic district and archaeological site designated by the city council, and additional copies shall be maintained by the director and the building official. The director shall file for recordation in the real property records of the county or counties in which the designated property is located each action of the city council designating a landmark, historic district or archaeological site.

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

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

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

- (1) Any civic association registered with the director within whose service area the potential landmark or archaeological site is located; and
- (2) If the owner of the landmark or archaeological site initiated the application for designation, the owner.

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

- (1) Notice shall be given by mail to each property owner within the proposed historic district, as shown on the most current appraisal district records.
- (2) Notice shall be published in a newspaper of general circulation in the city; and
- (3) Notice shall be posted by sign in at least four locations within the district selected by the director at locations reasonably calculated to be seen easily by residents of the district and where each sign will be visible from at least one ~~public right of way street~~. In addition, where, in the opinion of the director, because of the size, configuration, traffic patterns or

other characteristics of the proposed historic district, additional signs would be beneficial in providing notice, the director shall cause an appropriate number of additional signs to be posted. The signs shall conform to specifications prescribed by the director.

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

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

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

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

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

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

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

~~(c) Notwithstanding the foregoing, the city council may establish by ordinance a temporary process to allow for reconsideration of the designations of historic districts made or proposed prior to June 9, 2010 in connection with the adoption of amendments to this article.~~

### **Sec. 33-228. Certificate of non-designation.**

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

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

- (2) The address and general description of the property that is the subject of the application;
- (3) A current photograph of the property that is the subject of the application; and
- (4) Information demonstrating whether the property is eligible for designation as a landmark or protected landmark or as a contributing structure in an historic district or an archaeological site.

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

(b) The HAHC shall consider an application for certificate of non-designation at a regular meeting within 35 days of the date a complete application for the certificate is filed with the director or at a later time mutually agreed upon in writing by the director and the applicant. The HAHC may continue its consideration of an application for a certificate of designation to its next regular meeting upon finding that specific information is needed by the HAHC to enable it to reach its decision or upon agreement with the applicant for a continuance. If the HAHC does not act upon an application for a certificate of non-designation within the later of 70 days from the date the application is filed with the director or 35 days after the date mutually agreed on by the applicant and director for review of the application by the HAHC, the application shall be deemed approved, unless the applicant consents in writing to an extension to a specified date.

- (c) The HAHC shall not grant the certificate of non-designation if it finds any of the following:
- (1) The building, structure, object, site, property or area is the subject of a pending application for designation as a landmark, protected landmark or archaeological site;
  - (2) The building, structure, object, site, property or area is within an area that is the subject of a pending application for designation of an historic district;
  - (3) The building, structure, object, site, property or area is eligible for designation as a landmark, protected landmark or archaeological site; or
  - (4) The building, structure, object, site, property or area is located in an area that is eligible for designation as an historic district and meets the criteria for contributing structure if the area were to be designated as an historic district.

Otherwise, the HAHC shall grant the certificate of non-designation.

(d) The certificate of non-designation shall expire ten years after the date of its issuance and shall be evidence that the subject of the certificate of non-designation will not be subject to the provisions of this article for a period of ten years from the date of issuance of the certificate of non-designation. The certificate of non-designation shall run with the land and may not be transferred to any other building, structure, object, site, property or area.

(e) If the HAHC finds that the subject of an application does not qualify for a certificate of non-designation, the HAHC shall deny the application and shall notify the applicant in writing of the denial. If the HAHC denies the certificate of non-designation, the property shall be subject to the provisions of section 33-223 of this Code for the time specified therein.

(f) Following notice and an opportunity for hearing, the HAHC may revoke a certificate of non-designation that is found to have been issued in error.

(g) If the city council designates as a landmark or archaeological site a building, structure, object or site that is the subject of an unexpired certificate of non-designation, the designation shall not be effective until the expiration of the certificate of non-designation. If the city council designates an historic district, the designation shall not be effective with respect to an individual building, structure, object or site located within the historic district that is the subject of an unexpired certificate of non-designation until the expiration of the certificate of non-designation with respect to the individual building, structure, object or site.

### Sec. 33-229. Designation of protected landmark.

(a) ~~The HAHC shall review each An~~ application for designation of a protected landmark may only be submitted by the property owner, that is included in an application for designation of a landmark, at the same time and in the same manner as it reviews and considers the application for landmark. The HAHC shall review each application and shall ~~not~~ recommend a property to be designated as a protected landmark ~~unless if~~ the property:

- (1) Meets at least three of the criteria for designation in section 33-224 of this Code;
- (2) Was constructed ~~before 1905~~more than 100 years before application for designation was received by the director;
- (3) Is listed individually or as a contributing structure in an historic district on the National Register of Historic Places; or
- (4) Is recognized by the State of Texas as a Recorded State Historical Landmark.

~~(b) If the HAHC reviews an application for designation of a protected landmark initiated after the designation of the landmark, the HAHC shall review the basis for its initial recommendation for designation and may recommend designation of the landmark as a protected landmark if the landmark:~~

- ~~(1) Met at least three of the criteria of section 33-224 of this Code at the time of its designation or, based upon additional information considered by the HAHC, the landmark then meets at least three of criteria of section 33-224 of this Code;~~
- ~~(2) Was constructed before 1905;~~
- ~~(3) Is listed individually or as a contributing structure in an historic district on the National Register of Historic Places; or~~
- ~~(4) Is recognized by the State of Texas as a Recorded State Historical Landmark.~~

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

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

**Secs. 33-230—33-235. Reserved.**

## DIVISION 4. CERTIFICATES OF APPROPRIATENESS

### Sec. 33-236. Prohibited activities; offense.

(a) No person shall alter, rehabilitate, restore or construct any exterior feature of a landmark or protected landmark without a certificate of appropriateness.

(b) No person shall alter, rehabilitate, restore or construct any exterior feature of any building, structure or object within an historic district without a certificate of appropriateness.

(c) No person shall excavate any archaeological site; alter, rehabilitate, restore or construct any exterior feature of any building, structure or object located on or in an archaeological site; or demolish any building, structure or object located on or in an archaeological site without a certificate of appropriateness.

(d) No person shall relocate any landmark or protected landmark without a certificate of appropriateness.

(e) No person shall relocate any building, structure or object within, into or out of an archaeological site without a certificate of appropriateness.

(f) No person shall relocate any building, structure or object within or into an historic district or relocate a contributing structure out of an historic district without a certificate of appropriateness, provided that a certificate of appropriateness shall not be required to relocate a noncontributing structure to a location outside of the historic district in which it is located.

(g) No person shall demolish any landmark, protected landmark, or any ~~building, structure or object contributing structure~~ within an historic district without a certificate of appropriateness.

(h) No person shall conduct any mandatory repair of a landmark, protected landmark, or of a building, structure or object within an historic district or archaeological site without a certificate of appropriateness.

(i) No owner of a protected landmark or contributing structure in an historic district shall allow a protected landmark or contributing structure to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural feature.

(j) No person shall alter, rehabilitate, restore, construct, relocate or demolish any landmark, protected landmark, or any building, structure or object in an historic district or archaeological site, or excavate any archaeological site, without complying with the applicable provisions of this article. It is a defense to prosecution under this section that the director of public works and engineering or a deputy director or an assistant director having supervisory responsibilities over the issuance of building permits has determined (1) that the work to be performed is necessary to correct conditions that are in violation of the life safety requirements for existing buildings as set forth in Chapter 34 and Appendix L of the Building Code; (2) that the work to be performed is the only means for achieving compliance with the life safety requirements; and (3) that, based upon the nature of the life safety violations and the risks associated with their continuation, the provisions of this article should be waived to the extent of the life safety requirements.

(k) Any application for amendment to a pending certificate of appropriateness application or building permit application or a certificate of appropriateness or building permit that has been issued under the provisions of this section that would affect any part of the work that is within the scope of this article, as set forth in section 33-202 of this Code, shall be considered as though it were an original application for the purposes of this division.

### Sec. 33-237. Exemptions.

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

~~landscaping, HVAC units, light fixtures, porch ceiling fans(1) , and rRoofing with in-kind materials with no change to the structure, shape, or pitch of the roof;~~

~~(2) An addition that is obscured from view from the street by the original structure and not merely obscured by fencing, landscaping, non-historic additions, or other impermanent obstructions;~~

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

~~(4) Fences that are:~~

~~a. Located behind the front wall of the structure; or~~

- b. ~~Located at or in front of the front wall of the structure, constructed of non-masonry material, and are either:~~
  - ~~[1] 50% or more transparent; or~~
  - ~~[2] Four feet or less in height;~~

~~(5) Painting over non-masonry surfaces. The operation of this section shall constitute an affirmative defense to prosecution under section 33-236 of this Code.~~

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

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

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

### **Sec. 33-238. Application.**

~~An application for a certificate of appropriateness may be filed before, at the same time as or after the filing of an application for a building permit, but the 90-day period provided for in section 33-250 of this Code shall not begin until a completed application for a certificate of appropriateness is filed with the director. An applicant for a building permit may request the building official to review and process the application for a building permit during the 90-day period provided for in section 33-250 of this Code, but no building permit shall be issued until the applicant for the building permit presents a certificate of appropriateness or a 90-day waiver certificate issued pursuant to section 33-250 of this Code.~~

~~Application for a certificate of appropriateness shall be made by the owner of the property for which the application is requested or by the owner's agent. When necessary for the city to enforce the provisions of article IX of chapter 10 of this Code, the neighborhood protection official shall apply for any necessary certificate of appropriateness. Applications shall be filed with the director. No application shall be deemed to be filed unless it is submitted in the form promulgated by the director and contains all required supporting plans, designs, photographs, reports, and other exhibits required by the director. If any plans and specifications are required to secure a building permit, a copy of the plans and specifications shall be submitted with the application for certificate of appropriateness. The fee for an application for a certificate of appropriateness shall be as prescribed in the fee schedule and may vary depending on the type of activity proposed.~~

~~and shall contain the following information(1) The name, address and daytime telephone number of the owner and the applicant, if different from the owner;~~

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

~~(3) A statement of whether the intended action by the applicant is:~~

~~a. Demolition;~~

~~b. Relocation;~~

~~c. Alteration;~~

~~d. Restoration;~~

~~e. Rehabilitation;~~

~~f. New construction;~~

~~g. Excavation; or~~

~~h. Mandatory repair;~~

~~(4) A current photograph of the subject of the application; and~~

~~(5) Either:~~

~~a. A rendering of the exterior of the subject of the application as it will appear upon completion of the proposed activity; or~~

~~b. A description of the work intended to be done, the materials to be used and the changes to be made.~~

~~If any plans and specification are required to secure a building permit, a copy of the plans and specifications shall be submitted with the application for certificate of appropriateness. There shall be no fee for the filing of an application for a certificate of appropriateness.~~

~~(6) Reserved.~~

### Sec. 33-238.1. Notice requirements.

(a) The applicant for a certificate of appropriateness for ~~demolition or relocation of a~~ landmark, protected landmark, or any contributing structure in an historic district, or for an appeal from a decision of the HAHC, shall give notice of ~~a meeting of the HAHC to consider~~ the application for a certificate of appropriateness ~~not less than ten days before the date of the meeting~~ by posting at least one sign on the property for which the certificate of appropriateness is requested. A sign shall face each ~~public right-of-way street~~ bordering the site; provided, however, that if more than four signs would be required to be posted, the applicant may request the director to approve an alternative number and location of signs. The director shall approve an alternative to the number and location of signs required by this subsection in excess of four upon determining that the alternative will provide maximum visibility and obtain the objectives of this section without unduly burdening the applicant. Each sign required under this subsection shall comply with the following:

~~(b1)~~ For an application for a certificate of appropriateness for demolition, relocation, or for an appeal from the decision of the HAHC, Each each sign shall be a minimum of four by eight feet in size and shall be posted no more than 15 feet from the ~~public right-of-way street~~. Each sign shall be posted not less than ten days before the date of the meeting at which the certificate of appropriateness will next be considered. The lettering on ~~the each~~ sign shall be legible from the ~~public right-of-way street~~. The applicant shall use reasonable efforts to maintain each required sign on the site until the close of the meeting at which the ~~HAHC acts on the application~~application for certificate of appropriateness is considered. Each sign shall include:

~~(c)a.~~ Each sign shall provide the following information: (1)—The application number and the type of certificate of appropriateness being requested;

~~(2)b.~~ The date, time, and place of the meeting at which the ~~HAHC will first consider the~~ application will next be considered, updated to reflect any changes in the date, time, and place of the meeting, including if the applicant's request is deferred, continued, or otherwise postponed;

~~(3)c.~~ A telephone number of the applicant to call for additional information; and

~~(4)d.~~ A department telephone number to call for additional information.

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

- a. The application number and the type of certificate of appropriateness being requested; and
- b. A department telephone number to call for additional information.

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

### **Sec. 33-239. Procedures.**

An application for a certificate of appropriateness shall be considered by the HAHC if the complete application is submitted by the next scheduled submittal deadline as approved by the HAHC. The HAHC may continue its consideration of an application for a certificate of appropriateness to its next regular meeting upon finding that specific information is needed by the HAHC to enable it to reach its decision or upon agreement with the applicant for a continuance. If the HAHC does not act upon an application for a certificate of appropriateness within the next two meetings of the HAHC after the first meeting in which the application is considered for a total of three meetings in which the application is considered, the application shall be deemed approved, unless the applicant consents in writing to an extension to a specified date.

### **Sec. 33-240. Criteria for issuance of certificates of appropriateness—General.**

(a) The HAHC shall be the body responsible for approving certificates of appropriateness unless otherwise provided in this article. The HAHC shall review and approve or disapprove a certificate of appropriateness pursuant to:

- (1) The applicable specific criteria in this division; and
- (2) Design guidelines approved pursuant to section 33-268 of this Code or division 6 of this article for the Old Sixth Ward Protected Historic District, to the extent applicable.
- (3) In the event of a conflict between the criteria in this division and the design guidelines, the design guidelines shall control.

(b) The applicant for a certificate of appropriateness shall have the burden of demonstrating that the application satisfies the criteria applicable to the issuance of the certificate of appropriateness. To approve or disapprove an application for a certificate of appropriateness, the HAHC shall consider and make findings with respect to the relationship between the proposed activity and the applicable criteria. The HAHC shall take into consideration the current needs of the applicant and shall be sensitive to the property owner's financial condition in determining whether to issue a certificate of appropriateness.

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

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

~~(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:

- (1) The proposed activity must retain and preserve the historical character of the property;
- (2) The proposed activity must contribute to the continued availability of the property for a contemporary use;
- (3) The proposed activity must recognize the building, structure, object or site as a product of its own time and avoid alterations that seek to create an earlier or later appearance;
- (4) The proposed activity must preserve the distinguishing qualities or character of the building, structure, object or site and its environment;
- (5) The proposed activity must maintain or replicate distinctive stylistic exterior features or examples of skilled craftsmanship that characterize the building, structure, object or site;
- (6) New materials to be used for any exterior feature excluding what is visible from public alleys must be visually compatible with, but not necessarily the same as, the materials being replaced in form, design, texture, dimension and scale;
- (7) The proposed replacement of exterior features, if any, should be based on accurate duplication of features, substantiated by available historical, physical or pictorial evidence, where that evidence is available, rather than on conjectural designs or the availability of different architectural elements from other structures;
- (8) Proposed additions or alterations must be done in a manner that, if removed in the future, would leave unimpaired the essential form and integrity of the building, structure, object or site;
- (9) The proposed design for any exterior alteration or addition must not destroy significant historical, architectural, archaeological or cultural material, including but not limited to siding, windows, doors, and porch elements;
- ~~(10)~~ and The proposed alteration or addition must be compatible with the massing, size, scale, material and character of the property and the ~~area in which it is located~~ surrounding area;
- ~~(1011)~~ The ~~setback distance from the property line to the front and side walls, porches, and exterior features~~ of any proposed addition or alteration must be compatible with ~~the existing setbacks along the blockface and facing blockface(s)~~ distance to the property line of similar elements of existing contributing structures in the surrounding area; and
- ~~(11) The proposed activity will comply with any applicable deed restrictions.~~

**Sec. 33-241.1. Same—Administrative Approvals.**

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

- (1) A rear addition that:
  - a. Is not taller than the existing structure;
  - b. Is set back from the side property lines at least as much as the structural walls of the existing structure;
  - c. Is not wider than the wall to which it is attached;

- c. Does not require the demolition of any portion of the existing structure except for the rear wall to which the addition will be attached; and
- d. Has a roof pitch that is less than or equal to the existing structure; and
- e. Is not constructed on a building that has had an addition approved under this chapter.

(2) A side addition that:

- a. Is not taller than the existing structure;
- b. Is attached only to one side exterior wall of the existing structure and does not extend past the existing rear wall of the side to which it is attached;
- c. Is set back from the front of the wall to which it is attached at least thirty percent of the distance between the front of the wall to which it is attached to the rear of the wall to which it is attached;
- d. Is not wider than half the distance that the addition is set back from the front of the wall to which it is attached. For example, if the addition is set back 20 feet from the front wall to which it is attached, the addition may not be wider than 10 feet;
- e. Does not require the demolition of any portion of the existing structure except for the exterior wall to which the addition will be attached; and
- f. Does not deviate from the roof pitch of the existing structure except for cross gable or hip roofs; and
- g. Is not constructed on a building that has had an addition approved under this chapter.

(3) A partial second-story addition that:

- a. Is constructed on top of a one-story structure;
- b. Does not extend outside the footprint of the existing structure;
- c. Is set back from the front wall of the existing structure at least half the distance between the front wall of the existing structure and the farthest point of the rear of the existing structure;
- d. Has a plate height that does not exceed the plate height of the story beneath the proposed addition;
- e. Has a roof pitch that is less than or equal to the existing structure; and
- f. Is not constructed on a building that has had an addition approved under this chapter.

~~(b) 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 that does not extend outside the footprint of the existing 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.~~

~~d. No other alterations involving original building materials are proposed for the structure except roof materials at the location the addition connects to the structure.~~

~~(2) For new additions that are not taller than any part of the roof of the structure, and are adjacent only to the one sides of the front façade of the existing structure, and does not extend past the rear of that side, 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 in the case of for cross gable roofs.~~

~~d. No other alterations involving original building materials are proposed for the structure except materials at the location the addition connects to the structure.~~

~~(3) For a new additions that are is not taller or wider than any point of the roof of the existing structure and extends only 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. No other alterations involving original building materials are proposed for the structure except materials at the location the addition connects to the structure.~~

~~(4) No original building materials are removed from the portion of the structure from the front façade to the addition.~~

(eb) The ~~HAHC director~~ shall issue a certificate of appropriateness for the alteration, rehabilitation, restoration or addition of an exterior feature of any noncontributing structure in an historic district upon finding that the application satisfies the following criteria, as applicable:

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

~~(2) The proposed activity must match the architectural features, materials, and character of the existing noncontributing structure.~~

~~(23)~~ For an addition to a noncontributing structure:

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

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

~~a. The setback of the addition is no closer to the public right-of-way than the typical setback of existing contributing structures in the historic district;~~

- ~~b. The height of the eaves of the addition to a noncontributing structure used or intended for use for residential purposes is not taller than the typical height of the eaves of existing contributing structures used for residential purposes in the historic district; and~~
- ~~e. The height of an addition to a noncontributing structure used or intended for use for commercial purposes is not taller than the height of the existing structure.~~

~~(dc) Notwithstanding subsections (a), (b), and (c) of this section, the director is authorized to issue a certificate of appropriateness for the following activities if the director finds that the proposed activity will be performed in a manner that satisfies the criteria for alterations, additions, or new construction in this article, as applicable. If the director finds that an application for a certificate of appropriateness pursuant to this subsection does not satisfy the applicable criteria, or that the application does not satisfy the general intent and purposes of this article, the director shall refer the application to the HAHC for consideration. types of alteration of a (i) landmark, (ii) protected landmark, (iii) building, structure or object in an historic district, or (iv) building, structure or object that is part of an archaeological site upon finding that the application satisfies the criteria of the subsection (a) of this section of the Code, as applicable:~~

- (1) Removal of an inappropriate window or door element that was not original to the structure and replacement with a window or door element that:
  - a. Is appropriate to the historic significance of the structure; and
  - b. Does not change the size, shape or location of any opening, including the trim, molding or other features associated with the opening, from which the window or door elements are to be removed;
- (2) Removal of:
  - ~~a. synthetic-Synthetic~~ exterior wall cladding, such as asbestos, aluminum or vinyl siding, that was not an original feature or characteristic of the structure and replacement with appropriate cladding; ~~and~~
  - ~~b. Non-historic additions, including attached garages or carports; and~~
  - ~~c. Non-historic decorative elements, such as shutters, brackets, awnings, or signs;~~
- ~~(3) Replacement of historic materials that are damaged beyond repair with materials of the same size, shape, material, and pattern;~~
- ~~(4) Installation or removal of:
  - ~~a. Burglar bars;~~
  - ~~b. Accessibility ramps or lifts;~~
  - ~~c. Skylights, solar panels, antennae, satellite dishes, or other roof equipment installed on the rear half of the roof; and~~
  - ~~d. Awnings and canopies;~~~~
- ~~(5) Construction of:
  - ~~a. Freestanding garages, including garage apartments, freestanding carports, and other secondary structures, that have a footprint of 600 square feet or less, located at the rear of the lot,~~
  - ~~b. A rear porch that is not taller than the existing structure and that does not extend beyond the existing side walls of the structure;~~~~
- (36) Installation of any details including porch elements or detailing that have been partially lost or removed but whose existence has been substantiated by the remaining elements

still in existence or historical documentation such as architectural plans or historic photographs; and

(7) Installation of signs that:

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

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

c. Are installed without damage to significant historic material.

(8) Construction of non-masonry fences that are:

a. Less than 50% transparent;

b. More than four feet in height; and

c. Located in front of the front façade of the structure.

~~(4) Reconstruction of a contributing structure that was completely or partially destroyed by a fire, natural disaster, or other damage not intentionally caused by the owner of the structure only if the reconstruction is built within the same footprint and has the same exterior features as the contributing structure.~~  
~~(d) The director shall issue a certificate of appropriateness for repair or reconstruction of those internal structural elements that are essential to support the building's envelope to which they are attached, for example, interior shiplap, if the applicant demonstrates to the satisfaction of the director that the structural repair or reconstruction can be accomplished without harm to the exterior features of the building or structure visible from the right-of-way. In support of an application for repair or reconstruction under this subsection, the applicant shall include a written statement from a structural engineer licensed by the State of Texas that the proposed repair or reconstruction can be accomplished without harm to the exterior features of the building or structure visible from the right-of-way.~~

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

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

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

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

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

- (1) ~~The distance from the property line of the front and side walls, porches, and exterior features of any proposed new construction must be compatible with the distance from the property line of similar elements of existing contributing structures in the surrounding area; 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 scale and proportions of the new construction, including the relationship of the width and roofline, overall height, eave height, roof shape and roof pitch, and other dimensions to each other, must be compatible with the typical scale and proportions of existing contributing structures in the surrounding area; and objects in the historic district;
- (4) ~~The new construction of a two-story structure in a surrounding area with only one-story contributing structures must be constructed with compatible proportions to the contributing structures in the surrounding area with respect to foundation heights, first floor plate heights, and other dimensions that are substantially the same as dimensions on contributing structures in the surrounding area; and~~
- (5) ~~The new construction of a two-story structure shall not be constructed in a historic district that is comprised entirely of one-story contributing structures, unless specifically allowed in the design guidelines for the historic district.~~

~~(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.~~

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

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

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

- (1) ~~For a The~~ landmark, ~~or~~ protected landmark that is not located in a historic district, the structure:
  - a. Has architectural or historical value independent of its physical location that will not be diminished by relocation;
  - b. Can be moved without significant damage to its physical integrity; and
  - c. Will be relocated to an area that is compatible with the historical and architectural character of the landmark or; protected landmark, ~~or contributing structure.~~
- (2) ~~For a contributing structure located in a historic district that is being located within the same historic district, the relocation must also meet the following criteria:~~
  - a. The structure can be relocated without significantly diminishing the integrity of the historic district in which it is located,
  - b. The structure can be moved without significant damage to its physical integrity;

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

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

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

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

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

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

#### **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:

- (1) The relocation will not destabilize any archaeological resources within or on the archaeological site; and
- (2) 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:

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

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

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

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

~~(2) The HAHC finds, based on the preponderance of credible evidence presented subject to the establishment by the applicant, the existence 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) Photographs and other documented evidence detailing the deteriorated state of the property and the inability to reasonably repair the property;~~

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

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

~~(4) All listings of the property for sale or rent that are less than a year old at the time of the application. All listings for the sale or lease of the property by the owner within the last year, and a statement by the owner of any bids and offers received and counteroffers given on the property;~~

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

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

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

~~(7) A comparison of the cost of rehabilitation of the existing building with the demolition of the existing building and the construction of a new building;~~

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

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

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

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

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

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

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

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

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

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

- (1) That the property is incapable of earning a reasonable return, ~~without regard~~less of ~~to~~ whether the return is the most profitable return, including without limitation, regardless of whether the costs of maintenance or improvement of the property exceed its fair market value;
- (2) That the owner has demonstrated that the property cannot be adapted for any other use, whether by the current owner, by a purchaser or by a lessee, that would result in a reasonable return;
- (3) That the owner has demonstrated reasonable efforts to find a purchaser or lessee interested in acquiring the property and preserving it, and that those ~~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~~denies an application for 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 appeal the decision of the HAHC during this period. It shall be the duty of an applicant for a certificate of appropriateness for demolition to participate in good faith in a diligent effort to identify alternatives to demolition. The HAHC, the director and the applicant may consult with recognized historic preservation organizations and other civic groups, public agencies and interested citizens to determine the feasibility of:

- (1) Public or other acquisition of the property, structure, building or object;
- (2) Relocating one or more of the structures or features of the property if to do so would preserve its historic or architectural value and that the property meets the criteria for relocation in section 33-243 of this Code; or
- (3) Any other reasonable means of preserving the property, structure, building or object's historic or architectural value.

~~Sec. 33-248-249. Reserved~~Sec. 33-248. Same—Demolition of noncontributing structure.

~~The director shall issue a certificate of appropriateness for demolition of a noncontributing structure upon determining that the building, structure or object for which the certificate of appropriateness is requested was identified as a noncontributing structure upon the designation of the historic district in which it is located.~~

**~~Sec. 33-249. Same — Mandatory repair.~~**

- ~~(a) The director shall issue a certificate of appropriateness for mandatory repair of a landmark, protected landmark, or of a building, structure or object within an historic district or archaeological site upon application and review of the order or citation requiring the mandatory repair if the director finds that the proposed mandatory repair is necessary to comply with the order or citation and will not result in a change in the architectural, historical, archaeological or cultural character of the landmark, protected landmark, or of the building, structure or object in the historic district or archaeological site that existed prior to the issuance of the order or citation. The director shall consider the criteria in section 33-241 in reviewing the application and making the findings required by this section.~~
- ~~(b) If the director does not issue a certificate of appropriateness for mandatory repair within three working days following receipt of the application or a later date mutually agreeable to the applicant and the director, or if the director denies the application, the application shall be submitted to the HAHC for consideration as if it were an application for a certificate of appropriateness for alteration, rehabilitation, restoration or construction pursuant to section 33-241 of this Code.~~

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

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

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

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

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

~~(e) An application for a certificate of appropriateness may be filed before, at the same time as or after the filing of an application for a building permit, but the 90-day period provided for in this section shall not begin until a completed application for a certificate of appropriateness is filed with the director. An applicant for a building permit may request the building official to review and process the application for a building permit during the 90-day period provided for in this section, but no building permit shall be issued until the applicant for the building permit presents a certificate of appropriateness or a 90-day waiver certificate issued pursuant to this section.~~

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

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

~~demolition any action required by the city pursuant to division 7 of article IX of chapter 10 of this Code, or the securing of a building required by the city or other action ordered by the building official pursuant to article IX of chapter 10 section 10-431 of this Code or for the securing of a building pursuant to section 10-377 of this Code.~~

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

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

~~(d) If the director does not issue a certificate of appropriateness for mandatory repair within three working days following receipt of the application or a later date mutually agreeable to the applicant and the director, or if the director denies the application, the application shall be submitted to the HAHC for consideration as if it were an application for a certificate of appropriateness for alteration, rehabilitation, restoration or construction pursuant to section 33-241 of this Code.~~

### **Sec. 33-252. Conditions.**

In granting any certificate of appropriateness, if the HAHC has reason to believe that the activity for which the certificate of appropriateness is required may result in the disturbance of any archaeological or paleontological resource, the HAHC may require, as a condition of the certificate of appropriateness, that the applicant submit a construction plan demonstrating actions that the applicant will undertake to mitigate the disturbance and loss of archaeological or paleontological resources.

### **Sec. 33-253. Appeal.**

#### **OPTION A:**

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

(b) The planning commission shall consider the appeal at its first regularly scheduled meeting for which required notice can be given. The planning commission shall consider the application, ~~and~~ the findings of the HAHC and any evidence, ~~including comments submitted from the public,~~ presented at the meeting at which the appeal is considered. The planning commission shall ~~either reverse or~~ affirm the decision of the HAHC based upon the criteria applicable to the certificate of appropriateness ~~or refer the application back to the HAHC for reconsideration with findings on how the project complies with the criteria of this article.~~ If the planning commission does not make a decision on the appeal within 30 days following the planning commission's hearing on the appeal, the decision of the HAHC with respect to the application for the certificate of appropriateness shall be deemed affirmed.

(c) If the planning commission refers an application back to the HAHC for reconsideration, the HAHC shall consider the item at the next regularly scheduled meeting of the HAHC. The HAHC shall consider the recommendation and the findings of the planning commission and shall vote to approve or disapprove the application. The HAHC may not defer an application that is being reconsidered from the planning commission unless the applicant requests the deferral.

(d) An applicant aggrieved by the ~~decision-reconsideration~~ of the ~~planning commission~~ HAHC ~~on an appeal from a decision of the HAHC under subsection (c) of this section~~ may appeal to the city council. The city council shall consider the appeal at its first regularly scheduled meeting for which the required notice can be given. The city council shall consider the appeal under the provisions of Rule 12 of Section 2-2 of this Code. At the conclusion of the city council's review of the matter, the city council shall reverse or affirm the decision of the planning commission. The decision of the city council shall be final and exhaust the applicant's administrative remedies.

(ed) The director shall provide the applicant with notice of the time and place of the meeting at which each appeal will be considered by mail no less than ~~ten-fifteen~~ days before the date of the meeting, ~~except that notice of a reconsideration of the HAHC shall be given no later than three business days after the meeting of the planning commission.~~

#### **OPTION B:**

(a) The Historic Preservation Appeals Board ("HPAB") is hereby created. The HPAB shall consist of 5 members and shall consist of former members of the planning commission or the HAHC that have extraordinary knowledge and experience in the archaeological, architectural, cultural, social, economic, ethnic or political history of the city, and must have a known and demonstrated interest, competence, or knowledge in historic preservation within the city. The mayor shall assign a staff member to serve as a liaison between the HPAB and the mayor's office. The HPAB shall elect its own chair and vice-chair. Members of the HPAB shall be appointed by the mayor, subject to confirmation by the city council. Each member shall serve for a term of two years and shall hold over until the member's successor is appointed. A member may be appointed to serve consecutive terms. The director, or in his absence or inability to act, a deputy director or assistant director of the department shall serve as a non-voting, ex officio member and as executive secretary to the HPAB. Three members of the HPAB shall constitute a quorum; however, in the event of vacancies on the HPAB, a majority of the members of the HPAB shall constitute a quorum. The HPAB shall adopt rules, procedures, and schedules for meetings as are necessary or convenient to accomplish the purposes of this article, and shall meet as needed when notified by the director of an appeal from a decision of the HAHC.

(b) An applicant aggrieved by a decision of the HAHC with respect to any certificate of appropriateness may appeal to the HPAB by filing a written notice of appeal, stating the grounds for the appeal, with the director within ten days following the date the HAHC renders its decision. The director shall notify the members of the HPAB of the receipt of a notice of appeal and shall schedule a meeting of the HPAB to consider the appeal.

(c) The HPAB shall consider the appeal within 60 days after a notice of appeal is filed with the director. The HPAB shall consider the application, the findings of the HAHC and any evidence presented at the meeting at which the appeal is considered. The HPAB shall reverse or affirm the decision of the HAHC based upon the criteria applicable to the certificate of appropriateness. If the HPAB does not make a decision on the appeal within 60 days after a notice of appeal is filed with the director, the decision of the HAHC with respect to the application for the certificate of appropriateness shall be deemed affirmed.

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

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

the decision of the HPAB. The decision of the city council shall be final and exhaust the applicant's administrative remedies.

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

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

- (1) A deteriorated or inadequate foundation;
- (2) Defective or deteriorated floor supports or floor supports that are insufficient to carry the loads imposed with safety;
- (3) Ceilings, roofs, ceiling or roof supports, or other horizontal members which sag, split, or buckle due to defect or deterioration, or are insufficient to support the loads imposed with safety;
- (4) Fireplaces and chimneys which bulge, or settle due to defect or deterioration, or are of insufficient size or strength to carry the loads imposed with safety; ~~and~~
- (5) Deteriorated, crumbling, or loose exterior stucco, mortar, or siding;
- (6) Leaks and other conditions that allow the penetration of water into the structure; and
- (7) Damage caused by termites and other pests that contribute to the deterioration of the structure;

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

### **Sec. 33-255. Validity.**

A certificate of appropriateness shall be valid for ~~one two~~ years from its effective date.

**Note**—Formerly, § 33-254

### **Sec. 33-256. Amendment.**

A certificate of appropriateness may be amended, modified or extended only in accordance with the procedures and criteria established for its original approval.

**Note**—Formerly, § 33-255

## DIVISION 5. DESIGN GUIDELINES

### Sec. 33-266. Application.

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

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

- (1) The director shall ~~endeavor to~~ conduct one or more public meetings within or near the historic districts for which design guidelines are proposed to enable the public to provide input on the proposed guidelines;
- (2) The director shall mail notice to all property owners within the historic districts for which design guidelines are proposed not less than 15 days before each public meeting; and
- (3) The director shall present design guidelines to the HAHC within one year of the HAHC's request for design guidelines, or if the director is unable to do so, the director shall report on the progress of the design guidelines to the HAHC and include a timeline for completion of the design guidelines.

### Sec. 33-267. Requirements.

(a) The purpose of design guidelines is to provide guidance on how to interpret the criteria of this article within individual historic districts. ~~The goal of design guidelines is to further the intent of this ordinance, preserve the character of the historic district, and allow adequate flexibility to encourage diversity of construction while not compromising the architectural integrity of the historic district.~~

(b) The proposed historic district design guidelines shall contain:

- (1) A map and description of the proposed historic district, including boundaries; photographs of buildings in the district; an inventory of the age, setting, character and architectural, cultural or historical significance of structures in the district; and objectives to be achieved in the historic district;
- (2) A statement of the architectural, cultural or historical significance of the proposed historic district and a description of structures and features to be preserved; and
- (3) A set of specific standards for reviewing applications for certificates of appropriateness for demolition, construction, alteration, rehabilitation, restoration and relocation that are tailored to the specific characteristics and features of the of the district for which they are written.

(b) The proposed design guidelines shall not contain any standards for reviewing applications for certificates of appropriateness that allow activity specifically prohibited by the criteria for certificates of appropriateness in this article.

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

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

(b) ~~The city council shall consider the recommendation of the HAHC and shall vote to approve or disapprove the design guidelines in the form in which they are recommended by the HAHC, else the city council shall refer the design guidelines back to the HAHC for reconsideration in accordance with the provisions of subsection (a) of this section. After approval by city council, the HAHC shall use the criteria within the design guidelines for granting or denying applications for certificates of appropriateness for applicable activities within the boundaries of the historic district.~~

(c) ~~Amendments to design guidelines that have been approved by city council shall be considered in accordance with the process for the adoption of design guidelines in this section. The HAHC shall conduct a public hearing on amendments to the design guidelines if changes are recommended by the HAHC in any annual report. At the public hearing, interested parties may comment in person or in writing on any recommended amendments to the design guidelines. Following the public hearing, the HAHC may vote to recommend amendments to the design guidelines to city council. No amendment shall be effective unless it is approved by the city council.~~

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

**~~Sec. 33-269. Staff assistance.~~**

~~When the city is the applicant for the designation of an historic district, the department shall prepare any proposed conservation plan.~~

**~~Secs. 33-270-269—33-274. Reserved.~~**

***DIVISION 6. OLD SIXTH WARD PROTECTED HISTORIC DISTRICT***

**Sec. 33-275. Designation of Old Sixth Ward Protected Historic District.**

In recognition of the unique historical significance of the Old Sixth Ward area and in furtherance of the project plan and reinvestment zone financing plan of the Old Sixth Ward tax increment reinvestment zone (Reinvestment Zone Number Thirteen, City of Houston, Texas), there is hereby designated an area to be known as the Old Sixth Ward Protected Historic District. The purpose of the designation is to provide additional protection against the irretrievable loss or alteration of the historic structures within the OSWPHD and new construction that is not compatible with the historic structures in the district. The area included in the OSWPHD and the contributing and noncontributing structures in the OSWPHD are shown in Appendix G and Appendix H, respectively, to this chapter. The provisions of section 33-250(c) and (d) of this Code shall not apply to a certificate of appropriateness for any structure or property within the OSWPHD. The director shall not issue a 90-day waiver certificate for any property located within the OSWPHD.

### Sec. 33-276. Approval of design guidelines.

The city council hereby approves design guidelines to be applicable in the Old Sixth Ward Protected Historic District. A copy of the design guidelines is to be maintained in the office of the city secretary and on the website of the department. The HAHC shall refer to the design guidelines in determining whether an application for certificate of appropriateness satisfies the applicable criteria of division 4 of this article and in making the findings required by section 33-240 of this Code.

### Sec. 33-277. Amendment of design guidelines.

The HAHC shall conduct a public hearing on amendments to the design guidelines if changes are recommended by the HAHC in any annual report. At the public hearing, interested parties may comment in person or in writing on any recommended amendments to the design guidelines. Following the public hearing, the HAHC may amend the design guidelines.

### Amend Section 44-5 to read as follows:

**\*Effective for Tax Year 2017 (FY 2018)\***

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

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

~~(1) — At any time following the designation of the historic site by the city council pursuant to article VII of chapter 33 of this Code,~~

~~(b) Eligibility. the owner A property is eligible for tax exemption under this section in accordance with the following: must perform restoration or preservation of the historic site to encourage its preservation.~~

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

~~(2) The eligible work performed must be at a cost of at least 50-25 percent of the "base value," which for purposes of this section means the assessed value of the historic structure or improvements, not including the value of any land associated with the historic site. ~~The required expenditure shall be determined by the director of finance, based upon the assessed value of the historic structure or improvements not including the value of any land associated with the historic site prior to the work ("the base value").~~~~

~~(3) The eligible work is performed not earlier than five years before the application for tax exemption; and Only expenditures made for work performed either following or within five years of the designation of the property by the city council pursuant to article VII of chapter 33 of this Code may be applied.~~

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

~~(c) Application. An application for tax exemption under this section shall be filed with the director of the Finance Department, or his designee ("director of finance") in the form prescribed by the~~

director of finance, and shall contain documentary evidence, including photographs and other documentation, of:

- (1) All completed work for which a tax exemption is sought;
- (2) Itemized accounting of eligible costs, shown as distinct from any ineligible costs, associated with any interior and exterior construction for which a tax exemption is sought; and
- (3) Compliance with the requirements of any certificates of appropriateness issued pursuant to the Historic Preservation Ordinance.

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

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

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

- (1) Restoration performed pursuant to a certificate of appropriateness granted under the Historic Preservation Ordinance;
- (2) Repair or reconstruction of the historic portion of the structural components, which includes parts of a building such as walls, partitions, floors, ceilings; windows and doors; all components of a central air conditioning or heating system, whether within or adjacent to a building, including motors, compressors, pipes and ducts; plumbing and plumbing fixtures, such as sinks and bathtubs; electric wiring and lighting fixtures; chimneys; stairs, escalators, and elevators; interior sprinkler systems; fire escapes; and other components relating to the operation or maintenance of a building;
- (3) Interior remodeling of the historic portion of the structure's paint, flooring, permanent coverings such as paneling or tiling;
- (4) Professional services such as architectural, engineering, and other development fees; and
- (5) Construction management and labor, materials, and reasonable overhead.

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

- (1) Appliances, consumer and industrial machinery, including machinery needed for the preparation and storage of food;
- (2) Furniture, including cabinetry and countertops;
- (3) Decks, fencing, retaining walls, swimming pools, and any exterior work such as sidewalks, driveways, and landscaping;
- (4) Acquisition costs;
- (5) Demolition and relocation costs;
- (6) All costs, both exterior and interior, associated with the construction of a new addition or new construction, as those terms are defined in the Historic Preservation Ordinance;
- (7) Work done outside the scope of a certificate of appropriateness required by the Historic Preservation Ordinance; and

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

~~(2) For a potentially contributing structure, the restoration or preservation made or proposed to be made must have the effect of reversing incompatible alterations or deteriorating conditions of the structure, as evidenced by a certificate of appropriateness issued by the Houston Archaeological and Historical Commission. The denial of any application for a certificate of appropriateness under article VII of chapter 33 of this Code shall be grounds for denial or revocation of any tax exemption authorized by this ordinance.~~

~~(b) Each historic site for which a tax exemption is sought must meet the applicable qualifications set out in subsection (a) hereof. (g) Annual review of tax exemption. The director of finance shall conduct an annual review of each property granted an exemption under this section and may recommend revocation of the tax exemption granted under this section to city council if:~~

~~(1) The historic site must not be or have been is or has been the subject of a certificate of appropriateness, as defined in section 33-201 of this Code, issued pursuant to sections 33-247 or 33-250 of this Code;~~

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

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

~~(4) City taxes assessed against the property are delinquent, as confirmed by the director of finance. which shall be grounds for denial or revocation of the exemption. Each owner desiring the tax exemption must make sworn application to the director of finance of the city. The application shall be in a form approved by the director of finance and shall set forth facts sufficient to show that the historic site is eligible for tax relief hereunder.~~

~~(eh) Calculation of tax exemption. An exemption granted hereunder by the city council shall exempt the historic structure or improvements not including the value of any land associated with this historic site from ad valorem taxation on the basis of qualifying expenditures made for bona fide restoration or preservation, as determined by the director of finance upon demonstration by the owner. The exemption and shall be computed on the following basis:~~

~~(1) If the said qualifying expenditures are at least 50-25 percent but less than 100 percent of the base value, then the exemption for each tax year on the assessed value of the structure shall be equal to the amount of the qualifying expenditures; or~~

~~(2) If the said qualifying expenditures are 100 percent or more of the base value of the improvements, then the exemption for each tax year shall be one hundred percent of the assessed value of the historic structure or improvements not including the value of any land associated with this historic site.~~

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

~~The duration of the aforesaid exemption shall be for a period of 15 years if the restoration project receives no financial incentive from the city funded by municipal hotel occupancy taxes, or ten years if the restoration project receives a financial incentive from the city funded by municipal hotel occupancy taxes. The exemption shall begin on January 1 of the year following the date that the director of finance makes the determination that the owner of the historic site has met all of the requirements of this section for an exemption.~~

~~The director of finance, in consultation with the planning official, shall establish and promulgate written procedures for the implementation of the exemption provided herein and the review of applications, and the said officials shall jointly make a recommendation to the city council regarding each application that is duly submitted for consideration.~~

~~(di) Term. An exemption granted under this section shall begin on January 1 of the year following the date that the director of finance makes the determination that the owner of the historic site has met all of the requirements of this section for an exemption. The duration of the exemption shall be for a period of 15 years if the restoration project receives no financial incentive from the city funded by municipal hotel occupancy taxes, or ten years if the restoration project receives a financial incentive from the city funded by municipal hotel occupancy taxes. An exemption granted under this section shall be effective as of January 1 of the year following demonstration of completion of the restoration or preservation work and demonstration of the making of the qualifying expenditures to the director of finance. If sufficient restoration work on a designated historic site has not been completed to satisfy either subdivision one or two of subsection (c) above within five years of the passage of a historic site tax exemption ordinance, then said ordinance shall expire. After the expiration of any such ordinance under the terms of this provision, upon a showing of good cause for the delay, the owner of the historic site may apply for a new tax exemption ordinance.~~

~~(e) — The exemption shall be automatically continued as of January 1 of each year succeeding the year the exemption was first granted for the duration of the ten- or 15-year period. The exemption shall be continued in the event of a transfer of an ownership interest or a portion of an ownership interest in the historic structure during such ten or 15-year period. However, the exemption shall be terminated in the event of a second transfer of an ownership interest or a portion of an ownership interest in a historic structure, other than a single family property containing no more than four residential units, during such ten or 15-year period. In the case of a condominium or other multi-family residential building, the second transfer of an ownership interest or a portion of an ownership interest in an individual unit shall cause the termination of the exemption pertaining to that particular unit. As used in this section, a "transfer" of an ownership interest or portion of an ownership interest shall not include such transfers as a lease, a mortgage, a transfer by inheritance, a creation of a trust for the benefit of the owner, or other transaction not ordinarily regarded as a "sale" of property.~~

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

~~(f) The director of finance shall conduct an annual review of each property granted an exemption hereunder, and, if he finds that any city taxes assessed on the subject property are delinquent, the historic site has deteriorated, has been demolished or destroyed, or has been the subject of a certificate of appropriateness issued pursuant to sections 33-247 or 33-250 of this Code, then the changed condition shall constitute grounds for revocation of the exemption.~~

~~(gk) Recapture. Tax receipts and tax certificates issued for any historic site receiving tax relief pursuant to this section shall be clearly marked: "Historic site—Subject to recapture of additional taxes under Code of Ordinances." Each year during which the property is granted tax relief, the director of finance shall note on his records the valuation which would have been made and the taxes that would have been due had the historic site not qualified for tax relief under this section. If the historic site is subsequently damaged, demolished, or destroyed, or if a certificate of appropriateness is issued for the historic site pursuant to sections 33-247 or 33-250 of this Code the tax exemption is revoked under this section, then the property shall be subject to a recapture of taxes and subject to penalties and interest calculated under pertinent provisions of the Texas Tax Code. The additional tax shall be equal to the total amount of tax relief granted under this section over the life of the structure difference between taxes paid or payable hereunder and the amount of the tax payable for the preceding fifteen years had the property not been granted tax relief. Such additional taxes shall be deposited in a segregated account, the use of~~

~~which shall be established by city council by a subsequent ordinance~~ the Historic Preservation Fund. Until paid, there shall be a lien for additional taxes, penalty, and interest on the property granted tax relief under the provisions of this section. An obligation to pay recaptured taxes is extinguished by operation of force majeure. Force Majeure means: fires, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts, riots, and the acts of superior governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application, bankruptcy or an event that merely makes performance more difficult, expensive or impractical.

~~(h)~~ (h) A historic site for which an exemption has expired or has been withdrawn, revoked, or terminated may not requalify for a tax exemption under this section. Only one tax exemption at a time under this section may apply to a property hereunder except as allowed under subsection (d).

~~(i) It is the policy of the city to facilitate the issuance of building permits for work to be performed under this section. Consistent with the terms of the Construction Code, the building official shall work with persons who are performing preservation and restoration work to allow alternative methods of construction and alternative materials that are determined to be suitable under the provisions of the Construction Code and shall waive strict conformance with the Construction Code as authorized by Section 3406.1 of the Building Code.~~

~~(j)~~ (jm) Notwithstanding any other provision of this code, a structure that has been designated as a landmark or as a contributing structure ~~or a potentially contributing structure~~ in a historic district pursuant to ~~article VI of chapter 33 of this Code~~ the Historic Preservation Ordinance and that is owned by the State of Texas or a political subdivision thereof is entitled to an exemption equal to 100 percent of the assessed value of the historic structure and the land necessary for access and use of such structure. If an application for an exemption pursuant to this subsection is granted prior to the adoption of the ad valorem tax rate for the tax year in which the application is granted, the exemption shall be effective as of January 1 of that tax year. If such an application is granted after the adoption of the ad valorem tax rate for the tax year in which the application is granted, the exemption shall be effective as of January 1 of the tax year following the date the application was granted. An exemption granted pursuant to this subsection shall remain effective until the property is sold. ~~The director of finance and administration shall conduct an annual review of each property granted an exemption pursuant to this subsection, and if he finds that a historic site has deteriorated or has been demolished or destroyed, then such changed condition shall constitute grounds for revocation of the exemption.~~

**Amend Section 10-374 to read as follows:**

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

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

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

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