

# Historic Preservation Ordinance Issues Statement

October 13, 2014



**PLANNING &  
DEVELOPMENT  
DEPARTMENT**

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

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

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

### Current administrative approvals:

...the director is authorized to issue a certificate of appropriateness for the following types of alteration...

- *Removal of an inappropriate non-original window or door and replacement with an appropriate window or door that does not change the size, shape or location of the opening*
- *Removal of synthetic exterior wall cladding that was not original to the structure and replacement with appropriate cladding*
- *Installation of any details that have been partially lost or removed but whose existence has been substantiated*
- *Reconstruction of a contributing structure in-kind that was completely or partially destroyed by a fire, natural disaster, or other damage not intentionally caused by the owner*

**Proposed change:** Staff researched the Administrative Approval process for 12 different cities (see attachment entitled Administrative Approval Research). From this research, staff is recommending the following items be added to the list of projects for which the Director is authorized to issue a Certificate of Appropriateness.

- *Freestanding garages, freestanding carports, and secondary structures located at the rear of the structure*
- *Shall approve additions*
- *Installation of rear porches not wider or taller than the existing rear wall*
- *Removal of non-historic additions, including attached garages or carports, comprised of non-historic materials*
- *Repair or replacement of existing historic damaged siding materials with materials of the same size, shape, material and pattern.*
- *Removal of non-historic and non-appropriate decorative elements such as shutters, brackets, awnings, or signs*
- *Alterations to non-contributing structures*
- *Installation of signs and awnings to commercial buildings that do not compromise or cover historic features; are appropriately scaled for the building; and are affixed without damaging significant historic material*

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- *Installation of ramps or lifts for accessibility purposes*
  - *Skylights, solar panels, antennas, satellite dishes, or other roof equipment that are at the rear half of the structure and are installed without damaging significant historic material*
  - *Minor changes to previously approved COAs.*
  - *Extension of soon-to-expire Certificate of Appropriateness or renewal of expired Certificate of Appropriateness for up to one additional year from the original expiration date (i.e. maximum extension is two years from date of COA approval). No revision to original approved scope of work allowed with staff administrative approval.*

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

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

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

### **Current exemptions:**

- *Landscaping*
- *HVAC units*
- *Light fixtures*
- *Porch ceiling fans*
- *Roofs*

**Proposed change:** Staff recommends the following items be added to the list of modifications be exempt from the need for a COA:

- *Change “Roofs” to “Re-roofing with in-kind materials”*
- *Additions obscured from view from the public right of way by the original structure.*
- *Burglar bars*
- *Fences (currently considered ordinary maintenance and repair)*
- *Gutters and downspouts*
- *Storm windows and doors*
- *Screen windows and doors*
- *Installation of temporary emergency weatherization features such as plywood coverings on windows*

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

**Issue:** The ordinance defines Exterior Features as “an element of the architectural character and general arrangement of the external portion of a building, structure or object, including building material that is visible from a public right-of-way.” It is unclear from this definition that the “building material” includes the entire wall assembly, including shiplap. The definition of Exterior Features may also include the structural supports that are integral to the support of the exterior feature whether they are visible from the right of way or not. This is critical because removal of interior shiplap has a significantly negative impact on the structural integrity of the exterior wall. In some prior instances, the removal of interior shiplap has caused irreparable damage to contributing structures.

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

**Comments from the committee:** (Edminster) Involving a structural engineer in all instances of shiplap removal may maintain the structural integrity of the wall

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

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

**Approach:** As there has been growing interest in the creation of design guidelines for districts that pre-date the 2010 ordinance change, the committee should consider providing a process for creating guidelines in those districts.

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

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

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

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

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

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

**Current process:** The City Council must pass a Resolution amending the original Resolution that created the district and established the boundaries and inventory.

**Proposed change:**

- *Create a process where Planning Department staff proposes change in classification to HAHC and City Council based on new information not present at the time of classification or error.*
- *No petition by property owner.*
- *No change in classification due to neglect by owner.*

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

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

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

**Current language:**

*The HAHC shall not recommend a property to be designated as a protected landmark unless the property:*

- (1) Meets at least three of the criteria for designation in 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.*

**Proposed change:**

*The HAHC shall not recommend a property to be designated as a protected landmark unless the property:*

- (1) Meets at least three of the criteria for designation in section 33-224 of this Code;*

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- (2) *Was constructed more than 100 years ago;*
  - (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.*

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

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

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

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

### Current Language:

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

- (1) *An addition taller than any point of the roof of the structure conforms to the following standards:*
  - a. *The addition does not encroach into the front half of the existing structure, measured from the front façade of the existing structure to the farthest point of the rear of the existing structure from the front façade;*
  - b. *The plate height of the addition does not exceed 1.25 times the plate height of the existing structure; and*
  - c. *The roof of the new addition does not deviate from the roof pitch of the existing structure.*
- (2) *For new additions that are not taller than any part of the roof of the structure and are adjacent to the sides of the front façade of the existing structure, the new addition conforms to the following standards:*
  - a. *The addition does not encroach into the front thirty percent of the total depth of the existing structure, measured from the front façade of the existing structure to the farthest point of the rear of the existing structure from the front façade;*
  - b. *The addition is not wider, as measured from the side adjacent to the front façade, than half of the distance that the addition is actually set back from the front facade. For example, if an addition is set back forty percent of the total depth of the existing structure from the front façade, the addition may not be wider than twenty percent of the total length of the existing structure; and*

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- c. *The roof of the new addition does not deviate from the roof pitch of the existing structure except for cross gable roofs.*
- (3) *For new additions that are not taller than any point of the roof of the existing structure and do not encroach past the farthest point of the rear of the existing structure from the front façade, the roof of the new addition does not deviate from the roof pitch of the existing structure except for cross gable roofs.*
- (4) *No original building materials are removed from the portion of the structure from the front façade to the addition.*

### **Proposed Language:**

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

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

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- c. *No other alterations are proposed for the structure except removal of materials at the location the addition connects to the structure, as well as removal of inappropriate materials and replacement with appropriate materials.*

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

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

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

**Comments from the public:** In order to keep neighbors informed, the Code should require signage for all COA applications.

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

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

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

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



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

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

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

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

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

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

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

**Approach:** Research other cities’ criteria for reviewing these applications. Consider revising review criteria language to assist the applicant, staff and the Commission to make more informed decisions based on better information. Clarify the difference between relocating a structure on-site versus relocating it off-site.

## 13. Allow for a Certified Local Government

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

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

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

- Enforce state or local legislation that protects historic properties
- Establish a qualified review commission composed of professional and lay members
- Maintain a system for surveying and inventorying historic properties

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- Provide for public participation in the historic preservation process, including recommending properties to the National Register of Historic Places.

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

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

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

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

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

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

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

**Comments from the public:** The Commission needs more technically oriented members, i.e. structural engineers

#### Existing language:

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

(b) *The 13 members of the HAHC shall hold specific positions as follows:*

- (6) *Position 6 shall be filled by a representative of an organization for commercial businesses with knowledge of and interest in restoration, historic building renovation and compatible new construction.*
- (8) *Position 8 shall be filled by a **representative of an organization for remodelers or builders** with knowledge of and interest in restoration, historic building renovation and compatible new construction.*

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

- (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 consecutive terms.

**Proposed change:**

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

- (b) The 13 members of the HAHC shall hold specific positions as follows:

(6) Position 6 shall be filled by **a licensed structural engineer** who has knowledge of and interest in restoration, historic building renovation and compatible new construction.

(8) Position 8 shall be filled **by a representative of an organization for remodelers or builders and shall have knowledge** of and interest in restoration, historic building renovation and compatible new construction.

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

- (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 consecutive terms.~~

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

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

**Approach:** Consider revising the process.

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

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

**Approach:** Consider increasing the penalty.

**18. Enforcement (Section 33-203)**

**Issue:** The City does not have a fully coordinated system to enforce the Code and respond to violations of it. In addition, the current structure of fines provides little incentive for compliance.

**Approach:** Fully research and work with other City enforcement offices to develop a coordinated approach to enforcement. Research other Texas cities to determine the maximum penalties for violations.

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## 19. Deferrals (Section 33-239)

**Issue:** 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.

**Comments from the public:** It is in the best interest of the applicant that they receive a prompt decision and therefore the Commission should be prevented from deferring a decision.