

**CITIES AND ARCHAEOLOGY: PRESERVATION**

Committee for City Archaeology  
of the  
Society for Historical Archaeology

Compiled by

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LEGISLATION AND GUIDELINES  
RELATED TO URBAN ARCHAEOLOGY

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## LEGISLATION

(Compiled from North American City Survey responses  
and Alexandria Archaeology files.)

### Localities

Alexandria VA Resolution (in packet)	Larkspur CA Ordinance (in packet)
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Kingston ON Ordinance (in packet)	

### States

Louisiana Enabling legislation (in packet)	Texas Enabling legislation (in packet)
Pennsylvania Enabling legislation (in packet)	Washington DC Ordinance (in packet)

HIGHLIGHTS OF LOCALITIES'  
LEGISLATION

Alexandria, VA

Resolution 371 - Establishes an Alexandria Archaeological Commission whose duties are:

1. To define goals and priorities
2. To promote archaeology program
3. To promote public awareness of the value of archaeology
4. To develop ordinance and plan for the protection and preservation of archaeological resources in the City

Ann Arbor, MI

Actually land development regulations - include consideration of a proposed project's impact on archaeological resources

Main feature: Review Process (when site plan filed with Planning Dept)

1. Four criteria signal need for archaeological investigations
  - a. The existence of known site(s) in proximity to proposed development site
  - b. Proposed development located in area of "high archaeological potential"
  - c. Proposed project located in area where little or development has occurred
  - d. Proposed development impacting 5 or more acres
2. Planning Department notifies University of Michigan Museum of Anthropology (UMMA) if any of four criteria met
3. UMMA begins "formal file assessment" begun to determine
  - a. If known site will be affected by project
  - b. If sufficient cause present to require some type of field survey
4. UMMA gives recommendation to City
5. City makes final decision regarding project's compliance with land use regulations
6. Developer responsible having survey conducted
7. UMMA reviews reconnaissance report and makes impact assessment
8. If archaeological resources encountered during construction, UMMA makes informal review

Advantages:

1. Flexibility of program
2. Review/survey conducted in early stages of planning process
3. and before development begins
4. Cost of review process fairly low

Baltimore, MD

1. Proposed ordinance listed under "Police Ordinances" section
2. Theft of archaeological objects from City property termed misdemeanor
3. Fines imposed not exceeding \$100, or imprisonment not exceeding 30 days, or both

Dade County, FL

Extensive ordinance:

1. Establishes Historic Preservation Board
2. Encourages development of site, district, and zone designations for archaeological resources
3. Review process to obtain -
  - a. Certificateness of Appropriateness
  - b. Certificate to Dig

Important features of ordinance:

1. Definitions of properties considered eligible for designation
2. Designation report must be filed and each affected agency notified
3. Public hearing is held in order to act on each site, district, or zone designation, and Board must state decision within 7 days
4. Each agency or person involved is to be notified of Board's decision
5. Penalties:
  - a. Not more than \$500 a day for each day of violation
  - b. Any work performed without complying with regulations must be removed.
6. Incentives:

Owners of designated properties eligible for financial assistance with monies put aside by County for historic preservation

Fairfax County, VA

1. Archaeology alluded to as part of cultural significance in historic preservation ordinance
2. Historic District overlays proposed by Architectural Review Board (ARB) and/or Fairfax County History Commission to Planning Commission and/or Board of Supervisors
3. Building permit not issued for construction, demolition, or relocation in overlay areas until approval is given by Architectural Review Board (ARB)
4. Application for permit forwarded to ARB by Director (however, which Director is unclear)
5. Appeal process available
6. Limitations on use of land in overlay districts listed in ordinance

Fredericksburg, VA

Basically, an Historic Preservation ordinance

1. Encourages efforts to protect/preserve archaeological resources when impacted by nearby project
2. States that ARB and Planning Commission are to review proposals to demolish or relocate structures of significance and that action's effect on surrounding properties
3. Allows for an appeal

Houston, TX

1. Ordinance establishes Houston Archaeological and Historical Commission
2. Establishes public policy for city officials to use

Kingston, ON

1. By-law states that artifacts given to the municipality will be under the direction of the Chief Administrative Officer of the municipality
2. If any person discovers anything of historical or archaeological value on City property, the City must be notified and will attempt to keep any delays caused by the find at a minimum
3. The preceding information must be included in all City and Public Utilities Commission contracts requiring groundbreaking activities
4. Persons not complying with the by-laws can be fined a maximum fine of \$2,000.

Larkspur, CA

Ordinance contains:

1. Statement of purpose
2. Archaeological investigation permit required before any excavation can be conducted
  - a. Unlawful to do so without permit
  - b. Archaeological investigation permit required before building or grading permit is issued on a recorded archaeological resource
  - c. If archaeological material is discovered on a site, all excavation activities must stop until an archaeological investigation permit is issued
  - d. Application for permit must be filed with planning department
3. Representative chosen to conduct reconnaissance of proposed project site and submit report
4. Certified Environmental Impact Report (in compliance with state EPA law) may be accepted in lieu of representative's findings
5. Planning Commission determines significance and allows permit after approving proper mitigation procedures
6. Records of findings are sent to several state and local agencies

New Orleans, LA

Historic Preservation ordinance

1. States purpose
2. Creates New Orleans Historic District/Landmarks Commission
3. Alludes to archaeological resources under "Landmark and Landmark Site" in definitions
4. Certificate of Appropriateness required before any excavation of archaeological resources in conjunction with earthworks
5. Outlines "landmark" designation application procedures
6. Allows for the placement of plaques at landmark sites
7. Resolution added in which protection of burial sites encouraged

Oklahoma City, OK

1. States purpose and definitions
2. Establishes Historical Preservation and Landmark Commission and lists duties
3. 2 types of historic district designations
  - a. "HL" - Historical Landmark Zoning District
  - b. "HP" - Historical Preservation Zoning District
4. Certificate of Appropriateness - instances where certificate is needed listed in ordinance
5. Procedural information extensive

New York, NY

1. Ordinance focuses on preservation of landmarks and historic districts
2. Establishes Landmarks Preservation Commission
3. Archaeological resources alluded to in "landmark" and "landmark site" definitions

Pensacola, FL

Ordinance specifically considering archaeological resources

1. Review process similar to NPHA Section 106 review process
2. Department of Community Design and Planning responsible for coordinating review process
3. Before any development commences on City property, Director of Community Design and Planning, Department Head of agency proposing project, City Manager and appointed Archaeologist will meet to discuss groundbreaking activities involved with project
4. If project thought to disturb archaeological resources, impact review will be initiated
  - a. Case report prepared if adverse effect is indicated
  - b. Memorandum of Agreement prepared if needed
5. Appointed Archaeologist will be contacted regarding any ARB and Planning Board meetings to monitor impact of groundbreaking activities proposed on private properties and to advise citizens/developers on archaeology matters which might pertain to their proposed projects



Philadelphia, PA

1. Archaeological resources alluded to as "historic sites and objects"
2. States policies for protection/preservation of historic resources
3. Permit required before any demolition can be approved in an historic district

St. Petersburg, FL

Ordinance specifically focuses on archaeological resources

1. Establishes Archaeology Committee
2. Public and private properties included in ordinance requirements
  - a. Any person discovering archaeological resources must report find(s) to City Archaeologist
  - b. City Archaeologist will examine site to determine value
  - c. Public hearing will be held by Archaeology Committee within 10 days of initial report by archaeologist to City Archaeologist
  - d. Archaeology Committee will then determine what action will be permitted on the site
  - e. Owner of property may appeal decision

Wilmington, DE

Ordinance focusing on historic district standards

1. States purpose
2. Review Commission for Historic Districts has design review authority
3. Review conducted before demolition can occur in historic district
4. A proposal for demolition must include subsequent plans for archaeological investigation

Local Legislation Addendum--Archaeological Codes



Introduction and first reading: 1/10/89  
Public hearing: 1/14/89  
Second reading and enactment: 1/14/89

### INFORMATION ON PROPOSED ORDINANCE

#### Title

AN ORDINANCE to add a new Section 13-1-40 (METAL DETECTING AND DIGGING ON CITY PROPERTY) to Chapter 1 (GENERAL OFFENSES), Title 13 (MISCELLANEOUS OFFENSES) of The Code of the City of Alexandria, Virginia, 1981, as amended.

#### Summary

The proposed ordinance prohibits the possession and use of metal detectors on, digging on and excavation of, and the removal of objects from city property.

#### Sponsor

#### Staff

Jean Federico, Director, Office of Historic Alexandria  
Oliver A. Pollard, III, Assistant City Attorney

#### Authority

§ 2.04(c), Alexandria City Charter

#### Estimated Costs of Implementation

#### Attachments in Addition to Proposed Ordinance

Department head memorandum

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE to add a new Section 13-1-40 (METAL DETECTING AND DIGGING ON CITY PROPERTY) to Chapter 1 (GENERAL OFFENSES), Title 13 (MISCELLANEOUS OFFENSES) of The Code of the City of Alexandria, Virginia, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Chapter 1, Title 13 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is amended by adding a new section 13-1-40 to read as follows:

Sec. 13-1-40 Metal detecting and digging on city property.

(a) Except as provided in subsections (b), (c) and (d), it shall be unlawful for any person, while located on city property, to:

(1) possess or use a mineral or metal detector or any other device or probe to search for objects in, on or below the surface of the soil;

(2) dig, excavate or in any other way disturb the surface of the soil;

(3) remove any object found in, on or below the surface of the soil.

(b) Notwithstanding the prohibitions in subsections (a)(1) and (a)(3), permission may be obtained from the director of the department of recreation, parks and cultural activities, or his designee, to use a metal detector on city property to locate and recover a specific item of personal property which has been lost by the person requesting such permission.

(c) Notwithstanding the prohibitions in subsection (a)(2), permission to dig on or excavate specific city property may be granted by the city manager, after review of and favorable recommendation on the request by the city archaeologist. Any objects found as a result of such permitted digging or excavation shall remain the property of the city. Any person receiving permission under this subsection shall, at the completion of the work, restore the city property to its previous condition.

(d) This section shall not apply to activities conducted by city employees during the course of their duties.

(e) Any person violating this section shall, upon conviction, be guilty of a class three misdemeanor. Each day that a violation continues or occurs shall constitute a separate offense.

Section 2. That this ordinance shall become effective upon the date and at the time of its final passage.

JAMES P. MORAN, JR.  
Mayor

Introduction: 1/10/89  
First Reading: 1/10/89  
Publication:  
Public Hearing:  
Second Reading:  
Final Passage:

N.B. Underlining is not part of the ordinance but denotes new or changed material. Material marked through with dashes is not part of the ordinance but denotes material being deleted.



Alexandria, Virginia

RESOLUTION NO. 371

WHEREAS, the City of Alexandria possesses a unique character and heritage that is desirable to preserve for this and future generations; and

WHEREAS, the archaeological efforts in the City to date have been carried forward to the best of the abilities of the few individuals involved; and

WHEREAS, it is desirable to expand the participation in these archaeological programs in order to establish goals and priorities and to preserve, promote and display the extraordinary artifacts which have been recovered and restored to date and which can be expected to be recovered in the future.

NOW, THEREFORE, BE IT RESOLVED:

1. That there be established an Alexandria Archaeological Commission which shall be charged with the following responsibilities:

- (a) To establish goals and priorities with a view to excavating, preserving, and restoring and displaying the artifacts which contribute to the history and heritage of colonial, federal and historic Alexandria, historic Virginia and historic America.
- (b) To promote the archaeological programs of the City with the local, state and federal governments as well as the private foundations and the general public, and to seek support, financial and otherwise, to supplement or complement the City's program.
- (c) To promote and expedite the restoration and preservation of the historic artifacts recovered from the Gadsby, Market, and Bank blocks the 300 and 400 blocks of King Street, and those to be recovered from the 500 block of King Street and the DIP Urban Renewal Project.
- (d) To promote and establish sites for the display of Alexandria artifacts.
- (e) To plan, develop, and recommend a ten-, five-, and two-year Archaeological Plan and Program for the City of Alexandria, to be submitted to the City Council and the City Manager.
- (f) In establishing goals and priorities, the Commission shall cause a Register to be made of all known lands in the City of Alexandria, whether public or private, known or believed to contain historical artifacts, and shall make recommendations concerning the excavation and preservation of historic artifacts contained thereunder. Any objects of monetary value found on private lands shall remain the property of the owner unless donated to the City. The City shall have the privilege of photographing such artifacts. The Commission shall cooperate with owners of private lands in all reasonable private attempts to excavate shafts and other areas on such lands.



- (g) To establish and implement, with the cooperation of local high schools and metropolitan colleges, programs whereby students could learn excavation, processing and restoration of artifacts as well as research and studies in local and metropolitan libraries, record rooms of courts and museum and other institutions of learning, early American and local history and the identification of artifacts and early craftsmen and colonial living (similar to the successful program conducted with George Washington University in the past) and receive high school and college credit.
- (h) To cooperate with the Bicentennial Program of the City of Alexandria and the program of the State of Virginia during the period 1974-1983 to assure its success.
- (i) To propose local ordinances and state statutes to the City Council and the City Manager to promote the goals and aims as set forth above.
- (j) To study and make recommendations to City Council with respect to additional activities involving the City's archaeological program and artifacts.

2. That the Commission shall be composed of:

- (a) Four members at large;
- (b) One citizen member from Planning District I;
- (c) One citizen member from Planning District II;
- (d) One citizen member from Planning District III;
- (e) Three members to be nominated by the Alexandria Association, the Historic Alexandria Foundation and the Alexandria Historic Society, one from each organization

With ex-officio members as follows:

- (a) One representative of the Alexandria Tourist Council, and
- (b) One representative of the Alexandria Bicentennial Commission.

3. That the establishment of the Commission be publicized and all candidates for appointment submit their application to the City Clerk by the close of business March 19, 1975, for consideration by the City Council and appointment at the Second Regular Meeting in March. The initial terms of the members of the Commission shall be for two and and three years, to be determined by lot, except that the Chairman and one member nominated by the Associations shall serve for four years. Thereafter, all terms shall be four years.

4. That the City Council shall name the first Chairperson of the Commission and the Commission shall elect its own chairperson thereafter.

5. That the Commission is empowered to adopt rules and regulations in regard to procedure and other matters so long as the same are not inconsistent herewith, and including, but not limited to, the election of a Vice Chairperson and Secretary and the establishment of committees through which to carry out its functions and purpose.

6. That the Commission shall hold at least nine regular meetings each year, and as many special meetings each year as the Commission may deem advisable.

Adopted February 25, 1975

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Helen Vickers, Clerk of the City of  
Alexandria, Virginia



DLR # 590  
Draft #1  
Date: 6-5-85  
Disk: Police Ord. #1

Proposed Ordinance

CITY COUNCIL OF BALTIMORE

No. \_\_\_\_\_

By: Clarence H. "Du" Burns, President  
Requested by: The Administration  
Introduced:  
Assigned to:

REFERRED TO THE FOLLOWING MUNICIPAL AGENCIES:

A BILL ENTITLED

AN ORDINANCE concerning

ARCHAEOLOGICAL OBJECTS

FOR the purpose of prohibiting the stealing of archaeological objects  
from City property and providing penalties.

BY adding

Article 19 - Police Ordinances

To come under the new subtitle "Archaeological Objects"

Section 3A

Baltimore City Code (1983 Replacement Volume, as amended)

SECTION 1. Be it ordained by the Mayor and City Council of  
Baltimore, That Section(s) of the Baltimore City Code (1983 Replacement  
Volume, as amended) be added, repealed, or amended, to read as follows:

ARTICLE 19 - POLICE ORDINANCES

Archaeological Objects

3A. Theft prohibited.

Any object or material of historical or archaeological value or  
interest found on an archaeological site on land owned or controlled by  
the City is the property of the City. Any person who unlawfully steals  
such an object or material is guilty of a misdemeanor and upon  
conviction is subject to a fine not exceeding \$100 or imprisonment not  
exceeding 30 days, or both, with costs imposed in the discretion of the  
court.

SEC. 2. And be it further ordained, That this ordinance shall  
take effect on the 30th day after the date of its enactment.



LAND DEVELOPMENT REGULATIONS

1:1 Purpose. The purpose of these Regulations is to specify procedures by which land developers obtain approval of proposed developments and to specify certain materials which must be prepared and submitted to assist the City in determining if the proposed development is in compliance with local ordinance, state and federal statutes, and these regulations. The Planning Director, with the approval of the City Planning Commission, may modify the petition requirements when all necessary information is provided.

1:2 Definitions. "Natural Features" shall include:

- (1) Archeological Finds. (Contact Planning Department for information)
- (2) Endangered Species Habitat. (Contact Planning Department for information)
- (3) Floodplain, 100-Year. An area which has a one percent chance of flood occurrence in any given year.
- (4) Hedgerow. A row of eight or more trees having a four-inch diameter or greater at four feet. The dripline of the trees defines the land area of a hedgerow.
- (5) Ponds and Lakes. A natural or artificial impoundment of water that retains water year round.
- (6) Steep Slopes. Slopes with a grade of 20 percent or more.
- (7) Landmark Tree. Any tree of stature standing alone in the open; or any woodlot tree which stands obviously apart from its neighbors by size, form or species. Trees equal to or greater than the diameters shown on Attachment A will generally be considered a landmark tree regardless of location. (See Attachment A)
- (8) Wetlands. Land where standing water is retained for a portion of the year and does support wetland vegetation or aquatic life and is commonly referred to as a bog, swamp or marsh.
- (9) Woodlot. An area of 1/4 acre or more containing eight or more trees per 1/4 acre having a four-inch or greater diameter at a four-foot height.

1:3 Area Plan Requirements. Applications for area plan approval shall include a brief description of the development program, a community analysis, a site analysis, general information, and a schematic design, 13 copies of which shall be filed with the Planning Director.

~~ARCHAEOLOGY IN THE PLANNING PROCESS:~~

THE ANN ARBOR PLAN

Michael Shott  
John O'Shea

Museum of Anthropology  
University of Michigan  
Ann Arbor, MI 48109

ARCHAEOLOGY IN THE PLANNING PROCESS:

THE ANN ARBOR PLAN

ABSTRACT

Archaeological preservation is an emerging focus in environmental management and planning. Statutes mandating archaeological survey and excavation in connection with federally-sponsored projects have been in effect for some years. Few local preservation measures have been enacted, however, and archaeological sites continue to be destroyed during land altering operations conducted under local oversight. This paper describes an archaeological review plan and its implementation in Ann Arbor, Michigan. It also discusses the rationale for incorporating archaeological review in planning and demonstrates how it can prove a cost-effective component of planning programs.

## INTRODUCTION

In recent years, the planning profession has devoted considerable attention to environmental issues. Frequently included under this broad heading are archaeological sites and the artifacts which they contain. A variety of statutory and administrative measures has been enacted at the federal level that require active concern for such resources. However, prudent and effective measures for integrating archaeological review into the planning process have been implemented far less frequently at the level of state and local governments and actions at these levels continue to damage and destroy irreplaceable archaeological sites.

Economic hardship and lack of relevance to modern conditions are often cited in justification of the failure to protect sites. Clearly, the question of relevance is of central importance to this issue, and we are firmly convinced that prehistoric and historic archaeological sites possess qualities of relevance and significance to our own society (Dixon 1977). The issue, however, warrants extended treatment in its own right. For the purposes of this paper, we assume that the intrinsic importance of these sites is established. Instead, our purpose here is to describe a recently implemented local planning measure, its effectiveness, and its economic impact on development projects. We then discuss the advantages of integrating archaeology into the planning process.

## ARCHAEOLOGY IN THE PLANNING PROCESS: AN OVERVIEW

~~Contrary to what many believe, archaeological sites are widely~~

distributed across the landscape. They are neither rare nor exotic;

~~some of the most noteworthy and impressive sites in the world are~~

found in the United States. It may also surprise some to learn that archaeological sites are readily accessible, occurring in most cases on or just below the modern ground surface. Given this accessibility, sites are vulnerable to unwitting destruction. Such destruction occurs every day, and it increases with the pace of development. Needless to say, archaeological sites are irreplaceable. We can never restore what has been destroyed, but it is within our power to design and implement reasonable measures that will extend a degree of protection to remaining sites while posing no obstacle to needed development.

Since the late 1960s, a number of federal statutes and regulations have been enacted to promote the preservation of archaeological sites, and to consider and mitigate the impact of federally-sponsored or -licensed projects on them.<sup>1</sup> In most cases, these statutes and regulations require the survey of project locations to determine if archaeological sites fall within their boundaries. When sites are found, additional measures may sometimes be required to ensure that their scientific importance is adequately assessed and their potential at least partly realized before they are destroyed. These federal enactments take effect not only when actions are planned by federal agencies, but in all cases in which federal funding or licensing is involved. Many state and local government agencies seek federal support for development projects they contemplate, and archaeological preservation requirements enter into the planning process in those cases. Unfortunately, archaeological review requirements often occasion surprise to planners unaware of their existence or their



applicability to specific projects.

A number of states have enacted legislation similar to federal statutes. These statutes vary considerably in scope and purpose, from measures closely modeled on federal legislation to others with more limited effects. Unfortunately, some states have established little or no statutory authority for the preservation of archaeological sites.

It is more difficult to monitor efforts at the local level, but it is our impression that few municipalities have enacted ordinances or other measures designed to protect archaeological sites as the federal government and some states do. However, the list is growing as major cities like New York, Toronto, Baltimore and Washington, D.C., and other communities such as Annapolis, Maryland and Albuquerque, New Mexico have enacted or are considering such measures. The absence of widespread preservation measures at this level is especially unfortunate for several reasons. First, while local developments are generally more limited in nature than federally or state funded projects, they are far more numerous and their net effect on archaeological sites probably is greater. Second, such measures rarely constitute a financial burden to developments; in fact, locally mandated preservation efforts should normally comprise a tiny if not negligible fraction of total project costs. If carried out in a timely fashion, municipalities can thus promote the preservation of their cultural heritage at what amounts to a negligible cost. Third, the establishment of local preservation measures and associated planning procedures render two benefits to the municipality beyond heritage conservation. They make responsible planning authorities

more aware of cases in which preservation requirements from higher levels take effect and, since review and planning procedures already are in place, they facilitate compliance with those supralocal requirements. The cost of such compliance should rarely if ever become burdensome to a project, but the failure to anticipate preservation requirements can have serious financial effects as a consequence of scheduling delays necessary to secure compliance. For these reason, municipalities may discover that, far from being a "frill" issue, archaeological review plans can prove a cost-effective component of their overall planning effort.

In the following section, we introduce a local preservation planning measure instituted in Ann Arbor, Michigan, describe its operation, and discuss its potential with respect both to archaeological preservation and efficient planning efforts.

#### THE ANN ARBOR PLAN

In 1983, the city of Ann Arbor enacted a revised set of land development regulations governing development projects in the city. Section 1 of the regulations instructs developers and the city to consider the effects that proposed site plans will have on a variety of natural features. Archaeological sites are explicitly included among such features.

It bears emphasizing that the regulations were enacted strictly on the city's initiative, and that archaeologists had no role in their drafting or passage. Once the regulations were in place, however, Ann Arbor recognized that their effective implementation with respect to archaeological sites would require the involvement of qualified professionals. To assist Ann Arbor in its planning efforts and to promote archaeological preservation in the city as a model for other

communities to emulate, the University of Michigan Museum of Anthropology (UMMA henceforth) undertook a project designed to maximize the effectiveness of the Ann Arbor regulations. Specifically, the UMMA supplied data on known archaeological sites within the city limits, and designed a review process for the efficient implementation of the regulation as proposed development plans are submitted.

In this plan, we have attempted to develop a series of graded responses corresponding to the likelihood that an archaeological site may be encountered during the course of a given development project. The system of graded responses is designed to provide a high degree of protection to the prehistoric archaeological heritage of Ann Arbor, while minimizing expense and delay in the planning process. A flow chart (Fig. 1) illustrates the main steps and decisions involved in the archaeological review process.

The first step is the most critical one in the entire review process, and it is carried out by the city planning department. Through an analysis of archaeological occurrences in Ann Arbor, the UMMA has identified a set of four criteria which significantly increases the likelihood that archaeological sites will be encountered in a given area. These are, in order of importance: 1) the existence of a known archaeological site in the immediate vicinity of the area to be developed; 2) location of the project area within a zone of high archaeological potential as identified by distributional analysis of known sites; 3) location within areas not appreciably altered or disturbed by previous modern occupation; and 4) development to affect areas measuring five acres or more in extent. If any of these four

criteria is met, there exists a sufficient likelihood that archaeological sites will be affected.

The relative importance of the criteria may vary according to other circumstances. Possibly owing to the presence of the University of Michigan, Ann Arbor has more recorded archaeological sites than most communities. Absence of information should not be equated with absence of sites, however, since many archaeological sites still await discovery. In cities with fewer known archaeological sites, the first condition listed above will not assume the importance it does in Ann Arbor.

Often a given plan will meet two or more of these criteria. Although the plan still proceeds through the same file review processes, this increases the likelihood that some manner of field inspection will be recommended. In the event that a given plan does meet one or more of the four conditions, the UMMA is notified by the city planning department and a formal file assessment is initiated. The prime objective of a file assessment is to determine whether a) a known archaeological feature will be adversely affected by the plan and b) to determine whether there is sufficient cause to require some form of field reconnaissance of the area prior to development. That file review utilizes UMMA internal data on site location and other variables as well as information concerning topography and other natural features, and produces a recommendation concerning necessary and adequate measures to be implemented. If field investigation is warranted, the UMMA offers advice on the nature of the investigation that will be necessary. This information and advice is sent to the city, where the final decision concerning the plan's compliance with the land development regulations is made. Again, the file review is

~~conducted at no cost to the city or the developer.~~

★ Since the responsibility for the field reconnaissance rests with the developer, the actual individuals or concerns retained to conduct the investigation may vary. However, the cost of such an investigation typically is not great given the size of most tracts slated for development in Ann Arbor. Once the field reconnaissance has been conducted, the UMMA reviews the report, both in terms of its adequacy (Did qualified individuals conduct the work? Did they follow within reason the specifications established by the city and the UMMA?) and for the significance of its findings. The UMMA and the city also have developed a set of criteria to employ in the evaluation of archaeological reports and prospective archaeological consultants. Based on the report, the UMMA makes recommendations to the city concerning the likely impact of the plan on archaeological sites. These may range from a determination of "no effect" to a recommendation that the plan be revised or that additional measures for archaeological preservation be undertaken. In most instances, however, in which archaeological sites are encountered, minor revision to a plan is all that is needed to protect them, while allowing development to continue unhindered.

If a plan fails to meet any of the four criteria, there exists insufficient a priori grounds to justify a formal file assessment. This does not necessarily mean, however, that archaeological remains will not be encountered during the execution of the plan. In such unforeseen cases, information on construction plans and schedules is sent routinely to the UMMA for informal review, to be conducted on an "as time permits" basis. The developer incurs no financial obligation

for this effort. In addition, contractors are encouraged to report immediately any archaeological materials encountered during the course of construction. In this manner, at least some information may be salvaged from such unexpected discoveries.

#### EVALUATING THE PLAN

The Ann Arbor plan exhibits several important qualities. Perhaps chief among these is its flexibility. There is no absolute requirement that an archaeological investigation take place at a proposed development site. Instead, the site is evaluated against a set of criteria by the city and against a second set of purely archaeological criteria by the UMMA. Only when the site plan has passed through both stages of review can a field investigation be required. The city of Ann Arbor reviews over 50 site plans for new construction each year. Given the nature of the archaeological review criteria, the majority of these plans probably will not qualify for archaeological review. Furthermore, those plans which do meet the criteria and thus enter the review process will not always require on-site archaeological investigation. It is too early as yet to detect trends in the review process, but it is our belief that less than half of all reviews will result in a recommendation that archaeological investigation take place. In the first five months following the implementation of the review procedure in November 1984, only five of the 11 plans submitted for review required investigation. In several of those instances, only portions of the project area were considered potentially sensitive and thus worthy of investigation. We emphasize that the 11 plans submitted for review during this period comprised only a subset of all plans reviewed by the city planning department.

A second major advantage of the Ann Arbor plan is that it involves

review and, if warranted, field investigation early in the planning process, and well before on-site development occurs. In this fashion, necessary modifications to site plans can be accomplished without imposing scheduling or financial hardships on developers. As long as the plan outlined here is implemented, archaeological review will pose no obstacle to the timely review and completion of development projects. In the great majority of cases, field investigation can be carried out in a short period relative to project timetables. Ordinarily, such investigations will require no more than several days of fieldwork which should occur well before actual on-site development takes place.

Finally, the cost of archaeological review measures will be modest, to put it mildly. Most development project budgets are likely to involve hundreds of thousands of dollars. Archaeological field investigations, in comparison, rarely exceed several thousands dollars, and frequently will be less. Archaeological review rarely if ever should comprise more than a very small fraction of total project costs.

Several aspects of the plan bear emphasizing at this point. It should be clear that the UMMA's participation in the review process is solely advisory. It is volunteering its expertise for the protection of Ann Arbor's archaeological heritage, but any final decisions in the process must be made by the city. In addition, the UMMA houses a comprehensive data base on archaeological sites which is updated on a regular basis. That data base is confined to the state of Michigan, and can only be utilized there. In other states, recourse to different data bases will be necessary. These specific considerations

aside, the overall design of the review process should be adaptable to a wide variety of local archaeological and planning conditions.

#### ARCHAEOLOGY IN THE PLANNING PROCESS:

##### THE LONGER VIEW

Much of the funding for local developments comes from the federal government, through a variety of agencies and programs. In such cases, federal statutory requirements for archaeological review apply regardless of whether or not local preservation planning measures have been enacted. Communities may discover that including such review from the earliest stages of planning can be beneficial for three reasons. First, it will call attention to the obligations established by federal statutes, so that budget estimates designed to reflect archaeological review requirements can be made, and last minute allocations avoided. Second, archaeological review at this stage can produce cost estimates for such services, so that communities and developers will have an idea of reasonable expenses before services must be retained. Third, specific design elements can be altered without causing hardship or added expense if they will impact known archaeological sites sufficiently to require extensive excavation. The manner in which such review is implemented may vary, but is likely to involve the use of preservation planners hired on a consulting basis or as a part of the permanent planning staff.

The Ann Arbor plan involves joint efforts of the city and the UMMA. The latter has placed its archaeological expertise at the city's disposal on a gratis basis, as part of its contribution to the local community. Similar arrangements, of course, cannot be established everywhere, since major universities possessing the requisite staff and facilities are not available in all communities. Instead, communities may find it advisable to retain professional

preservation planners in lieu of a cooperative arrangement with a university. In such cases, distributing the planning costs over a broad base may be the most efficient option, and this can be accomplished by employing relevant expertise at a county or regional level where salary and administrative costs can be shared by a group of communities. Many communities are members of regional planning and administration councils and it is at this level that the involvement of preservation professionals may prove cost-effective (Gray 1977).

#### CONCLUSION

Preservation and enhancement of the environment--both natural and cultural--has been an increasing concern of planners in recent years. A consensus has emerged that reasonable constraints on development are warranted in view of the severe environmental deterioration which is occurring at an alarming pace in our society. Historically, the federal government has assumed the initiative in planning for the protection of archaeological sites. However, there is a growing sentiment that mandates a reasonable concern for archaeological cultural resources in development at the local level. The Ann Arbor plan exemplifies one way of mobilizing that sentiment effectively. By incorporating archaeology into the planning process itself--not after plans have been set and commitments made--preservation can be ensured, a community's archaeological heritage protected, and statutory requirements satisfied in an orderly and cost-effective manner.

#### ENDNOTE

<sup>1</sup> These include the National Historic Preservation Act of 1966 (16 USC Sec. 470), the Archaeological and Historic Preservation Act of 1974 (16 USC Sec. 69), the National Environmental Policy Act of 1969 (42 USC Sec. 4321), and Executive Order 11593, "Protection and Enhancement of the Cultural Environment," (36 F.R. 8921; 16 USC 470). For a summary of these acts and other pertinent federal statutes, consult King et al. (1977) or Treatment of Archaeological Properties: a Handbook, which is available at the following address:

Advisory Council on Historic Preservation  
The Old Post Office Building  
1100 Pennsylvania Ave. N.W.  
Washington, D.C. 20004

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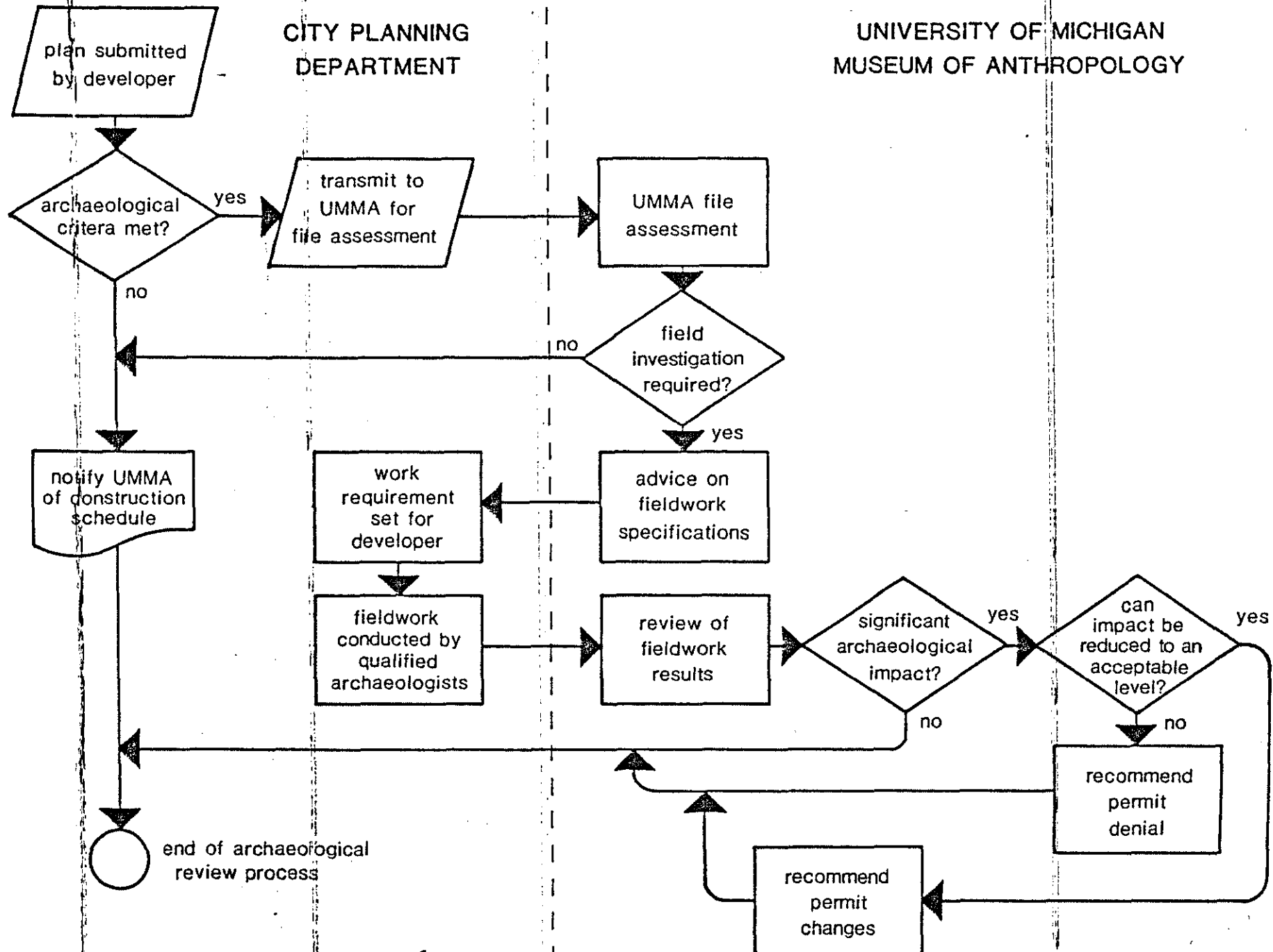
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CITY PLANNING  
DEPARTMENT

UNIVERSITY OF MICHIGAN  
MUSEUM OF ANTHROPOLOGY



Chapter 16A

HISTORIC PRESERVATION\*

Sec. 16A-1. Short title.

This chapter shall be known and may be cited as the "Metropolitan Dade County Historic Preservation Ordinance." (Ord. No. 81-13; § 1, 2-17-81)

Sec. 16A-2. Declaration of legislative intent.

It is hereby declared as a matter of public policy that the protection, enhancement and perpetuation of properties of historical, cultural, archeological, aesthetic and architectural merit are in the interests of the health, prosperity and welfare of the people of Dade County. Therefore, this chapter is intended to:

- (1) Effect and accomplish the protection, enhancement and perpetuation of buildings, structures, improvements, landscape features and archeological resources of sites and districts which represent distinctive elements of the county's cultural, social, economic, political, scientific, religious, prehistoric and architectural history;
- (2) Safeguard the county's historical, cultural, archeological and architectural heritage, as embodied and reflected in such individual sites, districts and archeological zones;
- (3) Foster civic pride in the accomplishments of the past;
- (4) Protect and enhance the county's attraction to visitors and the support and stimulus to the economy thereby provided; and

\*Editor's note—At the editor's discretion, §§ 1—16 of Ord. No. 81-13, adopted Feb. 17, 1981, have been included as Ch. 16A of the Code.

Cross references—Building code, Ch. 8; housing, Ch. 17; landscaping, Ch. 18A; planning generally, Ch. 23A; urban renewal, Ch. 30A; zoning, Ch. 33.

- (5) Promote the use of individual sites and districts for the education, pleasure and welfare of the people of Dade County. (Ord. No. 81-13, § 2, 2-17-81)

Sec. 16A-3. Scope of regulations.

(1) This chapter is intended to and shall govern and be applicable to all property located in unincorporated Dade County, Florida. Nothing contained herein shall be deemed to supersede or conflict with applicable building and zoning codes. Provisions contained herein shall be cumulative and read in conjunction with other provisions of the Dade County Code. All municipalities within Dade County shall have up to and including July 1, 1982, to adopt local ordinances with respect to districts, individual sites and archeological zones. Adherence with this chapter by municipalities shall be deemed accomplished by the filing of each municipality's respective ordinance with the clerk of the Dade County board of county commissioners.

(2) Before a municipal historic preservation ordinance shall be filed, it shall address the following sections: The establishment of an historic preservation board with powers and duties; the creation of a process to designate individual sites, districts and archeological zones; a process of review of certificates of appropriateness and certificates to dig; and an appeal process. Municipalities shall also submit the proposed ordinance to the National Register of Historic Places for certification by the National Register to be eligible for the 1981 Economic Recovery Tax Act as amended. Although municipalities are not restricted from implementing the ordinance prior to National Register certification, the municipality must obtain certification as expeditiously as reasonably possible.

(3) Should any municipality fail to adopt an ordinance regulating historic preservation prior to July 1, 1982, this chapter shall govern. (Ord. No. 81-13, § 3, 2-17-81; Ord. No. 82-99, § 1, 10-19-82)

Sec. 16A-4. Definitions.

- (1) Archeological zone: An area designated by this chapter which is likely to yield information on the history



and prehistory of Dade County based on prehistoric settlement patterns in Dade County as determined by the results of the Dade County historic survey. These zones will tend to conform to natural physiographic features which were the focal points for prehistoric and historic activities.

(2) Certificate of appropriateness: A certificate issued by the board permitting certain alterations or improvements to a designated individual site or property in a designated district.

(a) Regular certificate of appropriateness: A regular certificate of appropriateness shall be issued by the staff of the preservation board, based on the guidelines for preservation approved by the board.

(b) Special certificate of appropriateness. For all applications for a special certificate of appropriateness involving the demolition, removal, reconstruction or new construction at an individual site or in a district, a special certificate of appropriateness is required that is issued directly by the board.

(3) Certificate to dig: A certificate that gives the board's permission for certain digging projects that may involve the discovery of as yet unknown or known archeological sites in an archeological zone. This certificate is issued by staff of the board based on the guidelines for preservation approved by the board.

(4) Certificate of recognition: A certificate issued by the board recognizing properties designated pursuant to this chapter.

(5) Demolition: The complete constructive removal of a building on any site.

(6) Districts: A collection of archeological sites, buildings, structures, landscape features or other improvements that are concentrated in the same area and have been designated as a district pursuant to this chapter.

(7) Exterior: All outside surfaces of a building or structure.

-(8) Guidelines for preservation: Criteria established by the preservation board to be used by staff in determining the validity of applications for a regular certificate of appropriateness and any certificate to dig and to establish a set of guidelines for the preservation of buildings in south Florida.

(9) Historic preservation board: A board of citizens created by this chapter as described in sections 16A-5 through 16A-9.

(10) Historic survey: A comprehensive survey compiled by the historic preservation division of the Dade county office of community and economic development involving the identification, research and documentation of buildings, sites and structures of any historical, cultural, archeological or architectural importance in Dade County, Florida.

(11) Individual site: An archeological site, building, structure, place or other improvement that has been designated as an individual site pursuant to this chapter. Under the provisions of this chapter interior spaces may be regulated only where a building or structure is a designated individual site.

(12) National Register of Historic Places: A federal listing maintained by the U.S. Department of the Interior of buildings, sites, structures and districts that have attained a quality of significance as determined by the Historic Preservation Act of 1966 as amended.

(13) Ordinary repairs or maintenance: Work done to prevent deterioration of a building or structure or decay of or damage to a building or structure or any part thereof by restoring the building or structure as nearly as practicable to its condition prior to such deterioration, decay or damage.

(14) Owner of a designated property: As reflected on the current Metropolitan Dade County tax rolls or current title holder.

(15) Undue economic hardship: Failure to issue a certificate would place an onerous and excessive financial burden upon the owner that would amount to the taking of the owner's property without just compensation.

(16) *Landscape feature*: Any improvement or vegetation including, but not limited to outbuildings, walls, courtyards, fences, shrubbery, trees, sidewalks, planters, plantings, gates, street furniture and exterior lighting. (Ord. No. 81-13, § 4, 2-17-81; Ord. No. 82-99, § 1, 10-19-82)

**Sec. 16A-5. Historic preservation board—Created and established.**

There is hereby created an historic preservation board, ("the board"), as a governmental agency of the county government in and for Dade County, Florida. The board is hereby vested with the power, authority and jurisdiction to designate, regulate and administer historical, cultural, archeological and architectural resources in Dade County, Florida, as prescribed by this chapter under the direct jurisdiction and legislative control of the board of county commissioners. (Ord. No. 81-13, § 5, 2-17-81)

Cross reference—Standards for creation and review of boards, commissions, etc., §§ 2-11.36—2-11.40.

**Sec. 16A-6. Same—Members.**

The board shall consist of nine (9) members appointed by the board of county commissioners. Each member of the board shall be, and shall hold office only so long as he or she is, a resident and registered voter of Dade County, Florida. Appointments shall be made on the basis of civic pride, integrity, experience and interest in the field of historic preservation. The board of county commissioners should attempt to appoint architects, realtors, archeologists, historians, art historians, lawyers or other individuals from the business, financial and other segments of the community who, by virtue of their profession or business, have demonstrated concern for historic preservation. The term of office of membership shall be one (1) year for one (1) member, two (2) years for two (2) members, three (3) years for three (3) members and four (4) years for three (3) members, with appointments thereafter to be for a term of four (4) years for each member. Any vacancy occurring on the board shall be filled by the county commission for the

remainder of the unexpired term, at the earliest possible date. Members shall be eligible for reappointment, and shall hold office until their successors have been duly appointed and qualified. Members of the board shall serve without compensation but shall be reimbursed for necessary expenses incurred in the performance of their official duties, as shall be determined and approved by the county commission. Before entering upon the duties of office, each member shall file written acceptance of appointment and take and subscribe to the oath of office prescribed by law, which shall be filed in the office of the clerk of the county commission. A member of the board may be removed from office only by a two-thirds vote of the entire membership of the county commission; however, whenever a member of the board shall fail to attend three (3) consecutive meetings, the chairman shall certify the same to the county commission. Upon such certification, the member shall be deemed to have been removed and the county commission shall fill the vacancy by appointment. (Ord. No. 81-13, § 6, 2-17-81)

**Sec. 16A-7. Same—Organization.**

The members of the board shall select a chairman who shall serve at the pleasure of the board and such other officers as may be deemed necessary or desirable. The county manager shall provide adequate personnel for the board, including but not limited to representatives from the departments of community and economic development, building and zoning, and planning which shall be deemed the staff of the board. Minutes of each board meeting shall be kept and prepared under the supervision and direction of the board, and copies of such minutes shall be filed with the clerk of the county commission. (Ord. No. 81-13, § 7, 2-17-81)

**Sec. 16A-8. Same—Rules and regulations.**

The board shall make and prescribe such rules and regulations reasonably necessary and appropriate for the proper administration and enforcement of the provisions of

this chapter. Such rules and regulations shall conform to the provisions of this chapter and shall not conflict with the Constitution and general laws of the State of Florida, and shall govern and control procedures, hearings and actions of the board. No such rules and regulations shall become effective until a public hearing has been held upon the proposed rules and regulations, and any amendments or modifications thereto, and the same have been approved by the county commission and filed with the clerk of the commission. Upon approval by the commission, such rules and regulations shall have the force and effect of law within Dade County, Florida. The board shall prescribe forms for use by applicants in compliance with the provisions of this chapter. The board may authorize any one of its members to administer oaths and certify to official acts. (Ord. No. 81-13, § 8, 2-17-81)

#### Sec. 16A-9. Same—Powers and duties.

The historical preservation board shall have the following enumerated powers and duties:

- (1) Adopt or amend rules of procedure.
- (2) Designate individual sites, districts and archeological zones.
- (3) Issue or deny certificates of appropriateness and certificates to dig.
- (4) Approve historical markers and issue certificates of recognition for individual sites and designated properties in a district.
- (5) Recommend zoning and building code amendments to the proper authorities.
- (6) Establish guidelines for preservation and criteria for issuance by staff of regular certificates of appropriateness.
- (7) Promote the awareness of historic preservation and its community benefits.

- (8) No actions of this board will supersede or be construed — as superseding the authority of the board of county commissioners.
- (9) Review and update the historic survey for its quality and professional merit, and validate the findings of the survey as bona fide and sincere.
- (10) Implement the authority of this chapter and fulfill the tasks set forth for this board by the county commissioners in this chapter and other ordinances.
- (11) Record and maintain records of the board's actions and decisions.
- (12) Follow and abide by the laws of the United States of America, the State of Florida and Dade County.
- (13) Provide an annual report to the board of county commissioners. (Ord. No. 81-13, § 9, 2-17-81)

#### Sec. 16A-10. Designation process and procedure.

(I) [Criteria.] The board shall have the authority to designate areas, places, buildings, structures, landscape features, archeological sites and other improvements or physical features, as individual sites, districts or archeological zones that are significant in Dade County's history, architecture, archeology or culture and possess an integrity of location, design, setting, materials, workmanship or association, or:

- (a) Are associated with distinctive elements of the cultural, social, political, economic, scientific, religious, prehistoric and architectural history that have contributed to the pattern of history in the community, Dade County, south Florida, the state or the nation; or
- (b) Are associated with the lives of persons significant in our past; or
- (c) Embody the distinctive characteristics of a type, period, style or method of construction or work of a

master; or that possess high artistic value; or that represent a distinguishable entity whose components may lack individual distinction; or

(d) Have yielded, or are likely to yield information in history or prehistory; or

(e) Are listed in the National Register of Historic Places.

(II) [*Properties not generally considered; exceptions.*] Certain properties which include cemeteries, birthplaces, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, properties commemorative in nature and properties that have achieved significance within the last fifty (50) years, will not normally be considered for designation. However, such properties will qualify if they are integral parts of districts that do meet the criteria, or if they fall within the following categories:

(a) A religious property deriving primary significance from architectural or artistic distinction of historical importance.

(b) A building or structure removed from its location but which is primarily significant for architectural value, or is the surviving structure most importantly associated with an historic event or person.

(c) A birthplace or grave of an historical figure of outstanding importance if there is no other appropriate site or building directly associated with his/her productive life.

(d) A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, distinctive design features, or from association with historic events.

(e) A property primarily commemorative in intent if design, age, tradition or symbolic value has invested it with its own historical significance.

(f) A property or district achieving significance within the past fifty (50) years if it is of exceptional importance.

(III) [*Investigation and designation report.*] Prior to the designation of an individual site, a district, or an archeological zone, an investigation and designation report must be filed with the board. The format of these reports may vary according to the type of designation; however, all reports must address the following: The historical, cultural, architectural or archeological significance of the property or properties being recommended for designation; a recommendation of boundaries for districts and archeological zones and identification of boundaries of individual sites being designated; a recommendation of standards to be adopted by the board in carrying out its regulatory function under this chapter with respect to certificates of appropriateness and certificates to dig. Where a report is filed recommending designation of a district, the report must identify those properties, if any, within the district which are not historically or architecturally compatible with structures in the district. The standards for regulating such nonconforming properties shall provide that a certificate of appropriateness may be required only for new construction on such properties. All reports shall take into consideration projected, proposed or existing public improvements and developmental or renewal plans.

#### (IV) Procedure.

(a) Petition of the owner. The owner(s) of any property in unincorporated Dade County may petition this board for designation of their property as an individual site, district or archeological zone provided that they appear before the board with sufficient information to warrant the investigation of the property for future designation and the board finds that the property may be worthy of designation. The board shall, based on its findings, either direct the staff to begin the designation process or deny the petition. Nothing in this subsection shall be deemed to restrict the power of the board to initiate the designation process pursuant to this section.

(b) *Directive of the board.* The board shall, upon recommendations from staff or the acceptance of petitions pursuant to part (IV), subsection (a) of this section, direct staff to begin the designation process by preparing a designation report, pursuant to part (III) of this section and any other standards the board may deem necessary, and submitting this report according to the procedures described herein.

(c) *Notification of owner.* For each proposed designation of an individual site, district or archeological zone, the board is encouraged to obtain the permission of the property owner(s) within the designated area, and is responsible for mailing a copy of the designation report to the owner(s) as notification of the intent of the board to consider designation of the property at least fifteen (15) days prior to a public hearing held pursuant to this section.

(d) *Notification of government agencies.* Upon filing of a designation report, the secretary of the board shall immediately notify the appropriate building and zoning department, the appropriate public works department and any other county or municipal agency, including agencies with demolition powers, that may be affected by said filing.

(e) *Notification of a public hearing.* For each individual site, district or archeological zone proposed for designation, a public hearing must be held no sooner than fifteen (15) days and within sixty (60) days from the date a designation report has been filed with the board. Owners of record or other parties having an interest in the proposed designated properties, if known, shall be notified of the public hearing by certified mail to the last known address of the party being served; however, failure to receive such notice shall not invalidate the same as such notice shall also be perfected by publishing a copy thereof in a newspaper of general circulation at least ten (10) days prior to the hearing. Owners shall be given an

opportunity at the public hearing to object to the proposed designation.

(f) *Requirement of prompt decision and notification.* Within seven (7) days of a public hearing on a proposed individual site, district or archeological zone, the board shall by written resolution state its decision to approve, deny or amend the proposed designation and shall direct the secretary of the board to notify the following of its actions with a copy of the resolution:

- (1) The appropriate building and zoning department,
- (2) The county clerk,
- (3) The appropriate municipal clerk when necessary,
- (4) Owner(s) of the affected property and other parties having an interest in the property, if known,
- (5) The appropriate planning department,
- (6) The appropriate public works department, and
- (7) Any other county or municipal agency, including agencies with demolition powers, that may be affected by this action.
- (8) Dade County property appraiser.

(g) *[Amendment or rescission.]* The board may amend or rescind any designation provided it complies with the same manners and procedures used in the original designation.

(h) *Moratorium.* Upon the filing of a designation report by the staff, the owner(s) of the real property which is the subject matter of the designation report shall not:

- (1) Erect any structure on the subject property.
- (2) Alter, restore, renovate, move or demolish any structure on the subject property, until such time as final administrative action, as provided by this chapter, is completed.

(i) *Recording of designation.* The board shall provide the clerk of the circuit court with all designations for the purpose of recording such designation and the clerk of the circuit court shall thereupon record the designation according to law. (Ord. No. 81-13, § 10, 2-17-81; Ord. No. 82-99, § 1, 10-19-82)

# Sec. 16A-11. Application for certificate of appropriateness.

(I) [*Certificate required as prerequisite to alteration, etc.*] No building, structure, improvement, landscape feature or archeological site within Dade County which is designated pursuant to section 16A-10 shall be erected, altered, restored, renovated, excavated, moved or demolished until an application for a certificate of appropriateness regarding any architectural features, landscape features or site improvements has been submitted to and approved pursuant to the procedures in this section. Architectural features shall include, but not be limited to, the architectural style, scale, massing, siting, general design and general arrangement of the exterior of the building or structure, including the type, style and color of roofs, windows, doors and appurtenances. Architectural features shall include, when applicable, interior spaces where interior designation has been given pursuant to section 16A-10. Landscape features and site improvements shall include but are not limited to, site regrading, subsurface alterations, fill deposition, paving, landscaping, walls, fences, courtyards, signs and exterior lighting. No certificate of appropriateness shall be approved unless the architectural plans for said construction, alteration, excavation, restoration, renovation, relocation or demolition is approved by the board.

(II) [*Board to develop procedures.*] The board shall develop procedures for making application for both a regular and special certificate of appropriateness.

(III) [*Standards for issuance.*] The board shall adopt and may from time to time amend the standards by which applications for any certificate of appropriateness are to be measured and evaluated. In adopting these guidelines, it is the intent of the board to promote maintenance, restoration, adaptive reuses appropriate to the property, and compatible contemporary designs which are harmonious with the exterior architectural and landscape features of neighboring buildings, sites and streetscapes. These guidelines shall also serve as criteria for staff to make decisions regarding applications for regular certificates of appropriateness.

(IV) *Regular certificates of appropriateness.* Based on the guidelines for preservation, the designation report, a complete application for regular certificate of appropriateness, any additional plans, drawings or photographs to fully describe the proposed alteration and any other guidelines the board may deem necessary, the staff of the board shall, within ten (10) days from the date a complete application has been filed, approve or deny the application for a regular certificate of appropriateness by the owner(s) of a designated individual site, or property within a designated district. The findings of the staff shall be mailed to the applicant within three (3) days of staff decision accompanied by a statement in full regarding the staff's decision. The applicant shall have an opportunity to challenge the staff decision by applying for a special certificate of appropriateness within thirty (30) days of the staff's findings.

## (V) *Special certificates of appropriateness.*

- (a) An applicant for a special certificate of appropriateness shall submit his application to the board pursuant to section 16A-10 and accompany such application to the board with full plans and specifications, site plan and samples of materials as deemed appropriate by the board to fully describe the proposed appearance, color, texture or materials, and architectural design of the building and any outbuilding, wall, courtyard, fence, landscape feature, paving, signage and exterior lighting. The applicant shall provide adequate information to enable the board to visualize the effect of the proposed action on the applicant's building and its adjacent buildings and streetscapes. If such application involves a designated archeological site the applicant shall provide full plans and specifications of work that may affect the surface and subsurface of the archeological site.

- (b) The board shall hold a public hearing upon an application for a special certificate of appropriateness affecting property under its control. In such instances,



notice and procedure of the public hearing shall be given to the property owner(s) by certified mail and to other interested parties by an advertisement in a newspaper of general circulation at least ten (10) days prior to the hearing.

- (c) The board shall act upon an application within sixty (60) days of receipt of application materials adequately describing the proposed action. The board shall approve, deny or approve in modified form an application, subject to the acceptance of the modification by the applicant, or suspend action on the application for a period not to exceed thirty (30) days in order to seek technical advice from outside its members or to meet further with the applicant to revise or modify the application.
- (d) The decision of the board shall be issued in writing. Evidence of approval of the application shall be by certificate of appropriateness issued by the board or the board's designated staff representative to the applicant, and whatever its decision, notice in writing shall be given to the applicant and the director of the building and zoning department. When an application is denied, the board's notice shall provide an adequate written explanation of its decision to disapprove the application. The board shall keep a record of its actions under this chapter.

#### (VI) Demolition.

- (a) Demolition of a designated building, structure, improvement or site may occur pursuant to an order of a government agency or a court of competent jurisdiction or pursuant to an approved application by the owner for a special certificate of appropriateness.
- (b) Government agencies having the authority to demolish unsafe structures shall receive notice of designation of individual sites, districts or archeological zones pursuant to section 16A-10. The board shall be deemed an interested party and shall be entitled to

receive notice of any public hearings conducted by said government agency regarding demolition of any designated property. The board may make recommendations and suggestions to the government agency and the owner(s) relative to the feasibility of and the public interest in preserving the designated property.

- (c) No permit for voluntary demolition of a designated building, structure, improvement or site shall be issued to the owner(s) thereof until an application for a special certificate of appropriateness has been submitted and approved pursuant to the procedures in this section. Refusal by the board to grant a special certificate of appropriateness shall be evidenced by written order detailing the public interest which is sought to be preserved. The board shall be guided by the criteria contained in part (VI), subsection (d) herein. The board may grant a special certificate of appropriateness which may provide for a delayed effective date of up to six (6) months. The effective date shall be determined by the board based upon the relative significance of the structure and the probable time required to arrange a possible alternative to demolition. During the demolition delay period, the board may take such steps as it deems necessary to preserve the structure concerned, in accordance with the purposes of this chapter. Such steps may include, but shall not be limited to, consultation with civic groups, public agencies and interested citizens, recommendations for acquisition of property by public or private bodies or agencies, and exploration of the possibility of moving one or more structures or other features.
- (d) In addition to all other provisions of this chapter, the board shall consider the following criteria in evaluating applications for a special certificate of appropriateness for demolition of designated properties:

- (1) Is the structure of such interest or quality that it would reasonably meet national, state or local criteria for designation as an historic or architectural landmark?

- (2) Is the structure of such design, craftsmanship, or material that it could be reproduced only with great difficulty and/or expense?
- (3) Is the structure one of the last remaining examples of its kind in the neighborhood, the county or the region?
- (4) Does the structure contribute significantly to the historic character of a designated district?
- (5) Would retention of the structure promote the general welfare of the county by providing an opportunity for study of local history, architecture and design or by developing an understanding of the importance and value of a particular culture and heritage?
- (6) Are there definite plans for reuse of the property if the proposed demolition is carried out, and what will be the effect of those plans on the character of the surrounding area?

(VII) [Building permit not to issue without certificate.] No building permit shall be issued by the director of the building and zoning department which effects any designated property in Dade County without a certificate of appropriateness.

(VIII) [Compliance of work with certificate standards.] All work performed pursuant to the issuance of any certificate of appropriateness shall conform to the requirements of the certificate. The county manager shall designate an appropriate official to assist the board by making necessary inspections in connection with enforcement of this chapter and shall be empowered to issue a stop work order if performance is not in accordance with the issued certificate. No work shall proceed as long as a stop work order continues in effect. Copies of inspection reports shall be furnished to the board and copies of any stop work orders both to the board and the applicant. The building and zoning director or appropriate official and staff for the board shall be responsible for ensuring that any work not in accordance with an issued certificate of appropriateness shall be corrected to comply with the certificate of appropriateness prior to withdrawing the stop work order.

(IX) [Emergency, temporary measures.] For the purpose of remedying emergency conditions determined to be dangerous to life, health or property, nothing contained herein shall prevent the making of any temporary construction, reconstruction or other repairs to a building or site in Dade County, pursuant to an order of a government agency or a court of competent jurisdiction. The owner of a building damaged by fire or natural calamity shall be permitted to stabilize the building immediately without board approval, and to rehabilitate it later under the normal review procedures of this chapter.

(X) [No action to constitute approval.] If no action upon an application is taken within sixty (60) days from the date of application, such application shall be deemed to have been approved and no other evidence of approval shall be needed. This time limit may be waived by mutual written consent of the applicant and the board.

(XI) [Power of review.] The board shall have the authority to review applications for certificate of appropriateness for all property in Dade County, however owned, by either private or public parties. The purposes of this chapter shall apply equally to plans, projects or work executed or assisted by any private party, governmental body or agency, department, authority or board of the city, county or state. (Ord. No. 81-13, § 11, 2-17-81; Ord. No. 82-99, § 1, 10-19-82)

#### Sec. 16A-12. Variances.

Where, by reason of particular site conditions and restraints, or because of unusual circumstances applicable solely to the particular applicant, strict enforcement of the provisions of this chapter would result in serious undue economic hardship to the applicant, the board shall have the power to vary or modify adherence to this chapter; provided always that its requirements ensure harmony with the general purposes hereof and will not adversely affect Dade County.

- (a) In any instance where there is a claim of undue economic hardship, the owner may submit, by affidavit, to the board at least fifteen (15) days prior to the public hearing, the following information:



- (1) For all property:
  - (i) The amount paid for the property, the date of purchase and the party from whom purchased;
  - (ii) The assessed value of the land and improvements thereon according to the two (2) most recent assessments;
  - (iii) Real estate taxes for the previous two (2) years;
  - (iv) Annual debt service, if any, for the previous two (2) years;
  - (v) All appraisals obtained within the previous two (2) years by the owner or applicant in connection with his purchase, financing or ownership of the property;
  - (vi) Any listing of the property for sale or rent, price asked and offers received, if any; and
  - (vii) Any consideration by the owner as to profitable adaptive uses for the property; and
- (2) For income-producing property:
  - (i) Annual gross income from the property for the previous two (2) years;
  - (ii) Itemized operating and maintenance expenses for the previous two (2) years; and
  - (iii) Annual cash flow, if any, for the previous two (2) years.
- (b) The board may require that an applicant furnish such additional information as the board believes is relevant to its determination of undue economic hardship and may provide in appropriate instances that such additional information be furnished under seal. In the event that any of the required information is not reasonably available to the applicant and cannot be obtained by the applicant, the applicant shall file with his affidavit a statement of the information which cannot be obtained and shall describe the reasons why such information cannot be obtained. (Ord. No. 82-99, § 1, 10-19-82)

#### Sec. 16A-13. Maintenance of designated properties.

Nothing in this chapter shall be construed to prevent the ordinary maintenance or repair of any exterior elements of

any building or structure which does not involve a change of design, appearance or material, and which does not require a building permit. (Ord. No. 81-13, § 12, 2-17-81; Ord. No. 82-99, § 1, 10-19-82)

#### Sec. 16A-14. Certificates to dig.

(I) [*When required; how granted.*] Within an archeological zone, new construction, filling, digging, the removal of trees, or any other activity that may alter or reveal an interred archeological site shall be prohibited without a certificate to dig. All applications to all appropriate municipal or county agencies involving new construction, large-scale digging, the removal of trees or any other activity that may reveal or disturb an interred archeological site, in an archeological zone shall require a certificate to dig before approval. Based on the designation report for the archeological zone, a complete application for a certificate to dig and any additional guidelines the board may deem necessary, the staff of the board shall, within ten (10) days from the date the completed application has been filed, approve the application for a certificate to dig by the owners of a property in a designated archeological zone. The certificate to dig may be made subject to specified conditions, including but not limited to conditions regarding site excavation. In order to comply with the site excavation requirements of the certificate to dig, the applicant may agree to permit the county archeologist to conduct excavation from the time of the approval of the certificate to dig until the effective date thereof. The findings of the staff shall be mailed to the applicant by registered mail promptly. The applicant shall have the opportunity to challenge the staff decision or any conditions attached to the certificate to dig by requesting a meeting of the board. The board shall convene within thirty-five (35) days after such a request and shall make every effort to review and reconsider the original staff decision to arrive at an equitable decision. The decision of the board shall be reduced to writing within seven (7) days from the date of the meeting.

(II) *Approved certificates to dig.* Approved certificates to dig shall contain an effective date not to exceed sixty (60) days at which time the proposed activity may begin, unless the board decides to designate the site in question as an individual site or district pursuant to section 16A-10 in which all the rules and regulations pertaining to the designation process shall apply from the date the designation report has been filed.

(III) [*Work to conform to certificate; stop-work order.*] All work performed pursuant to the issuance of a certificate to dig shall conform to the requirements of such certificate. It shall be the duty of the appropriate government agencies and the staff of the board to inspect from time to time any work pursuant to such certificate to assure compliance. In the event work is performed not in accordance with such certificate, the official designated by the county manager pursuant to section 16A-11(IX)(VIII) shall be empowered to issue a stop-work order and all work shall cease. No person, firm or corporation shall undertake any work on such projects as long as such stop work order shall continue in effect. (Ord. No. 81-13, § 13, 2-17-81; Ord. No. 82-99, § 1, 10-19-82)

#### Sec. 16A-15. Appeals.

Within twenty (20) days of the written decision of the board, an aggrieved party may appeal the decision by filing a written notice of appeal with the clerk of the board of county commissioners. The notice of appeal shall state the decision which is being appealed, the grounds for the appeal, and a brief summary of the relief which is sought. Within sixty (60) days of the filing of the appeal or the first regular county commission meeting which is scheduled, whichever is later in time, the county commission shall conduct a public hearing at which time they may affirm, modify or reverse the decision of the board. Nothing contained herein shall preclude the county commission from seeking additional information prior to rendering a final decision. The decision of the county commission shall be in writing and a copy of the decision shall be forwarded to the board and the appealing party.

Within the time prescribed by the appropriate Florida Rules of Appellate Procedure, a party aggrieved by a decision of the county commission may appeal an adverse decision to the circuit court in and for Dade County, Florida. The party taking the appeal shall be required to pay to the clerk of the board the sum of one hundred dollars (\$100.00) to defray the costs of preparing the record on appeal. (Ord. No. 81-13, § 14, 2-17-81; Ord. No. 82-99, § 1, 10-19-82)

#### Sec. 16A-16. Penalties.

Failure by an owner of record to comply with any provisions of this chapter shall constitute a violation hereof and shall be punishable by civil or criminal penalties including a fine of not more than five hundred dollars (\$500.00) per day for each day the violation continues and including a requirement that any work performed contrary to this chapter must be removed and the property returned to its condition prior to commencement of said action. (Ord. No. 81-13, § 15, 2-17-81; Ord. No. 82-99, § 1, 10-19-82)

#### Sec. 16A-17. Incentives.

All properties designated as individual sites or as designated properties within a district shall be eligible, upon application by the owner(s), for any available financial assistance set aside for historic preservation by Metropolitan Dade County contingent on the availability of funds and the scope of the project as described in the application. (Ord. No. 81-13, § 16, 2-17-81; Ord. No. 82-99, § 1, 10-19-82)

**PART 2            7-200 HISTORIC OVERLAY DISTRICT**

**7-201            Purpose and Intent**

Historic Overlay Districts are created for the purpose of promoting the general welfare, education, and recreational pleasure of the public, through the perpetuation of those general areas or individual structures and premises which have been officially designated by the Board of Supervisors as having historic, architectural or cultural significance.

Regulations within such districts are intended to protect against destruction of or encroachment upon such areas, structures, and premises; to encourage uses which will lead to their continuance, conservation and improvement in a manner appropriate to the preservation of the cultural, social, economic, political, architectural, or archeological heritage of the County; to prevent creation of environmental influences adverse to such purposes; and to assure that new structures and uses within such districts will be in keeping with the character to be preserved and enhanced.

**7-202            District Boundaries**

The boundaries of a Historic Overlay District shall in general be drawn so as to include all lands closely related to and bearing upon the character of the historic site, thus providing a landscape unit and affording transitional regulations needed to control potentially adverse environmental influences.

**7-203            Establishment of Districts**

1. The Architectural Review Board (ARB), as established by the provisions of Article 19, and/or the Fairfax County History Commission may propose to the Planning Commission and/or the Board of Supervisors such amendments to the provisions of this Ordinance as deemed appropriate, including the establishment of Historic Overlay Districts and revisions to existing Historic Overlay Districts.
2. Upon receipt of said proposal, the Board of Supervisors or the Planning Commission may initiate such amendment pursuant to the provisions of this Ordinance governing amendment thereof.
3. The Planning Commission, in cooperation with the ARB and the Fairfax County History Commission, shall prepare and submit a report to substantiate the proposed amendment. Such report shall establish and define the Historic Overlay District boundaries as well as the historic, architectural or cultural significance of buildings, structures, or sites to be protected, and describe present trends, conditions and desirable public objectives for preservation. In addition, such report shall include the following specific matters:
  - A. An analysis of existing structures by period of construction, architectural style, condition and other matters relating to planning or regulating future development, such as location on lots, location of yards and other open spaces, access to interior of lots, and off-street parking provided. In addition to general analysis, two specific and detailed descriptions shall be entered:
    - (1) A description of individual structures and premises of substantial public interest, with maps, photographs and other data indicating the public importance of their preservation and the particular features it is desired to preserve.

- (2) A description of existing structures, premises and uses likely to have an adverse effect on the desired character of the district, including those near and visually related to the district, with maps, photographs and other data indicating the reasons for such an effect.
  - B. An analysis of lands not occupied by structures, including lands near and visually related to the district. For public lands, ownership, use and location shall be indicated. For private lands, assessed valuation shall be added as well as existing zoning and planned land use.
  - C. Recommendations concerning detailed regulations to be applied within the district, to supplement or modify general regulations set forth in this Ordinance, which detailed regulations may include those pertaining to permitted and prohibited principal and accessory uses and structures, use limitations, bulk regulations, lot size requirements, performance standards, off-street parking and loading requirements, control of signs and exterior illumination, control of exterior character of buildings and sites when visible from a public way only, and control of, additions to or removal of existing buildings where said controls and regulations are only for the express purpose of preventing changes which are architecturally incompatible with the buildings, structures or sites to be preserved.
4. If the Board of Supervisors establishes a Historic Overlay District by adoption of an amendment to this Ordinance, its action shall include a declaration that the landmarks, buildings, structures or sites to be preserved are in fact of historical, architectural or cultural significance requiring protection against destruction and encroachment. Such action shall amend the Zoning Map by placing said historic district thereon, overlaying the existing zoning district(s). Such action shall also include adoption, in the manner provided for by general law, of such regulations and development policies as may be deemed necessary by the Board of Supervisors. Upon adoption, such regulations for a given historic district, which shall supplement or modify the regulations for the underlying district(s), shall be presented as an appendix to the Zoning Ordinance. Such appendix shall be incorporated as part of this Ordinance by reference as if it were completely presented herein.

## 7-204

**Administration of Historic Overlay District Regulations**

Upon creation of a Historic Overlay District, administrative procedures for the enforcement of such regulations shall be as provided hereafter in this Section.

- 1. The Director shall not issue a Building Permit for the erection, reconstruction, exterior alteration or restoration of any building or structure in a Historic Overlay District, until the issuance of the same has been approved by the ARB, following the procedures set forth below. In addition, no Building Permit for the demolition, razing, relocation or moving of any officially designated historic landmark, building or structure in a Historic Overlay District shall be issued until approved by the ARB.
- 2. Upon receipt of an application for a Building Permit, the Director shall forward to the ARB copies of the Building Permit application, plot plan, site plan and any other materials filed with such application.

3. The ARB may require the submission of any or all of the following information and any other materials as may be deemed necessary for its review.
  - A. For an initial presentation:
    - (1) Statement of proposed use, name of proposed user;
    - (2) Statement of estimated time of construction;
    - (3) Maps relating proposed use to surrounding property, zoning and the historic district;
    - (4) Design sketches showing building configuration, topography and paving;
    - (5) Architectural schematic drawings showing floor plan, four elevations (principal one in color).
  - B. For a final presentation, at which the architect shall appear:
    - (1) All material in Par. A above;
    - (2) Final design concept showing floor plan, four elevations and a rendering of more than one elevation;
    - (3) A site plan showing building configuration, paving and grading;
    - (4) A landscaping plan showing list of plantings;
    - (5) Plan showing exterior signs, graphics and lighting to establish location, size, color and type of materials.
4. The ARB shall review each application for a Building Permit promptly upon its receipt of the same. In reviewing applications for the erection, construction, reconstruction, remodeling, exterior alteration or restoration of a building or structure, the ARB shall not consider interior arrangement, relative size of the building or structure, detailed design or features not subject to any public view and shall not make any requirements except for the purpose of preventing developments architecturally incompatible with the historic aspects of the Historic Overlay District. The ARB shall consider the following in determining the appropriateness of architectural features:
  - A. The exterior architectural features, including all signs, which are subject to the public view from a public street, way or place;
  - B. The general design, arrangement, texture, material, color and fenestration of the proposed building or structure and the relation of such factors to similar features of buildings or structures in the immediate vicinity of the historic landmarks within the Historic Overlay District;
  - C. The extent to which the building or structure would be harmonious with or architecturally incompatible with the historic landmark;
  - D. The extent to which the building or structure will preserve or protect historic places and areas of historic significance in the County;

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- E. The extent to which the building or structure will promote the general welfare of the County and all citizens by the preservation and protection of historic places and areas of historic interest in the County.
- 5. In reviewing an application for a certificate to raze or demolish an officially designated historic landmark, building or structure, the ARB shall review the circumstances and the condition of the structure or part proposed for demolition and shall report its finding based on consideration of any or all of the following criteria:
  - A. Is the building of such architectural or historical interest that its removal would be to the detriment of the public interest?
  - B. Is the building of such old and unusual or uncommon design, texture and material that it could not be reproduced or be reproduced only with great difficulty?
  - C. Would retention of the building help preserve and protect a historic place or area of historic interest in the County?
- 6. In reviewing an application for a certificate to move or relocate an officially designated historical landmark, building or structure, the ARB shall consider the following criteria:
  - A. Would the proposed relocation have a detrimental effect on the structural soundness of the landmark, building or structure?
  - B. Would the proposed relocation have a detrimental effect on the historical aspects of other landmarks in the Historic Overlay District?
  - C. Would relocation provide new surroundings that would be harmonious with or incongruous to the historical and architectural aspects of the landmark, structure or building?
  - D. Would relocation of the building help preserve and protect a historic place or area of historic interest in the County?
- 7. The ARB, on the basis of the information received from the applicant and from its general background and knowledge, and upon application of the appropriate criteria set forth in Par. 4, 5 and 6 above, shall approve, approve with modifications or disapprove the application. If the ARB approves or approves with modification the application, it shall authorize the Director to issue the permit. If the ARB disapproves the application, it shall so notify the applicant and the Director.
- 8. Any person aggrieved by any decision of the ARB may appeal such decision to the Board of Supervisors, provided such appeal is filed with the Clerk to the Board of Supervisors within ten (10) days of the ARB's decision.
- 9. The Board shall consult with the ARB and hear the appeal. The Board may affirm, reverse or modify the decision of the ARB, and its determination shall be forwarded to the Director.
- 10. Any person or persons jointly or severally aggrieved by any decision of the Board of Supervisors, or any officer, department, board or agency of the County, may appeal such decision to the Circuit Court of Fairfax County for review by filing a

petition at law setting forth the alleged illegality of the action of the Board of Supervisors, provided such petition is filed within thirty (30) days after the final decision is rendered by the Board. The filing of said petition shall stay the decision of the Board pending the outcome of the appeal to the Court, except that the filing of such petition shall not stay the decision of the Board if such decision denies the right to raze or demolish any historic landmark, building or structure. The Court may reverse or modify the decision of the Board, in whole or in part, if it finds upon review that the decision is arbitrary and constitutes an abuse of discretion, or it may affirm the decision of the Board.

11. In addition to the right of appeal set forth in Par. 8, 9 and 10 above, the owner of a historic landmark, building or structure, the razing or demolition of which is subject to the provisions of Par. 2 of Sect. 206 below, shall, as a matter of right, be entitled to raze or demolish such landmark, building or structure, provided that:
  - A. He has applied to the ARB and Board of Supervisors for such right;
  - B. The owner has for the period of time set forth in the time schedule below and at a price reasonably related to its fair market value, made a bona fide offer to sell such landmark, building or structure, and the land pertaining thereto, to the County or to any department, officer, agency, board or government entity thereof, or political subdivision or agency thereof, which gives reasonable assurance that it is willing to preserve and restore such landmark, building or structure and the land pertaining thereto; and
  - C. That no bona fide contract, binding upon all parties thereto, shall have been executed for the sale of any such landmark, building or structure, and the land pertaining thereto, prior to the expiration of the applicable time period set forth in the time schedule below. Any appeal which may be taken to the Court from the decision of the Board of Supervisors, whether instituted by the owner or by any other proper party, notwithstanding the provisions heretofore stated relating to a stay of the decision appealed from, shall not affect the right of the owner to make the bona fide offer to sell referred to above. No offer to sell shall be made more than one (1) year after a final decision by the Board of Supervisors, but thereafter the owner may renew his request to the Board to approve the razing or demolition of the historic landmark, building or structure. The time schedule for offers to sell shall be as follows:
    - (1) Three (3) months when the offering price is less than twenty-five thousand dollars (\$25,000).
    - (2) Four (4) months when the offering price is twenty-five thousand dollars (\$25,000) or more, but less than forty thousand dollars (\$40,000).
    - (3) Five (5) months when the offering price is forty thousand dollars (\$40,000) or more, but less than fifty-five thousand dollars (\$55,000).
    - (4) Six (6) months when the offering price is fifty-five thousand dollars (\$55,000) or more, but less than seventy-five thousand dollars (\$75,000).

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- (5) Seven (7) months when the offering price is seventy-five thousand dollars (\$75,000) or more, but less than ninety thousand dollars (\$90,000).
- (6) Twelve (12) months when the offering price is ninety thousand dollars (\$90,000) or more.

## 7-205

**Permitted Uses**

Within an adopted Historic Overlay District, all uses shall be permitted pursuant to the district regulations of the zoning district(s) in which such Historic Overlay District is located; except as may be expressly modified by the regulations adopted for a particular Historic Overlay District. The ARB shall review and recommend on any application for a special permit or special exception use located in any Historic Overlay District. No use permitted by right, special permit or special exception shall be permitted where the operational characteristics of the use would tend to destroy or encroach upon the character of the Historic Overlay District as established.

## 7-206

**Use Limitations**

In addition to the use limitations presented for the zoning districts in which a Historic Overlay District is located, the following use limitations shall apply:

1. No building or structure, including signs, shall be erected, constructed, reconstructed, moved, externally remodeled or altered within any Historic Overlay District unless the same is approved by the ARB as being architecturally compatible with the historical, architectural or cultural aspects of the landmark.
2. No officially designated historic landmark, building or structure within any Historic Overlay District shall be razed, demolished, moved or relocated until such action is approved by the ARB.
3. Signs shall be permitted in accordance with the provisions of Article 12, and in accordance with any additional provisions that may be adopted for a particular Historic Overlay District; provided, however, that no such sign otherwise conforming as to structural type, size, design and location under the applicable provisions of Article 12 shall be permitted if the ARB finds such sign to be architecturally incompatible with the historical, architectural or cultural character of the Historic Overlay District.
4. Off-street parking and loading requirements shall be in accordance with the provisions of Article 11 and any additional regulations that may be adopted for a particular Historic District, except that no required off-street parking or loading space shall be located in any required front yard.  
 In addition, and notwithstanding the provisions of Article 11, off-street parking and loading areas shall be permitted and encouraged to locate on adjacent properties where it is determined that such facilities would otherwise have an adverse effect on the appearance of the property or the district in general. Off-street parking and loading areas shall be encouraged to group facilities in interior parking lots, courts, or at other appropriate locations which will be convenient for users, reduce interference with pedestrian and vehicular traffic and generally promote public safety.
5. Development of all lands within a Historic Overlay District shall be in strict accordance with the policies and recommendations set forth in the adopted comprehensive plan.



**7-207            Lot Size Requirements**

Lot size requirements shall be as specified by the district regulations of the zoning district in which such Historic Overlay District is located.

**7-208            Bulk Regulations**

Bulk regulations shall be as specified by the district regulations of the zoning district in which such Historic Overlay District is located, except as may be expressly modified by the regulations adopted for a particular Historic Overlay District.

**7-209            Open Space**

Open space shall be provided in accordance with the district regulations of the zoning district in which such Historic Overlay District is located, except as may be expressly modified by the regulations adopted for a particular Historic Overlay District.

ARTICLE 2, DIVISION 18.

(CITY CODE)

HFD - OLD AND HISTORIC FREDERICKSBURG DISTRICT

Adopted September 25, 1984 by  
The City Council of  
Fredericksburg, Virginia

#### Sec. 2-18.1. Purpose and Intent.

The Old and Historic Fredericksburg District (HFD) is established for the purpose of promoting the general welfare, education, and recreational benefit of the public through the recognition of this area of the City as having historic, architectural, and cultural significance. Regulations of the HFD are intended to protect, restore and preserve the architectural integrity of existing structures, to create an atmosphere for compatible growth for the future, to prevent the intrusion of environmental influences adverse to such purpose, and to assure that new structures and uses will be in keeping with the character to be preserved and enhanced.

The Historic Fredericksburg District is also intended to recognize, protect and preserve the abundant evidences of the City's industrial history including, but not limited to, the mill sites, canals, locks, dams and similar structures located along the Rappahannock River both within and outside of the designated HFD.

#### Sec. 2-18.2. District Boundaries.

The boundaries of the HFD shall be those established for the Fredericksburg District on the National Register of Historic Places, except that the Rappahannock River shall be the boundary on the East, and rear property lines shall be boundaries on all other sides. These boundaries will be delineated on tax maps of the City of Fredericksburg and as an overlay on the Official Zoning Map of the City.

#### Sec. 2-18.3. District Administration.

1. No building permit shall be issued for the reconstruction, exterior addition or alteration, exterior restoration, razing, relocation, or demolition of any building or structure within the HFD which was built prior to 1900 unless and until a Certificate of Appropriateness has been approved by the Architectural Review Board (ARB), in accordance with the guidelines herein pertaining to existing structures within the HFD.

2. No building permit shall be issued for the erection, reconstruction, exterior addition or alteration, exterior restoration, razing, relocation, or demolition of any building or structure within the HFD which was built during or after 1900 (includes new construction within the district) unless and until a Certificate of Appropriateness has been approved, by the

Planning Commission in accordance with the guidelines herein pertaining to existing structures and new construction within the HFD.

3. All applications for a building permit and ARB approval certificate shall be made to the City Zoning Administrator. When the Zoning Administrator has determined that the application is complete, then it shall be forwarded to the ARB or Planning Commission, as required, for review.

4. The ARB and Planning Commission may request any or all of the following information deemed necessary for its review of the application:

- (a) Statement of proposed use and user
- (b) Statement of estimated construction time
- (c) Photographs, maps, and/or drawings relating proposed use to surrounding property
- (d) Site design drawings, showing building configuration, topography and relationship to site improvements, color and building materials
- (e) Architectural drawings to scale showing plan and elevation of the erection, reconstruction, exterior addition or alteration, restoration, razing, relocation or demolition including drawings of existing building
- (f) A landscaping plan
- (g) A plan of exterior signs, lighting and graphics, to include description of materials

5. It shall be the Zoning Administrator's responsibility to advertise applications for a hearing at a regular or special meeting of the ARB, provided that such hearing notice is published twice, not less than five (5) days nor more than ten (10) days prior to the hearing, in a newspaper having general circulation in the City. Such notice shall specify (1) time and place of hearing at which the applicant and others affected may appear and present views (2) and where additional information may be obtained prior to the hearing.

6. The ARB and Planning Commission shall promptly review such application for a permit. In reviewing applications, the ARB and Planning Commission shall consider only those design features subject to view from the public right-of-way and shall not make any requirements except for the purpose of encouraging development which is architecturally compatible with the historic aspects of the HFD.

7.(a) The ARB and Planning Commission shall consider the Secretary of the Interior's "Standards for Rehabilitation", as may be amended from time to time, in determining appropriateness of any application for approval pertaining to existing structures, as follows:

(1) Every reasonable effort shall be made to provide a compatible use for a property which requires minimal alteration of the building, structure, or site and its environment, or to use a property for its originally intended purpose.

(2) The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historical material or distinctive architectural features should be avoided when possible.

(3) All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.

(4) Changes which may have taken place in the course of time are evidence of the history and development of a building, structure, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.

(5) Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure, or site shall be treated with sensitivity.

(6) Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Replacement of missing architectural features should be based on historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.

(7) The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.

(8) Every reasonable effort shall be made to protect and preserve archeological resources affected by or adjacent to any project.

(9) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material, and character of the property, neighborhood or environment.

(10) Wherever possible, new additions or alterations to structures shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

7(b). In conjunction with "The Secretary of Interior's Standards for Rehabilitation" as may be amended from time to time, the ARB and Planning Commission in reviewing applications for Certificates of Appropriateness involving existing structures within the HFD shall take into account the following specific addition or alteration review criteria to ensure that the application is consistent with the character and historic aspects of the HFD:

(1) mass-the height of a building, its bulk and the nature of roof line

(2) the proportions between the height of a building, its bulk, and the nature of roof line; (is its appearance predominantly horizontal or predominantly vertical?)

(3) the nature of the open spaces around buildings, including the extent of setbacks, the existence of any side yards and their size, and the continuity of such spaces along the street

(4) the existence of trees and other landscaping, and the extent of paving

(5) the nature of the openings in the facade, primarily doors and windows--their location, size and proportions

(6) the type of roof--flat, gabled, hip, gambrel, mansard, etc.

(7) the nature of projections from the buildings, particularly porches

(8) the nature of the architectural details and the predominant architectural style

(9) the nature of the materials

(10) texture

(11) the details or ornamentation

8. The Planning Commission shall consider the following in determining appropriateness of any application for approval pertaining to new structures:

Areas of relatedness to existing Historic District structures and/or characteristics, and including the following elements:

(a) Height - relationship to average height of existing adjacent structures

(b) Proportion of buildings' front facades

(c) Proportion of openings within the facade

(d) Relationship of solids to voids in front facade(s)

(e) Spacing of buildings on street

(f) Relationship of entrance and/or porch projections

(g) Relationship of materials

(h) Relationship of textures

(i) Relationship of architectural details

(j) Relationship of roof shapes

(k) Walls of continuity

- (l) Relationship of landscaping
- (m) Ground cover
- (n) Scale
- (o) Directional expression of front elevation

9(a). The ARB and Planning Commission shall consider the following in determining the appropriateness of any application for approval for demolition and/or removal, including relocation, of a structure in the historic district. (The term demolition is interpreted to include demolition which may occur through neglect as well as through direct actions.)

- (1) The architectural significance of the structure
- (2) The historical significance of the structure
- (3) The significance of the structure to the street-scape
- (4) The significance of the structure in furthering the Comprehensive Plan's goals for Historic Preservation and Historic District development
- (5) The significance of the structure with regard to tourism
- (6) Inordinate Hardship. (To establish "inordinate hardship", the applicant shall submit evidence that rehabilitation of the structure is impracticable, that the structure is inappropriate for the proposed use desired by the owner, and that the applicant cannot make reasonable economic use of the property. Such evidence may include proof of consideration of plans for adaptive reuse, attempts to sell, rent or lease the property, and information regarding annual income and expenses. Any hardship created by action of the applicant shall not be considered in reviewing any application.)

- (7) Effect on surrounding properties

9(b). In addition to the right of appeal herein set forth, the owner of a historic landmark, building or structure, the razing of which is subject to the provisions of the Article, shall as a matter of right be entitled to raze or demolish such landmark, building or structure provided that:

- (1) The owner has complied with the provisions of this ordinance.
- (2) The owner has for the period of time set forth in the time schedule hereinafter contained and at a price reasonably related to its fair market value, made a bona fide offer to sell such landmark, building or structure and the land pertaining thereto to whomever gives reasonable assurance that it is willing to preserve and restore the landmark, building or contract and the land pertaining thereto; and

(3) That no bona fide contract, binding upon all parties thereto, shall have been executed for the sale of any such landmark, building or structure and the land pertaining thereto, prior to the expiration of the applicable time period set forth in the time schedule hereinafter contained. Any appeal which may be taken to court from the decision of the governing body, whether instituted by the owner or by any other proper party, notwithstanding the provisions heretofore stated relating to a stay of the decision appealed from, shall not affect the right of the owner to make the bonafide offer to sell referred to above. No offer to sell shall be made more than one year after a final decision by the governing body, but thereafter the owner may renew his request to the governing body to approve the razing or demolition of the historic landmark, building or structure. The time schedule for offers to sell shall be as follows:

- a. Three (3) months when the offering price is less than twenty-five thousand dollars
- b. Four (4) months when the offering price is twenty-five thousand dollars or more but less than forty thousand dollars
- c. Five (5) months when the offering price is forty thousand dollars or more but less than fifty-five thousand dollars
- d. Six (6) months when the offering price is fifty-five thousand dollars or more but less than seventy-five thousand dollars
- e. Seven (7) months when the offering price is seventy-five thousand dollars or more but less than ninety thousand dollars; and
- f. Twelve (12) months when the offering price is ninety thousand dollars or more. (Ord. No. 78-15, 10/24/78)

10. The ARB and Planning Commission shall consider the following in determining the appropriateness of any application for approval of SIGNS within the HFD:

(a) Placement.

- (1) architectural integration with the building
- (2) placement should not obscure significant architectural features or details of building
- (3) signs should be placed only at location within the Historic District at which the announced business or activity takes place

(b) Lettering.

- (1) legibility
- (2) style - appropriateness to structure, business, and/or streetscape
- (3) size - should be in proportion both to sign and building



(c) Color.

- (1) relationship of sign colors to those of building to which it relates
- (2) number of colors on sign - too many colors may detract from strength of visual image

(d) General.

- (1) paper signs attached to windows (announcing sales, etc.) are discouraged as incompatible with the character of the Historic District
- (2) Refer to Article 2, Division 3 of this Ordinance for further regulations of signs and specifically to Section 23.6, provision number 5.

(e) Within one hundred twenty (120) days of the adoption of this ordinance and from time to time thereafter, the ARB shall adopt standards (including design examples) for signs deemed acceptable in the HFD and shall cause to be published or make available to the public such standards. The Building Inspector shall have the right to issue ninety (90) day temporary Certificates for any sign which he deems to meet these standards. The applicants for such temporary certificate must file an application with the ARB for permanent approval within sixty (60) days of the issuance of the temporary Certificate.

(f) For the HFD, the City has formulated four (4) types of signs which will not require review or approval by the ARB or Planning Commission but which must be approved through the sign permitting process by the Zoning Administrator (as contained in Article 2.) Each of these signs are required to be made by a professional sign maker or sign painter (one that is regularly engaged in the production of signs). Size, area, placement and related dimensional aspects of such signs shall continue to be governed by applicable sign regulations contained in Article 2, Division 3 of this ordinance. The four types of signs include:

(1) Directory Sign Addition. A Directory Sign addition is added to an existing or established Directory sign (which provides a listing of occupants or tenants of a building). A Directory Sign Addition may also include a change in the listing of an existing Directory sign. Examples of approvable Directory Sign Additions are located in the Office of the Building Official/Zoning Administrator.

(2) Professional Wall Sign. A Professional Wall Sign shows the name and/or occupation of a building tenant or occupant. It shall be limited to lettering only, without pictorial or similar types of representations. The size of this sign shall be limited to 12"x24" maximum size and ½" minimum thickness, and it shall be constructed of durable, substantial and generally accepted professional sign material. Examples of approved Professional Wall Signs are located in the Office of the Building Official/Zoning Administrator.

(3) Temporary Sign. A Temporary Sign is one which announces construction or real estate information. Such sign shall be allowed for a period of no more than 12 months and shall be limited to a 24"x48" maximum size. Examples of approved Temporary Signs are located in the Office of the Building Official/Zoning Administrator.

(4) Entablature or Panel Sign. An Entablature or Panel Sign is one which is limited to one color lettering painted onto an existing architectural panel or similar physical feature of a building. Examples of approved Entablature or Panel Signs are located in the Office of the Building Official/Zoning Administrator.

11. A record of ARB and Planning Commission actions and procedures shall be maintained and available to the general public. Any photograph, drawing, map, description, etc., submitted with the application, together with Certificates issued shall be a part of the public record and shall be maintained as such.

12. After appropriate review, the ARB shall act to (1) approve, (2) approve with modification or (3) deny the request/application within 30 days of submission of a complete application, and the Zoning Administrator shall notify the applicant of its actions within fourteen (14) days from the date of hearing.

If no action upon an application for a Certificate of Appropriateness submitted to the ARB has been taken at the expiration of thirty (30) days from the date of submission of a complete application such application shall be deemed to have been approved, and, if all other requirements of the City have been met, the Building Inspector may issue a permit for the proposed construction or sign, if so requested by the applicant. This time limit may be waived by mutual consent of the applicant and the ARB.

Any Certificate of Appropriateness issued under the provisions of this Article shall expire one (1) year after the date of such approval unless:

(a) A building permit has been obtained and work begun within 6 months.

(b) An extension has been granted by the ARB. Such extension shall not exceed six (6) months.

13. Applicants aggrieved by any decision of the ARB or Planning Commission may appeal such decision to the City Council, provided that such appeal is filed within fourteen (14) days from the date of notification of ARB or Planning Commission decision.

14. The City Council shall consult with the ARB or Planning Commission in relation to any appeal and may require documentation of any ARB decision prior to hearing the appeal. The City Council may affirm, reverse, or modify the ARB or Planning Commission decision and shall notify the Zoning Administrator of its actions.

15. Any person or group aggrieved by any decision of the City Council or its agents, may appeal such decision to the Circuit Court of Fredericksburg by filing a petition at law setting forth the alleged illegality of the action provided that such petition is filed within thirty (30) days after the final decision is rendered by the City Council.

The filing of the said petition shall stay the decision of the Council pending the outcome of the appeal to the Circuit Court, except that the filing of such petition shall not stay the decision of the City Council if such decision denies the right to raze or demolish a historic landmark, building or structure. The Court may reverse or modify the decision of City Council in whole or in part, if it finds upon review that the decision of the City Council is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion, or it may affirm the decision.

#### Sec. 2-18.4. Permitted Uses and Limitations.

1. All uses shall be permitted pursuant to the district regulations of the zoning district in which the HFD is located as an overlay. The ARB may review and make recommendations to the Planning Commission about any application for a special use permit located in the HFD.

2. Nothing in this chapter shall be construed to prevent the application of the building code or other laws and ordinances applicable thereto.

3. The provisions of this Article shall not apply to property owned by either the City of Fredericksburg, Virginia, the Commonwealth of Virginia, or the United States of America and used or to be used for public purposes.

4. Parking and loading shall be in accordance with the provisions of Article 2, Division 4 of this Ordinance.

#### Sec. 2-18.5. Additions to Historic District.

City Council may adopt an ordinance setting forth the historic landmarks within the City as established by the Virginia Historic Landmarks Commission, and any other buildings or structures within the City having an important historic, architectural, archaeological, or cultural interest, and any historic areas within the City as defined by Sec. 15.1-430(b) of the Code of Virginia, amending the existing zoning ordinance and delineating one or more historic districts adjacent to such landmarks, buildings and structures, or encompassing such historic areas, provided that such amendment of the zoning ordinance and the establishment of such district or districts shall be in accordance with the provisions of the Code of Virginia and the provisions of Chapter 18.1 of the City Code relative to amendments to the zoning ordinance.

Sec. 2-18.6. ARB Membership and Organization.

1. Architectural Review Board - General:

(a) Creation: For the purpose of administering the provisions of this article, there was initially created a Board of Historic Buildings which consisted of seven (7) members who were residents of the City or who conducted their primary business or profession in the City. These members were appointed by the City Council.

(b) After October 24, 1978, the Board of Historic Buildings name was changed to the Architectural Review Board and wherever in the City Code the term Board of Historic Buildings is used, the name shall be construed to mean the Architectural Review Board.

2. Membership: In accordance with the "Purpose and Intent" of the HFD the seven members appointed to the ARB shall be as follows, one shall be:

(a) A licensed real estate broker or salesman; one shall be

(b) A member of the Planning Commission; one shall be

(c) A resident of the HFD; one shall be

(d) A licensed architect; one shall be

(e) A business person whose primary business is located in the HFD, and

(f) An officer of a financial institution with an office or branch within the HFD, and

(g) One other citizen

3. Terms: Members shall be appointed for a term of four years. Initial appointments shall be three members for four years, and three members for two years. The term of the Planning Commission member shall be concurrent with his tenure on the Planning Commission.

4. Organization: The board shall elect from its own membership a Chairman, Vice-Chairman and a secretary, who shall serve annual terms and may succeed themselves.

5. Rules: There shall be a regular meeting of the ARB monthly except that at the discretion of the Chairman a regular meeting may be cancelled if there is no business pending before the Board and after inquiry of the other members there is no known new business to be presented. Special meetings of the board may be called by the Chairman or by two members upon written request to the Secretary. The Secretary shall mail to all members of the board, at least five (5) days in advance of a special meeting, a written notice fixing the time and place of the meeting and the purpose thereof.

Written notice of a special meeting is not required if the time of the special meeting has been fixed at a regular meeting, or if all members are present at the special meeting or file a written waiver of notice. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all the members of the board. The board may make, alter, or rescind rules and forms for its procedures, consistent with the ordinance of the City and the general laws of the State of Virginia.

6. Powers and Duties: Based on the criteria established herein, it shall be the function of the Architectural Review Board to pass upon the appropriateness of the exterior architectural features of structures which were built prior to 1900 and any other erection, reconstruction, exterior addition or alteration, restoration, razing, relocation or demolition in the Old and Historic Fredericksburg District wherever such exterior features are subject to view from the public right-of-way.

7. In addition, the ARB may perform the following duties:

(a) to survey and identify historically, archaeologically and architecturally significant structures and areas;

(b) to make recommendations regarding zoning amendments and comments on the local comprehensive plan;

(c) to undertake educational programs and activities; to accept funds from federal, state and private sources.

## CITY OF HOUSTON, TEXAS

To the Honorable City Council of the City of Houston:

In accordance with the provisions of Article VII, Section 7 of the Charter of the City of Houston, I submit and introduce to you the ordinance set out below with the request that it be passed finally on the date of its introduction. There exists a public emergency requiring such action and I accordingly request that you pass the same if it meets with your approval.

Date: January 31, 19 84

John J. Whitman  
Mayor of the City of Houston

City of Houston Ordinance No. 84-164

AN ORDINANCE AMENDING THE CODE OF ORDINANCES TO ADD A CHAPTER 33 1/2 TO ESTABLISH THE HOUSTON ARCHEOLOGICAL AND HISTORICAL COMMISSION; PROVIDING A SAVING CLAUSE; AND DECLARING AN EMERGENCY.

\* \* \*

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON:

Section 1. That the Code of Ordinances, Houston, Texas, is hereby amended by adding a chapter, to be numbered 33 1/2, which said Chapter reads as follows:

"Houston Archeological and Historical Commission

Sec. 1. Purpose.

The purpose of the Houston Archeological and Historical Commission is to promote the cultural, economic and general welfare of the city, foster civic pride in the beauty and noble accomplishments of the past, protect and enhance the city's attraction to tourists and visitors and the support and stimulus to business and industry thereby provided, strengthen the economy of the city and promote the use of archeological, historical, paleontological and historical architectural sites and landmarks for the education, pleasure and welfare of the people. The

role of the Houston Archeological and Historical Commission is to provide informed, expert advice to the mayor and city council on matters involving: (1) archeological, historical, paleontological, and historical architectural conservation and preservation; and (2) preservation of city-owned, historically significant sites and facilities. All decisions involving regulation of historic preservation or the expenditure of public funds will remain, as required by law, with the city council. It is hereby declared as a matter of public policy that the protection, enhancement, perpetuation and use of sites and landmarks of archeological, historical, paleontological or historical architectural interest or value is a public necessity and is required to protect and promote the health, economic well being, safety and welfare of the people.

#### Sec. 2. Definitions.

As used in this Chapter, the following words and phrases shall have the meanings set out below, unless another meaning is clearly indicated by usage or context:

"Commission" means the Houston Archeological and Historical Commission.

"Archeological" means relating to the study of past human behavior through use of material remains of historic and pre-historic origin.

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

"Qualified curatorial association" means an organized and permanent non-profit institution, essentially educational or aesthetic in purpose, with professional staff, which owns and utilizes tangible objects, cares for them, and exhibits them to the public on some regular schedule, and which institution meets the requirements of the Council of Texas Archeologists' Guidelines For Curation Standards and Procedures.

*Sec. 3. Creation of the Houston Archeological and Historical Commission, composition; appointment of members.*

There is hereby created the Houston Archeological and Historical Commission which shall consist of eleven (11) members. The mayor shall assign a member of his or her staff to serve both as a liaison between the Commission and the mayor's office, and as an ex officio, non-voting member of the Commission. The Chairman of the Harris County Historical Commission shall be an ex-officio member of the Commission and shall not have a vote. The director of the Planning Department of the city shall serve as executive secretary to the Commission, shall be an ex-officio member of the Commission and shall not have a vote. The executive secretary of the Commission shall call the first meeting of the Commission. The Commission shall select its own Chairman and Vice-Chairman.

The eleven members of the Commission shall hold specific positions.



Position 1 shall be held by the Archivist of the Houston Public Libraries, or a representative designated by written notice to the executive secretary of the Commission.

Position 2 shall be held by the Director of the Parks Department of the city, or a representative designated by written notice to the executive secretary of the Commission.

Position 3 shall be held by the Director of the Department of Public Works and Engineering of the city, or a representative designated by written notice to the executive secretary of the Commission.

The members holding Positions 4 through 11 of the Commission shall be appointed by the mayor, subject to confirmation by the city council, as follows:

Position 4 and 5 shall be filled by professional archeologists with knowledge of and interest in archeology of the city.

Position 6 shall be filled by a professional historian with knowledge of and interest in the history of the city.

Position 7 shall be filled by an architectural historian.

Positions 8 and 9 shall be filled by directors of qualified curatorial associations with significant research collections in archeology, history or paleontology.

Positions 10 and 11 shall be filled by citizens of the city with an interest in archeology, history, paleontology or historical architecture.

*Sec. 4. Meetings; Terms of the Commission; removal.*

The Commission shall meet at such times and at such public places as may be required for the conduct of its business.

Positions 1, 2 and 3 shall be held by the city employee holding the position described above, or his or her designated representative.

The terms of office for Positions 4, 6, 8, and 10 shall expire on March 1st of odd numbered years and the terms of office for Positions 5, 7, 9, and 11 shall expire on March 1st of even numbered years.

A member whose term has expired shall continue to serve until a successor has been appointed and confirmed. Positions on the Commission which become vacant due to death, resignation or removal 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 Commission member may be appointed to serve consecutive terms.

Seven members of the Commission shall constitute a quorum.

*Sec. 5. Members to serve without pay.*

Members of the Commission shall serve without compensation.

*Sec. 6. Responsibilities of the Commission.*

Unless otherwise specified in this Chapter, the responsibilities of the Commission shall be as follows:

- 1) Adopt such rules of procedure for meetings and proceedings of the Commission as are necessary or convenient to accomplish the purposes set out in this Chapter;
- 2) actively pursue and encourage the creation and maintenance of a list and maps of structures, sites and areas having special archeological, historical, paleontological and historical architectural interest or value. The Commission shall place particular emphasis upon evaluating and incorporating the findings of studies and surveys already completed. The Commission shall report annually to the city council the results of its work in these areas;
- 3) increase public awareness of the value of archeological, historical, paleontological and historical architectural conservation by facilitating and participating in public educational programs and by recommending updates to the conservation program;
- 4) 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 archeological, historical, paleontological or historical architectural sites or structures in the city;

- 5) evaluate and comment upon decisions by city departments and agencies affecting archeological, historical, paleontological or historical architectural resources;
- 6) 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 and state agencies;
- 7) facilitate efforts of persons wishing to donate archeological, historical, paleontological or historical architectural artifacts, materials, structures or sites to the public in placing those resources with qualified curatorial associations;
- 8) perform any other duties which the city council by ordinance authorizes the Commission to perform.

*Sec. 7. Assistance of city department.*

All city departments, including the following, are authorized to assist the Commission: Planning; Parks; Public Works; Real Estate; Legal; Community Development; and the Mayor's Office--Cultural Affairs.

The city attorney and his staff are authorized to provide legal services and representation to the Commission."

Section 2. If any provisions, section, subsection, sentence, clause, or phrase of this ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provision of this ordinance are declared to be severable for that purpose.

Section 3. There exists a public emergency requiring that this ordinance be passed finally on the date of its introduction, and the Mayor having in writing declared the existence of such emergency and requested such passage, this ordinance shall be passed finally on the date of its introduction, this 31<sup>st</sup> day of January, 1984, and shall take effect immediately upon its passage and approval by the Mayor.

PASSED this 31<sup>st</sup> day of January, A.D. 1934

APPROVED this 31<sup>st</sup> day of August, A.D. 1989.

CAPTION PUBLISHED IN DAILY COURT  
 REVIEW  
 DATE: FEB 7 1984

Mayor of the City of Houston

(Prepared by Legal Dept.  
(JJH:pas, 1/25/84)  
(L. D. File No. 70,866)

Assistant City Attorney

VOTE	
AYE	NO
MAYOR WHITMIRE	
COUNCIL MEMBERS	
ABSENT	McKASKLE
	McGOWEN
	GREANIAS
	ELLIS
	MANCUSO
	GOODNER

/	GORCZYNSKI
/	REYES
/	WESTMORELAND
/	TINSLEY
/	GREENWOOD
/	HALL
/	ROBINSON

CAPTION

**ADOPTED**

City of Kingston

Ontario

BY-LAW NO. 80-251

A BY-LAW TO PROVIDE FOR THE SAFEKEEPING BY THE MUNICIPALITY  
OF MATTERS OF HISTORICAL VALUE OR INTEREST, AND TO REGULATE  
THE DISCOVERY OF ITEMS OF ARCHEOLOGICAL OR HISTORICAL INTEREST

PASSED: December 1, 1980

As Amended By:

By-Law No. 81-47 - January 5, 1981

*(Office Consolidation)*

BY-LAW NO. 80-251

A BY-LAW TO PROVIDE FOR THE SAFEKEEPING BY THE MUNICIPALITY OF MATTERS OF HISTORICAL VALUE OR INTEREST, AND TO REGULATE THE DISCOVERY OF ITEMS OF ARCHEOLOGICAL OR HISTORICAL INTEREST

PASSED: December 1, 1980

WHEREAS City Council has expressed concern that items of historical value or archeological interest be held in the possession of the municipality, and that their discovery and retention be regulated by the municipality;

AND WHEREAS Section 24(a) of Section 352 of *The Municipal Act*, R.S.O. 1970, Chapter 284, provides that the municipality may regulate the keeping in the custody of the municipality things of historical value or interest;

AND WHEREAS Section 242 of *The Municipal Act* allows the municipality to pass by-laws which would have the effect of benefitting the welfare of the inhabitants of the municipality generally;

THEREFORE the Council of The Corporation of the City of Kingston enacts as follows:

1. Matters of historical value or interest that are donated or loaned to the municipality shall be kept in the possession of the municipality under the direction of the Chief Administrative Officer of the municipality. The Chief Administrative Officer is hereby authorized to accept such donations, and shall inform Council of the donation, and may recommend to Council, when necessary, the entering into any agreement with the donor or lender, for the keeping of such things as is considered necessary.

(By-Law No. 80-251 - 1980)

2. Any person digging, excavating, or simply finding, any thing or matter on City of Kingston property shall immediately notify The Corporation of the City of Kingston of that matter when it is considered to be of historical or archeological value. The person finding the matter or item of archeological or historical interest shall not be unreasonably delayed by the City in completing the digging or excavation at hand. The ownership rights of any item of archeological or historical value discovered on City property shall remain in the ownership of The Corporation of the City of Kingston.

(By-Law No. 80-251 - 1980)

3. The above conditions shall be made a part of all City and Public Utilities Commission contracts which involve excavation work.

(By-Law No. 80-251 - 1980)

December 1980

4. Any person who contravenes any of the provisions of this by-law shall, on summary conviction, be guilty of an offence and subject to a maximum fine of \$2,000.00.

*(By-Law No. 21-47 - 1961)*

5. This by-law shall come into force and take effect on its passing.

*(By-Law No. 80-251 - 1980)*



## Larkspur, California

omission which would be valid ground for rescission of such sale or exchange in the absence of this chapter. (Ord. 647 §1, 1980; Ord. 483 §1(part), 1974).

15.40.080 Nonliability of city. The residential building record report shall be compiled from the records of the city and from an inspection of the property. The issuance of the report is not a representation by the city that the subject property or its present use is or is not in compliance with the law. Neither the enactment of this chapter nor the preparation and delivery of any report required hereunder shall impose any liability upon the city for any errors or omissions contained in said report, nor shall the city bear any liability not otherwise imposed by law. (Ord. 483 §1(part), 1974).

Chapter 15.42ARCHAEOLOGICAL RESOURCESSections:

- 15.42.010 Purpose.
- 15.42.020 Definitions.
- 15.24.030 Archaeological investigation permit required.
- 15.24.040 Permit procedure.
- 15.24.050 Records of archaeological findings.

15.42.010 Purpose. This chapter is intended to provide a procedure for studying and/or preserving valuable archaeological resources in the city. Existing in Larkspur are certain deposits of shells, bones and other objects of historical significance believed to have been left by Indians and other early inhabitants. When studied under the supervision of qualified archaeologists, these resources may be of inestimable value in formulating the early history of Larkspur inhabitants. Uncontrolled excavation or modification of these resources, without regard to their possible historical and archaeological values, would destroy the archaeological integrity of the area. This loss would affect future generations and must be prevented in the public interest. (Ord. 571 §1(part), 1977).

15.42.020 Definitions. For the purpose of this chapter, the following terms shall have the meaning given herein:

(1) "Archaeological resource" means all evidence of human occupation and activity which may be used to reconstruct the lifeways of past peoples. This evidence shall include sites, structures, artifacts, environmental data, physical remains and all other relevant data that existed prior to 1860.

(2) "Disturb" means to have any direct or indirect adverse effect.

(3) "Qualified archaeological advisory agencies" means institutions of higher learning and/or established associations, pursuing as one of their major purposes the study of cultural remains having archaeological significance. A list of such institutions shall be adopted by city council resolution and will be used by the city in the selection of consulting organizations for the issuance of permits under this chapter.

(4) "Qualified archaeologist" means any person certified in the area of "field research" or "cultural resources management" by the Society of Professional Archaeologists.

(5) "Recorded archaeological resource" means those archaeological resources which are known to exist in the city, and which are recorded in the Statewide Archaeological Survey, the State Landmarks Inventory and/or the National Register of Historical Places.

(6) "Unrecorded archaeological resources" means those archaeological resources which have not yet been discovered or recorded, but which may exist in the city. (Ord. 571 §1 (part), 1977).

15.42.030 Archaeological investigation permit required.

(a) It is unlawful for any person to excavate or disturb, in any fashion whatsoever, any archaeological resource prior to issuance of an archaeological investigation permit.

(b) Whenever construction or other activities are proposed which will affect a recorded archaeological resource, an archaeological investigation permit shall be obtained prior to commencement of work and prior to issuance of any building or grading permit.

(c) Whenever a recorded or unrecorded archaeological resource is encountered and an archaeological investigation permit has not been issued, all activities which may affect the resource shall be stopped, and any city building permit or other authorization which may effect the resource shall be suspended until issuance of an archaeological investigation permit. (Ord. 571 §1(part), 1977).

15.42.040 Permit procedure. (a) Application for an archaeological investigation permit shall be made by the owner of the resource or a representative of such owner and shall be made in a form acceptable to the planning director. The application shall be accompanied by a fee in an amount determined by city council resolution.

(b) Upon receipt of such an application, the planning director or his designee, shall select one of the qualified archaeological advisory agencies (AAA) to inspect the site and prepare an archaeological report thereon and submit such

report to the city within fifteen days. The report shall describe the resource, state its significance, recommend the level of data recovery, if any, recommend measures, if any, for protection of the resource and recommend sources of funding for data recovery. The findings of a certified environmental impact report may be accepted by the planning commission in lieu of the archaeological report.

(c) The planning commission shall hold a hearing upon the report within seven days of submission. Whenever the planning commission determines that the resource is of archaeological significance, it shall approve the permit only after finding that mitigation measures will be taken to allow maximum protection of the resource and/or maximum preservation of knowledge of the resource. Mitigation measures may be required as conditions of approval, and the city may work with the permittee to find independent funding for the mitigation measures. Conditions of approval may include, but shall not be limited to, any or all of the following conditions:

(1) Preliminary site planning done under the supervision of a qualified archaeologist to relocate construction away from the resource;

(2) Prior to any construction activity, archaeological excavation, identification, classification and proper scientific analysis of artifacts and other materials having historical or archaeological significance shall be accomplished by a person with qualifications satisfactory to the planning commission;

(3) A qualified archaeologist shall be permitted to make periodic visits to the archaeological resource to observe the work-in-progress. (Ord. 571 §1(part), 1977).

15.42.050 Records of archaeological findings. Whenever work is performed by an archaeologist, he shall keep complete and accurate records and file them with the State Historic Preservation Officer and the National Park Service, and place copies in the site report files at the University of California at Berkeley, San Francisco State University, Marin Miwok Museum, and the College of Marin. (Ord. 571 §1(part), 1977).

#### Chapter 15.44

#### MINIMUM BUILDING SECURITY REGULATIONS

##### Sections:

- 15.44.010 Purpose.
- 15.44.020 Scope.
- 15.44.030 Exceptions.
- 15.44.040 Definitions.

See Pages 3-5  
for Archaeology  
reference

ORDINANCE  
(AS AMENDED)  
CITY OF NEW ORLEANS

CITY HALL, FEBRUARY 19, 1976

CALENDAR NO. 6482

NO. 5992 MAYOR COUNCIL SERIES

BY: COUNCILMAN FRIEDLER (BY REQUEST)

AN ORDINANCE creating and empowering the New Orleans Historic District/Landmarks Commission to regulate, preserve, and protect historic districts and landmarks within the City of New Orleans; and providing for the powers, duties, authority, and standards of said Commission; and repealing Ordinance Number 5643 M.C.S.

1. SECTION I. THE COUNCIL OF THE CITY OF NEW
2. ORLEANS HEREBY ORDAINS, that the purpose of this
3. ordinance is to promote historic districts and
4. landmarks for the educational, cultural, economic,
5. and general welfare of the public through the
6. preservation, protection, and regulation of
7. buildings, sites, monuments, structures, and areas
8. of historic interest or importance within the City
9. of New Orleans; to safeguard the heritage of the City
10. by preserving and regulating historic landmarks and
11. districts which reflect elements of its cultural,
12. social, economic, political, and architectural
13. history; to preserve and enhance the environmental
14. quality of neighborhoods; to strengthen the City's
15. economic base by the stimulation of the tourist
16. industry; to establish and improve property values;
17. to foster economic development; and to manage growth.

1. SECTION II. NEW ORLEANS HISTORIC DISTRICT/
2. LANDMARKS COMMISSION

Contact: Ellen Miller  
City Planning  
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3. The City Council of New Orleans hereby repeals
4. Ordinance Number 5643 M.C.S. and creates a commission
5. to be known as the New Orleans Historic District/
6. Landmarks Commission, for the purpose of regulating

7. historic district and historic landmarks designated  
8. within the City of New Orleans pursuant to State  
9. Constitution of 1974 and Acts 273 of 1974 and 804 of  
10. 1975 and the provisions of this ordinance. The Commission  
11. shall consist initially of nine (9) members, appointed  
12. by the Mayor subject to approval of a majority vote of  
13. the City Council for four (4) year terms each except  
14. that the terms of members of the first Commission  
15. shall be "staggered" as follows: 3 (three) members for  
16. 4 (four) year terms, 2 (two) members for 3 (three) year  
17. terms, 2 (two) members for 2 (two) year terms, and 2  
18. (two) members for 1 (one) year terms. Successors shall  
19. serve 4 (four) year terms thereafter. Vacancies on the  
20. Commission shall be filled for the remainder of the  
21. unexpired term(s). A chairman and vice-chairman shall  
22. be elected annually from the members of said Commission.  
23. All members shall serve without compensation. Any  
24. member may be appointed to another term or terms. Vacan-  
25. cies shall be filled by appointment in the same manner  
26. as the original appointments.  
27. For each historic district created by the City Council,  
28. not less than one (1) member shall be appointed (whether  
29. by appointment or reappointment) who shall be a resident  
30. or property owner within said historic district the total  
31. membership of the Commission shall not exceed 15 (fifteen)  
32. members.

1. SECTION III. QUALIFICATIONS FOR MEMBERSHIP

2. Members of the Commission must be electors and  
3. residents of the Parish of Orleans.

1. SECTION IV. POWERS AND DUTIES

2. The Commission shall exercise only those powers and  
3. duties granted by this ordinance or those powers and duties  
4. which may be assigned to it at a later time by the City Council.

1. SECTION V. DEFINITIONS

2. For the purpose of this ordinance the following  
3. definitions shall apply:

4. A. Alteration: Any change because of construction,

5. repair, maintenance, or otherwise to buildings  
6. located within an historic district or designated  
7. as a landmark.

8.       B. Applicant: The record owner of the site  
9. and/or buildings located thereon, the lessee there-  
10. of, or a person holding a "bona fide" contract to  
11. purchase same.

12.       C. Building: Any structure, place, or any  
13. other construction built for the shelter or enclosure  
14. of person, animals, or chattels, or any part of such  
15. structure when subdivided by division walls or party  
16. walls extending to or above the roof and without  
17. openings in such separate walls.

18.       The term "building" shall be construed as if  
19. followed by the words "or any part thereof."

20.       D. Certificate of Appropriateness: A document  
21. evidencing approval of the Commission for work proposed  
22. by an applicant.

23.       E. Commission: The Historic District/Landmarks  
24. Commission.

25.       F. Construction: The erection of any on-site  
26. improvements on any parcel of ground located within an  
27. historic district or on a landmark site, whether the  
28. site is presently improved, unimproved, or hereafter  
29. becomes unimproved by "demolition," "demolition by  
30. neglect," destruction of the improvements located  
31. thereon by fire, windstorm, or other casualty, or  
32. otherwise (hereinafter such a parcel of ground shall  
33. be referred to as 'site').

34.       G. Demolition: The complete or constructive  
35. removal by an applicant of a building on any site.

36.       H. Demolition by Neglect: Neglect in the  
37. maintenance of any building resulting in any one or  
38. more of the following:

39. (1) The deterioration of a building to  
40. the extent that it creates or permits a  
41. hazardous or unsafe condition as determined by  
42. the Department of Safety and Permits.

43. (2) The deterioration of a building(s)  
44. characterized by one or more of the following:

45. (a) Those buildings which have parts  
46. thereof which are so attached that they  
47. may fall and injure members of the  
48. public or property.

49. (b) Deteriorated or inadequate  
50. foundation.

51. (c) Defective or deteriorated floor  
52. supports or floor supports insufficient to  
53. carry imposed loads with safety.

54. (d) Members of walls, or other vertical  
55. supports that split, lean, list, or buckle  
56. due to defective material or deterioration.

57. (e) Members of walls or other vertical  
58. supports that are insufficient to carry imposed  
59. loads with safety.

60. (f) Members of ceilings, roofs, ceiling  
61. and roof supports, or other horizontal members  
62. which sag, split, or buckle due to defective  
63. material or deterioration.

64. (g) Members of ceiling, roofs, ceiling  
65. and roof supports, or other horizontal members  
66. that are insufficient to carry imposed loads  
67. with safety.

68. (h) Fireplaces or chimneys which list,  
69. bulge, or settle due to defective material or  
70. deterioration.

71. (i) Any fault, defect, or condition in the  
72. building which renders the same structurally  
73. unsafe or not properly watertight.

74. (3) Action by the City, the State Fire  
75. Marshall, or the Department of Safety and  
76. Permits relative to the safety or physical  
77. condition of any building.

78. I. Exterior: All outside surfaces of any  
79. building.

80. J. Historic District or District: An area  
81. designated by the City Council of New Orleans as  
82. an historic district and declared to be subject to  
83. jurisdiction of the Commission.

84. K. Landmark and Landmark Site: An unimproved  
85. parcel of ground (landmark site) or such parcel with  
86. improvements (landmark), wheresoever located in the  
87. City of New Orleans, subject to the jurisdiction of  
88. the Historic District/Landmark Commission, of  
89. particular historic, architectural, or cultural  
90. significance, which said parcel or parcels, plus its  
91. improvements, if any,

92. (1) exemplify or reflect the broad cultural,  
93. political, economic, or social history of the  
94. nation, state, or community; or

95. (2) are identified with historic personages  
96. or with important events in national, state, or  
97. local history; or

98. (3) embody distinguishing characteristics  
99. of an architectural type specimen, inherently  
100. valuable for a study of a period, style, method of  
101. construction, or of indigenous materials or craft-  
102. manship; or

103. (4) are representative of the notable work  
104. of a master builder, designer, or architect whose  
105. individual ability has been recognized.

106. L. Ordinary Repairs and Maintenance: Work done  
107. on a building to prevent it from deterioration or to  
108. replace any part thereof in order to correct any  
109. deterioration, decay of, or damage to a building on any  
110. part thereof in order to restore same as nearly as

*implies  
anthropological  
study*



111. practical to its condition prior to such deterioration,  
112. decay, or damage.

1. SECTION VI. HISTORIC DISTRICT POWERS AND REGULATIONS

2. A. No private building, structure, or edifice,  
3. including fences, boundary walls, signs, steps over  
4. seven (7) rises, and paving shall be erected, altered,  
5. restored, moved, or demolished within any district  
6. until after an application for a Certificate of  
7. Appropriateness as to exterior architectural  
8. features has been submitted to and approved by the  
9. Commission. Similarly, if earthworks of historical  
10. or archaeological importance exist in a district,  
11. there shall be no excavating or moving of earth,  
12. rock, or subsoil without a Certificate of Appropriateness.  
13. For the purpose of this ordinance "exterior architectural  
14. features" shall include but not be limited to the  
15. architectural style, general design and general  
16. arrangement of the exterior of a structure, including  
17. the kind and texture of the building material, the  
18. type and style of all roofs, windows, doors, and signs.  
19. The style, scale, materials, and location of outdoor  
20. advertising signs and bill posters within a district  
21. shall also be under the control of the Commission.

22. B. The Commission shall not consider interior  
23. arrangement or use, but shall consider the relation-  
24. ship of the exterior of the buildings concerned with  
25. all others in the district so as to avoid incongruity  
26. and promote harmony therewith. In all instances the  
27. Commission shall regulate those outside surfaces of  
28. a building that can be viewed from a public right of way  
29. or street.

30. C. Nothing in this ordinance shall be construed  
31. to prevent ordinary maintenance or repairs which do  
32. not involve a change of design, material, or of the  
33. outward appearance of a building.

1. SECTION VII. CERTIFICATE OF APPROPRIATENESS  
2. A. The Commission shall prescribe the procedure  
3. for making application for a Certificate of  
4. Appropriateness.  
5. B. The applicant shall have the right to a  
6. preliminary conference, upon applicant's request,  
7. with the Commission staff and any member of the  
8. Commission who chooses to attend after receiving  
9. a notice thereof, for the purpose of making any  
10. changes or adjustments to the application which  
11. might be more consistent with the Commission's  
12. standards.  
13. C. The Commission shall hold a public hearing  
14. upon each application for a Certificate of  
15. Appropriateness affecting property under its control  
16. except in those instances where the Commission has  
17. determined that the application for a Certificate  
18. of Appropriateness does not involve a material change  
19. or that the Commission has determined that the application  
20. complies with the standards adopted by said Commission  
21. in which case the Commission shall by appropriate  
22. means designate its approval. Notice of the time  
23. and place of said hearing shall be given by publication  
24. in the form of a legal advertisement appearing in the  
25. official journal of the City of New Orleans or in a  
26. newspaper having general circulation in Orleans Parish,  
27. at least seven (7) days before such hearing, and by the  
28. posting of such notice on or near the main entrance of  
29. any hall or room where the Commission usually meets.  
30. In addition, notices shall be mailed at least seven (7)  
31. days prior to the date of such public hearing to (1) all  
32. persons owning property on both sides of the street  
33. within the "block" face in which the property subject to  
34. the application is located, and in addition thereto, if  
35. the building is located on a corner, all three other

36. property owners located on the surrounding corners,  
37. (2) the applicant, (3) the Director, City Planning  
38. Commission of the City of New Orleans, and (4) the  
39. Director, Department of Safety and Permits.

40. D. Within not more than forty-five (45) days  
41. after the filing of an application, the Commission  
42. shall act upon it, either approving, denying, or  
43. deferring action, giving consideration to the factors  
44. set forth in Section VIII below. Evidence of approval  
45. of the application shall be by Certificate of  
46. Appropriateness issued by the Commission; and what-  
47. ever its decision, notice in writing shall be given  
48. to the applicant, the City Planning Commission, and  
49. the Department of Safety and Permits. The Commission  
50. shall keep a record of all applications for Certificates  
51. of Appropriateness and of all its actions under this  
52. ordinance or its rules and procedures.

53. E. No permit shall be issued by the Department  
54. of Safety and Permits which affects a site or structure  
55. in any district or a landmark or landmark site without  
56. a Certificate of Appropriateness.

57. F. The Commission shall have the right to make  
58. such recommendations for changes and modifications as  
59. it may deem to be necessary in order to enable the  
60. applicant to meet with its requirements.

61. G. Nothing contained in this section shall be  
62. construed as amending or revoking the provisions of the  
63. Comprehensive Zoning Ordinance of the City of New Orleans  
64. (Ordinance 4264 M.C.S., as amended.)

65. H. Nothing contained herein shall prevent the  
66. making of any temporary construction, reconstruction,  
67. demolition or other repairs on a landmark, landmark site,  
68. or building in a district pursuant to the order of any  
69. governmental agency or court for the purpose of remedying  
70. emergency conditions determined to be dangerous to life,  
71. health, or property.

72. I. Where, by reason of topographical conditions,  
73. irregularly shaped lots, or because of unusual  
74. circumstances applicable solely to the particular  
75. applicant, strict enforcement of the provisions of this  
76. ordinance would result in serious undue hardship  
77. particularly affecting said applicant, then the Commission,  
78. in passing upon his application shall have the power to  
79. vary or modify adherence to this ordinance; provided  
80. always that its requirements insure harmony with the  
81. general purposes hereof, and will not adversely affect  
82. an historic preservation district as a whole or any  
83. designated landmark. Guidelines for the application  
84. of this subpart shall be developed by the Commission  
85. as part of its operational rules and procedures.

1. SECITON VIII. CRITERIA FOR THE ISSUANCE OF  
2. CERTIFICATES OF APPROPRIATENESS.

3. The Commission shall adhere to and seek compati-  
4. bility of structures in the district in terms of size,  
5. texture, scale, and site plan and in so doing, the  
6. following guidelines shall be considered by the  
7. Commission in passing upon applications for a  
8. Certificate of Appropriateness:

9. A. For new construction:

10. (1) All new construction shall be visually  
11. compatible with the buildings and environment with  
12. which they are related.

13. (2) The general design, scale, gross volume,  
14. arrangement site plan, texture, material and  
15. exterior architectural features of new construction  
16. shall be in harmony with its surroundings and  
17. shall not impair the 'toute ensemble' of the  
18. neighborhood.

19. (3) No one architectural style shall be  
20. imposed.

21. (4) Quality and excellence in design should  
22. be major determinants.

23. B. For exterior alterations:  
24. (1) All exterior alterations to a  
25. building shall be compatible with the building  
26. itself and other buildings with which it is  
27. related, as provided in A (2) above and in  
28. applying these standards, the original design of  
29. the building may be considered.  
30. (2) Exterior alterations shall not affect the  
31. architectural character or historic quality of  
32. the building.  
33. C. For signs:  
34. (1) the scale, and design of any sign  
35. should be compatible with the buildings and  
36. environment with which it is related.  
37. (2) The materials, style, and patterns used  
38. in any sign should be compatible with the buildings  
39. and environment with which it is related.  
40. D. Demolition:  
41. In considering an application for the demolition  
42. of a landmark or a building in an historic district, the  
43. following shall be considered:  
44. (1) The historic or architectural significance  
45. of the building.  
46. (2) The importance of the building to the  
47. 'toute ensemble' of the district.  
48. (3) The special character and aesthetic  
49. interest that the building adds to the district.  
50. (4) The difficulty or impossibility of  
51. reproducing such a building because of its design,  
52. texture, material, or detail.  
53. (5) The future utilization of the site.  
54. E. Destruction of a non-conforming use:  
55. The reconstruction of buildings legally non-  
56. conforming as to use and destroyed by fire, storms, or  
57. other Acts of God shall be governed by the provisions

58. of the zoning ordinance except that the Commission  
59. shall regulate the exterior design of such buildings.

1. SECTION IX. LANDMARK POWERS

2. The Commission shall exercise the following  
3. powers:

4. A. (1) to name or designate a building to-  
5. gether with its accessory building (s) and its  
6. lot of record, or to name or designate vacant  
7. sites not in excess of five (5) acres as  
8. historic and worthy of preservation as a land-  
9. mark within the jurisdiction of the Commission;

10. (2) buildings and sites not encompassed  
11. by (1) of this subsection may be designated as  
12. landmarks by the Commission, but such determination  
13. shall be ratified by the two-thirds vote of  
14. the City Council;

15. B. to recommend appropriate legislation for the  
16. preservation of any building, structure, site,  
17. monument, area, or other landmark which it has so  
18. named or designated;

19. C. to make application for public and private  
20. funds when appropriate and available;

21. D. to review applications proposing erection,  
22. alteration, restoration or moving of any building,  
23. structure, site, monument, area or other landmark which  
24. it has so named or designated, and to issue or deny  
25. Certificates of Appropriateness accordingly;

26. E. to review all applications for demolition  
27. permits proposing demolition of all or part of any  
28. buildings, structure, monument or other landmark which  
29. it has so named and designated, and to issue Certificates  
30. of Appropriateness or to deny them for one year;

31. F. to work with the owner of landmark property  
32. throughout the year following a refusal to issue  
33. Certificate of Appropriateness pursuant to an application

34. for a demolition permit, and to seek alternative  
35. economic uses for the landmark property;

36. G. to renew its denial of a Certificate of  
37. Appropriateness for demolition of landmark property  
38. for additional one year periods indefinitely there-  
39. after, following a public hearing each time at which  
40. the owner of the affected property shall be afforded  
41. an opportunity to appear with counsel and to present  
42. testimony; and

43. H. to prohibit the issuance of building,  
44. exterior remodeling or demolition permits affecting  
45. any property under consideration for landmark  
46. designation, said prohibition to remain in effect for  
47. the length of time required by the Commission for final  
48. action on the proposed designation.

49. In all instances the Commission shall regulate the  
50. exterior of a landmark property.

1. SECTION X. LANDMARKS DESIGNATION PROCEDURE

2. A. The following procedure shall be adhered to  
3. in designating any building, structure, site, monument,  
4. or other landmark that is worthy of preservation;

5. (1) The Commission shall consider for  
6. landmark designation any property proposed by  
7. motion of any Commission member and seconded by  
8. two additional Commission members, or by the  
9. owner of proposed property.

10. (2) Notice of a proposed designation shall  
11. be sent by registered mail to the owner of  
12. property proposed for landmark designation, des-  
13. cribing the property proposed and announcing a  
14. public hearing by the Commission to consider said  
15. designation.

16. (3) The Commission shall also send notice  
17. of a proposed designation to all city agencies  
18. having previously requested notification of such  
19. proceedings; to the landmark area advisory board

20. in whose area the proposed landmark is located,  
21. if any exists; and to other parties customarily  
22. informed by the Commission of such proceedings.

23. (4) The Commission shall also cause notice  
24. of the proposed designation to be published at  
25. least once at least thirty (30) days prior to the  
26. public hearing in the official journal of Orleans  
27. Parish and shall post notice of the hearing in  
28. the place where the Commission meets, and in  
29. addition, such notice may be also published in  
30. a newspaper having general circulation in  
31. Orleans Parish.

32. (5) The Commission may solicit expert  
33. testimony regarding the historic and architectural  
34. importance of the building, structure, site,  
35. monument, area, or other landmark under consideration  
36. for designation.

37. (6) The Commission may present testimony  
38. or documentary evidence of its own to establish  
39. a record regarding the historic and architectural  
40. importance of the proposed landmark property.

41. (7) The Commission shall afford to the  
42. owner of said property reasonable opportunity  
43. to present testimony or documentary evidence  
44. regarding the historic and architectural importance  
45. of the proposed landmark property.

46. (8) The owner of property proposed for  
47. landmark designation shall be afforded the right of  
48. representation by counsel and reasonable opportunity  
49. to cross examine witnesses presented by the Commission.

50. (9) Any interested party may present testimony  
51. or documentary evidence regarding the proposed land-  
52. mark designation at the public hearing and may  
53. submit to the Commission documentary evidence within  
54. three days after the hearing.



55. (10) Within not more than forty-five (45)  
56. days after a public hearing, the Commission shall  
57. render a final decision regarding the proposed  
58. designation and shall give written notice of its  
59. decision to the owner of the property proposed for  
60. designation setting forth the reasons thereof.

61. (11) The Commission shall maintain a record  
62. of all testimony and documentary evidence submitted  
63. to the Commission for consideration of a proposed  
64. landmark designation.

65. (12) In accord with Section IX, A (2) of  
66. this Ordinance, the City Council may ratify the  
67. determination of the Commission prior to the  
68. classification of a property, as defined in Section  
69. IX, A (2), as a landmark at any regular or special  
70. meeting of the City Council.

71. (13) Within thirty (30) days of the date  
72. on which the Commission designates or the City  
73. Council ratifies, as the case may be, any building,  
74. structure, site or monument as a landmark worthy of  
75. preservation, the Commission shall cause to be  
76. filed in the conveyance office of Orleans Parish a  
77. certificate of notification that such property is  
78. designated a landmark, and said certificate of  
79. notification shall be maintained on the public  
80. records until such time as the landmark designation  
81. may be withdrawn by the Commission or the City  
82. Council.

83. B. At such time as a landmark or landmark site  
84. has been finally established in accordance herewith, the  
85. Commission may cause to be prepared and erected on the  
86. landmark or landmark site a suitable plaque declaring  
87. that such is a landmark or landmark site.

1. SECTION XI. ADDITIONAL COMMISSION POWERS

2. The Commission shall have the following additional  
3. powers:

4. Make periodic reports to the City Council; provide  
5. information to property owners and others involving the  
6. preservation of the district; suggest pertinent  
7. legislation; recommend planning and zoning proposals;  
8. cooperate with other regulatory agencies and civic  
9. organizations and groups interested in historic preservation;  
10. review all applications for zoning variances, changes  
11. and conditional uses where they affect the district; render  
12. advice with reference to sidewalk construction and repair,  
13. tree planting, street improvements, and also the renovation,  
14. restoration, or construction of public buildings; furnish  
15. information and assistance in connection with any  
16. capital improvement program involving the historic  
17. area; consult with the National Trust for Historic  
18. Preservation and other expert groups; administer such  
19. financial mechanisms as the City Council may establish  
20. for the welfare of the city within a district; and  
21. collect fees subject to City Council approval; appoint  
22. advisory boards from time to time; and promulgate  
23. operational rules and procedures which said rules and  
24. procedures shall be submitted to the City Council for  
25. ratification in order for the Commission to implement  
26. the powers and authority granted to the Commission by  
27. the ordinance.

1. SECTION XII. DEMOLITION BY NEGLECT

2. In the event the Commission determines that a  
3. building or landmark is being "demolished by neglect,"  
4. they shall notify the applicant of this preliminary  
5. finding, stating the reasons therefor, and shall give  
6. the applicant thirty (30) days from the date of notice  
7. in which to commence work rectifying the specifics  
8. provided by the Commission. Such notice shall be  
9. accomplished in the following manner:  
10. (1) by certified mailing to the last known  
11. address of applicant; or

12. (2) in the event the procedure outlined  
13. in (1) above is not successful, then such notice  
14. shall be attached to the building or landmark  
15. twice within a week.  
16. Upon applicant's failing to commence work, the Commission  
17. shall notify the applicant in the manner provided above  
18. to appear at the next public hearing of the Commission.  
19. The Commission's staff or representative shall present  
20. to the Commission at said public hearing the reasons for  
21. the notice, and applicant shall have the right to present  
22. any rebuttal thereto, If, thereafter, the Commission shall  
23. determine that the building or landmark is being  
24. "demolished by neglect," and no efforts made to preserve  
25. it, the City may, through the Director of the Department  
26. of Safety and Permits or other appropriate officer of  
27. said department, bring charges against the applicant for  
28. the violation of this ordinance; and the City may  
29. cause such property to be repaired at its expense at  
30. such time as funds are appropriated; and in which event  
31. the City may file an affidavit of the Director of the  
32. Department of Safety and Permits to this effect in the  
33. office of the Recorder of Mortgages for the Parish of  
34. Orleans, which said notice shall constitute a lien and  
35. privilege against the property.

1. SECTION XIII. COMMISSION ENFORCEMENT POWERS

2. Upon request, the Department of Safety and Permits  
3. may aid the Commission in making all necessary inspections  
4. in connection with the enforcement of this ordinance,  
5. and furnish the Commission with copies of  
6. the reports of their inspections. Employees of the  
7. Department of Safety and Permits shall have the same right  
8. to inspect premises in connection with the enforcement  
9. of this ordinance as they now have in relation to zoning  
10. and other violations under the jurisdiction of such  
11. department.

12. It shall be the duty of the Commission, through  
13. its Director or other appropriate officer, to send  
14. notices to all persons who may be in violation of the  
15. provisions of this ordinance or the rules and procedures  
16. of the Commission and inform them of such violations.  
17. If such a violation has been noted and the owner  
18. informed of the violation, and said violation has not  
19. been corrected within ten (10) days, a second notice  
20. shall be sent giving the owner five (5) days within  
21. which to comply or demonstrate an intent to comply. If  
22. such second notice has not been complied with, then it  
23. shall be the duty of the Commission through its Director  
24. to prosecute or to cause to have prosecuted such violations  
25. of this ordinance in the Municipal Court of the City, or such  
26. other court of competent jurisdiction as may be proper,  
27. either civil or criminal.

28. Failure to comply with the provisions of this  
29. ordinance or the rules and procedures of the Commission  
30. shall constitute a violation hereof and may be punish-  
31. able by a fine of not less than \$50.00 nor more than  
32. \$100.00 per day for each day that the violation continues;  
33. and if said violation continues for more than ten (10)  
34. days, in addition to said fine, by imprisonment for not  
35. more than sixty (60) days.

36. The Commission, through its Director or other  
37. appropriate officer, shall have the right to enforce  
38. any violations of this ordinance or the rules and  
39. procedures of this Commission by civil action for  
40. injunctive relief or other appropriate remedy brought  
41. on in the name of the City of New Orleans.

1. SECTION XIV. APPEALS

2. A. Any person or persons aggrieved by any decision,  
3. act, or proceeding of the Commission shall have a right  
4. to apply in writing to the City Council for reversal or

5. modification thereof; and the President of the City  
6. Council shall have the right to stay all further action  
7. until the City Council may affirm a decision of the  
8. Commission by majority vote of all its members. Any  
9. such appeal shall be taken within ten (10) days from  
10. the date of decision; and the City Council may consider  
11. said appeal at its next general or special meeting, but  
12. in any event not more than forty-five (45) days there-  
13. after. The City Council has the right to reverse, change,  
14. or modify any decision of the Commission only by a  
15. majority vote of all its members.

16. B. Any person or persons aggrieved by any  
17. decision of the City Council affecting said district  
18. shall have the right to file a civil suit within thirty  
19. (30) days from date of decision in a court of competent  
20. jurisdiction under the usual rules of procedure  
21. governing same with the right to stay orders and injunctive  
22. relief provided the situation warrants it.

1. SECTION XV. APPLICABILITY OF COMMISSION POWERS

2. The regulatory powers conferred upon the Commission  
3. shall apply to all private property in the area controlled  
4. by the Commission, including all buildings, structures,  
5. area, sites, and their adjuncts and appurtenances, insofar  
6. as they constitute part of the entirety or 'toute ensemble'  
7. of a district or landmark site; except public and private  
8. utility facilities located on public and private property,  
9. provided, however, that this exception shall not apply to  
10. electric substations and telephone exchanges. Any  
11. governmental agency, other than the City Council, having a  
12. responsibility for any building, structure, area, site,  
13. public way and their adjuncts and appurtenances within a  
14. district or landmark site shall seek the advice of the  
15. Commission prior to the initiation of any substantive  
16. change, modification, renovation, restoration, alteration,  
17. construction, or demolition.

1. SECTION XVI. SEVERABILITY CLAUSE
2. If any provision or item of this ordinance or the
3. application thereof is held invalid, such invalidity
4. shall not affect other provisions, items, or applications
5. of this ordinance which can be given effect without the
6. invalid provisions, items, or applications and to this
7. end the provisions of this ordinance are hereby declared
8. severable.

1. SECTION XVII. (REPEAL)
2. This ordinance may be repealed and the Commission
3. thereby abolished by a majority vote of the City Council.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS JUN 24 1976

FRANK FRIEDLER, JR.  
VICE PRESIDENT OF COUNCIL

Delivered to the Mayor on JUN 24 1976  
Approved: JUL 2 1976

MOON LANDRIEU  
MAYOR

Returned by the Mayor  
on JUL 2 1976 at 3-22 PM

JOSEPH C. PETERSON,  
CLERK OF COUNCIL

THE FOREGOING IS CERTIFIED  
TO BE A TRUE AND CORRECT COPY.

*Joseph C. Peterson*  
JOSEPH C. PETERSON, COUNCIL CLERK  
CITY OF NEW ORLEANS

*Gobbie -  
Perhaps we  
should suggest that  
NOTE the lead.*

*FYI - This resolution shows  
the intent of the Council  
and is the purpose of study*

*F.W.*

RESOLUTION

R-84-141

CITY HALL: April 19, 1984

BY: COUNCILMEN WAGNER AND GIARRUSSO AND BARTHELEMY

WHEREAS, the burial places of human beings are sacred and for moral and ethical reasons the Government should protect the integrity of such sites or provide for treatment of the sites with the dignity and respect which they deserve; and

WHEREAS, burial sites are an important link to our past and the wanton destruction or disturbance of such historic areas constitutes an irreparable loss of our heritage; and

WHEREAS, Louisiana and New Orleans presently have inadequate laws addressing the protection of cemeteries and burial sites; and

WHEREAS, procedures should be developed to protect and preserve our sacred burial places and to allow for archaeological and historic research; now, therefore

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS That, the Department of Safety and Permits, the Department of Law, the Historic District Landmarks Commission, the Vieux Carre Commission, and the City Planning Commission are hereby requested to give recommendations to the Council for legislation to protect and preserve burial sites including but not limited to requirements for archaeological surveys prior to construction on such sites and requirements for historic research so that descendants of the deceased may be notified in the event a burial site may be disturbed.

BE IT FURTHER RESOLVED That a report is requested no later than June 15, 1984.

THE FOREGOING RESOLUTION WAS READ IN FULL, THE ROLL WAS CALLED ON THE ADOPTION THEREOF AND RESULTED AS FOLLOWS:

YEAS: Babovich, Barthelemy, Boissiere, Giarrusso, Wagner - 5

NAYS: 0

ABSENT: Early (out of town), Singleton (temporarily absent) - 2

AND THE RESOLUTION WAS ADOPTED.

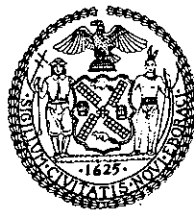
CRS 84-337

jij

THE FOREGOING IS CERTIFIED  
TO BE A TRUE AND CORRECT COPY

*Leatrice S. Siegel*  
LEATRICE S. SIEGEL, Council Clerk

**LOCAL LAWS**  
**OF**  
**THE CITY OF NEW YORK**



**Governing the establishment and regulation of landmarks, landmark sites, interior landmarks, scenic landmarks and historic districts.**

**Landmarks Preservation Commission**

\* Only seven pages of the ordinance are included here. They provide an example of how some cities are able to protect archaeological sites without actually mentioning "archaeology" or "archaeological resources" (i.e. by using such terminology as "landmark sites" or "scenic landmarks").



**LOCAL LAWS  
OF  
THE CITY OF NEW YORK  
A LOCAL LAW**

**Section 2004  
New York City Charter**

**§ 2004 Landmarks Preservation Commission.** 1. There shall be in the administration a landmarks preservation commission consisting of eleven members. The membership of such commission shall include at least three architects, one historian qualified in the field, one city planner or landscape architect, and one realtor. The membership shall include at least one resident of each of the five boroughs.

2. (a) The members of the commission shall be appointed by the mayor for terms of three years, provided that of those members first taking office, three shall be appointed for one year, four for two years, and four for three years. Each member shall serve until the appointment and qualification of his successor. The terms of members taking office shall commence on the date of their appointment.

(b) Before making any appointment of a member who is required to be an architect, historian or city planner or landscape architect, the mayor may consult with the fine arts federation of New York and any other similar organization. In the event of a vacancy occurring during the term of a member of the commission, the mayor shall make an interim appointment to fill out the unexpired term of such member, and where such member is herein required to have specified qualifications, such vacancy shall be filled by interim appointment, in the manner herein prescribed, of a person having such qualifications.

3. The members of the commission, other than the chairman, shall serve without compensation, but shall be reimbursed for expenses necessarily incurred in the performance of their duties.

4. The mayor shall designate one of the members of the commission to be chairman and one to be vice-chairman. The chairman and vice-chairman shall serve as such, until a successor or successors are designated. The commission shall appoint an executive director who shall devote full time to his duties. The commission shall submit an annual report on its activities to the mayor.

5. The commission may employ technical experts and such other employees as may be required to perform its duties, within the appropriations therefor.

6. The commission shall have such powers and duties as shall be prescribed by law with respect to the establishment and regulation of landmarks, portions of landmarks, landmark sites, interior landmarks, scenic landmarks and historic districts.

**CHAPTER 8-A—ADMINISTRATIVE CODE  
PRESERVATION OF LANDMARKS AND HISTORIC DISTRICTS**

**§ 205-1.0 Purpose and declaration of public policy.—a.** The council finds that many improvements, as herein defined, and landscape features, as herein defined, having a special character or a special historical or aesthetic interest or value and many improvements representing the finest architectural products of distinct periods in the history of the city, have been uprooted, notwithstanding the feasibility of preserving and continuing the use of such improvements and landscape features, and without adequate consideration of the irreplaceable loss to the people of the city of the aesthetic, cultural and historic values represented by such improvements

and landscape features. In addition distinct areas may be similarly uprooted or may have their distinctiveness destroyed, although the preservation thereof may be both feasible and desirable. It is the sense of the council that the standing of this city as a world-wide tourist center and world capital of business, culture and government cannot be maintained or enhanced by disregarding the historical and architectural heritage of the city and by countenancing the destruction of such cultural assets.

b. It is hereby declared as a matter of public policy that the protection, enhancement, perpetuation and use of improvements and landscape features of special character or special historical or aesthetic interest or value is a public necessity and is required in the interest of the health, prosperity, safety and welfare of the people. The purpose of this chapter is to (a) effect and accomplish the protection, enhancement and perpetuation of such improvements and landscape features and of districts which represent or reflect elements of the city's cultural, social, economic, political and architectural history; (b) safeguard the city's historic, aesthetic and cultural heritage, as embodied and reflected in such improvements, landscape features and districts; (c) stabilize and improve property values in such districts; (d) foster civic pride in the beauty and noble accomplishments of the past; (e) protect and enhance the city's attractions to tourists and visitors and the support and stimulus to business and industry thereby provided; (f) strengthen the economy of the city; and (g) promote the use of historic districts, landmarks, interior landmarks and scenic landmarks for the education, pleasure and welfare of the people of the city.

§ 207-1.0 **Definitions.**—As used in this chapter, the following terms shall mean and include:

a. "Alteration". Any of the acts defined as an alteration by the building code of the city.

b. "Appropriate protective interest". Any right or interest in or title to an improvement parcel or any part thereof, including, but not limited to, fee title and scenic or other easements, the acquisition of which by the city is determined by the commission to be necessary and appropriate for the effectuation of the purpose of this chapter.

c. "Capable of earning a reasonable return". Having the capacity, under reasonably efficient and prudent management, of earning a reasonable return. For the purposes of this chapter, the net annual return, as defined in subparagraph (a) of paragraph three of subdivision v of this section, yielded by an improvement parcel during the test year, as defined in subparagraph (b) of such paragraph, shall be presumed to be the earning capacity of such improvement parcel, in the absence of substantial grounds for a contrary determination by the commission.

d. "City-aided project". Any physical betterment of real property, which:

(1) may not be constructed or effected without the approval of one or more officers or agencies of the city; and

(2) upon completion, will be owned in whole or in part by any person other than the city; and

(3) is planned to be constructed or effected, in whole or in part, with any form of aid furnished by the city (other than under this chapter), including, but not limited to, any loan, grant, subsidy or other mode of financial assistance, exercise of the city's powers of eminent domain, contribution of city property, or the granting of tax exemption or tax abatement; and

(4) will involve the construction, reconstruction, alteration or demolition of any improvement in a historic district or of a landmark.

e. "Commission". The landmarks preservation commission.

f. "Day". Any day other than a Saturday, Sunday or legal holiday; provided, however, that for the purposes of subdivision d of section 207-16.0 of this chapter, the term "day" shall mean every day in the week.

g. "Exterior architectural feature". The architectural style, design, general arrangement and components of all of the outer surfaces of an improvement, as

distinguished from the interior surfaces enclosed by said exterior surfaces, including, but not limited to, the kind, color and texture of the building material and the type and style of all windows, doors, lights, signs and other fixtures appurtenant to such improvement.

h. "Historic district". Any area which:

(1) contains improvements which:

(a) have a special character or special historical or aesthetic interest or value; and

(b) represent one or more periods or styles of architecture typical of one or more eras in the history of the city; and

(c) cause such area, by reason of such factors, to constitute a distinct section of the city; and

(2) has been designated as a historic district pursuant to the provisions of this chapter.

i. "Improvement". Any building, structure, place, work of art or other object constituting a physical betterment of real property, or any part of such betterment.

j. "Improvement parcel". The unit of real property which (1) includes a physical betterment constituting an improvement and the land embracing the site thereof, and (2) is treated as a single entity for the purpose of levying real estate taxes; provided however, that the term "improvement parcel" said also include any unimproved area of land which is treated as a single entity for such tax purposes.

k. "Interior". The visible surfaces of the interior of an improvement.

l. "Interior architectural feature". The architectural style, design, general arrangement and components of an interior, including but not limited to, the kind, color and texture of the building material and the type and style of all windows, doors, lights, signs and other fixtures appurtenant to such interior.

m. "Interior landmark". An interior, or part thereof, any part of which is thirty years old or older, and which is customarily open or accessible to the public, or to which the public is customarily invited, and which has a special historical or aesthetic interest or value as part of the development, heritage or cultural characteristics of the city, state or nation and which has been designated as an interior landmark pursuant to the provisions of this chapter.

n. "Landmark". Any improvement, any part of which is thirty years old or older, which has a special character or special historical or aesthetic interest or value as part of the development, heritage or cultural characteristics of the city, state or nation and which has been designated as a landmark pursuant to the provisions of this chapter.

o. "Landmark site". An improvement parcel or part thereof on which is situated a landmark and any abutting improvement parcel or part thereof used as and constituting part of the premises on which the landmark is situated, and which has been designated as a landmark site pursuant to the provisions of this chapter.

p. "Landscape feature". Any grade, body of water, stream, rock, plant, shrub, tree, path, walkway, road, plaza, fountain, sculpture or other form of natural or artificial landscaping.

q. "Minor work". Any change in, addition to or removal from the parts, elements or materials comprising an improvement including, but not limited to, the exterior architectural features or interior architectural features thereof and, subject to and as prescribed by regulations of the commission if and when promulgated pursuant to section 207-18.0 of this chapter the surfacing, resurfacing, painting, renovating, restoring, or rehabilitating of the exterior architectural features or interior architectural features or the treating of the same in any manner that materially alters their appearance, where such change, addition or removal does not constitute ordinary repairs and maintenance and is of such nature that it may be lawfully effected without a permit from the department of buildings.

r. "Ordinary repairs and maintenance". Any:

(1) work done on any improvement; or

(2) replacement of any part of an improvement; for which a permit issued by the department of buildings is not required by law, where the purpose and

effect of such work or replacement is to correct any deterioration or decay of or damage to such improvement or any part thereof and to restore same, as nearly as may be practicable, to its condition prior to the occurrence of such deterioration, decay or damage.

s. "Owner". Any person or persons having such right to, title to or interest in any improvement so as to be legally entitled upon obtaining the required permits and approvals from the city agencies having jurisdiction over building construction, to perform with respect to such property any demolition, construction, reconstruction, alteration or other work as to which such person seeks the authorization or approval of the commission pursuant to section 207-8.0 of this chapter.

t. "Person in charge". The person or persons possessed of the freehold of an improvement or improvement parcel or a lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person directly or indirectly in control of an improvement or improvement parcel.

u. "Protected architectural feature". Any exterior architectural feature of a landmark or any interior architectural feature of an interior landmark.

v. "Reasonable return". (1) A net annual return of six per centum of the valuation of an improvement parcel.

(2) Such valuation shall be the current assessed valuation established by the City, which is in effect at the time of the filing of the request for a certificate of appropriateness; provided that:

(a) The commission may make a determination that the valuation of the improvement parcel is an amount different from such assessed valuation where there has been a reduction in the assessed valuation for the year next preceding the effective date of the current assessed valuation in effect at the time of the filing of such request; and

(b) The commission may make a determination that the value of the improvement parcel is an amount different from the assessed valuation where there has been a bona fide sale of such parcel within the period between March fifteenth, nineteen hundred fifty-eight, and the time of the filing of such request, as the result of a transaction at arms' length, on normal financing terms, at a readily ascertainable price, and unaffected by special circumstances such as, but not limited to, a forced sale, exchange of property, package deal, wash sale or sale to a cooperative. In determining whether a sale was on normal financing terms, the commission shall give due consideration to the following factors:

(1) The ratio of the cash payment received by the seller to (a) the sales price of the improvement parcel and (b) the annual gross income from such parcel;

(2) The total amount of the outstanding mortgages which are liens against the improvement parcel (including purchase money mortgages) as compared with the assessed valuation of such parcel;

(3) The ratio of the sales price to the annual gross income of the improvement parcel, with consideration given, where the improvement is subject to residential rent control, to the total amount of rent adjustments previously granted, exclusive of rent adjustments because of changes in dwelling space, services, furniture, furnishings or equipment, major capital improvements, or substantial rehabilitation;

(4) The presence of deferred amortization in purchase money mortgages, or the assignment of such mortgages at a discount;

(5) Any other facts and circumstances surrounding such sale which, in the judgment of the commission, may have a bearing upon the question of financing; and

(3) For the purposes of this subdivision v:

(a) Net annual return shall be the amount by which the earned income yielded by the improvement parcel during a test year exceeds the operating expenses of such parcel during such year, excluding mortgage interest and

amortization, and excluding allowances for obsolescence and reserves, but including an allowance for depreciation of two per centum of the assessed value of the improvement, exclusive of the land, or the amount shown for depreciation of the improvement in the latest required federal income tax return, whichever is lower; provided, however, that no allowance for depreciation of the improvement shall be included where the improvement has been fully depreciated for federal income tax purposes or on the books of the owner; and

(b) Test year shall be (1) the most recent full calendar year, or (2) the owner's most recent fiscal year, or (3) any twelve consecutive months ending not more than ninety days prior to the filing (a) of the request for a certificate, or (b) of an application for a renewal of tax benefits pursuant to the provisions of section 207-8.0 of this chapter, as the case may be.

w. "Scenic landmark". Any landscape feature or aggregate of landscape features, any part of which is thirty years or older, which has or have a special character or special historical or aesthetic interest or value as part of the development, heritage or cultural characteristics of the city, state or nation and which has been designated a scenic landmark pursuant to the provisions of this chapter.

§ 207-2.0 Establishment of landmarks, landmark sites, interior landmarks, scenic landmarks and historic districts.—a. For the purpose of effecting and furthering the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, scenic landmarks and historic districts, the commission shall have power, after a public hearing:

(1) to designate, and as herein provided in subdivision j in order to effectuate the purposes of this chapter, to make supplemental designations as additions to, a list of landmarks which are identified by a description setting forth the general characteristics and location thereof;

(2) to designate and, in order to effectuate the purposes of this chapter, to make supplemental designations as additions to, a list of interior landmarks, not including interiors utilized as places of religious worship, which are identified by a description setting forth the general characteristics and location thereof;

(3) to designate and, in order to effectuate the purposes of this chapter, to make supplemental designations as additions to, a list of scenic landmarks, located on property owned by the city, which are identified by a description setting forth the general characteristics and location thereof; and

(4) to designate historic districts and the location and boundaries thereof, and in order to effectuate the purposes of this chapter, to designate changes in such locations and boundaries and designate additional historic districts and the location and boundaries thereof.

b. It shall be the duty of the commission, after a public hearing, to designate a landmark site for each landmark and to designate the location and boundaries of such site.

c. The commission shall have power, after a public hearing, to amend any designation made pursuant to the provisions of such subdivisions a and b of this section.

d. The commission may, after a public hearing, whether at the time it designates a scenic landmark or at any time thereafter, specify the nature of any construction, reconstruction, alteration or demolition of any landscape feature which may be performed on such scenic landmark without prior issuance of a report pursuant to subdivision c of section 207-17.0. The commission shall have the power, after a public hearing, to amend any specification made pursuant to the provisions of this subdivision d.

e. Subject to the provisions of subdivisions g and h of this section, any designation or amendment of a designation made by the commission pursuant to the provisions of subdivisions a, b and c of this section shall be in full force and effect from and after the date of the adoption thereof by the commission.

f. Within five days after making any such designation or amendment thereof, the commission shall file a copy of same with the secretary of the board of esti-

mate and with the department of buildings, the city planning commission, the board of standards and appeals, the fire department and the health services administration.

g. (1) The secretary of the board of estimate, within five days after the filing of such copy with such secretary, shall refer such designation or amendment thereof to the city planning commission, which, within thirty days after such referral, shall submit to such board a report with respect to the relation of such designation or amendment thereof to the master plan, the zoning resolution, projected public improvements and any plans for the renewal of the area involved.

(2) Such board may modify or disapprove such designation or amendment thereof within ninety days after a copy thereof is filed with the secretary of the board. If the board shall disapprove such designation or amendment thereof, it shall cease to be in effect on the date of such action by the board. If the board shall modify such designation or amendment thereof, such modification shall be in effect on and after the date of the adoption thereof by the board.

h. (1) The commission shall have power, after a public hearing, to adopt a resolution proposing rescission, in whole or in part, of any designation or amendment or modification thereof mentioned in the preceding subdivisions of this section. Within five days after adopting any such resolution, the commission shall file a copy thereof with the secretary of the board of estimate, who shall, within five days after such filing, refer such resolution to the city planning commission.

(2) Within thirty days after such referral, the city planning commission shall submit to such board a report with respect to the relation of such proposed rescission to the master plan, the zoning resolution, projected public improvements and any plans for the renewal of the area involved.

(3) Such board may approve, disapprove or modify such proposed rescission within ninety days after a copy of the resolution proposing same is filed with the secretary of the board. If such proposed rescission is approved or modified by the board, such rescission or modification thereof shall take effect on the date of such action by the board. If such proposed rescission is disapproved by the board, or is not acted on by the board within such period of ninety days, it shall not take effect.

i. The commission may at any time make recommendations to the city planning commission with respect to amendments of the provisions of the zoning resolution applicable to improvements in historic districts.

j. All designations and supplemental designations of landmarks, landmark sites, interior landmarks, scenic landmarks and historic districts made pursuant to paragraph a shall be made pursuant to notices of public hearings given, as provided in § 207-12.0.

k. Upon its designation of any improvement parcel as a landmark and of any landmark site, interior landmark, scenic landmark or historic district or any amendment of any such designation or rescission thereof the commission shall cause to be recorded in the office of the register of the city of New York in the county in which such landmark, interior landmark, scenic landmark or district lies, or in the case of landmarks, interior landmarks, scenic landmarks and districts in the borough and county of Richmond in the office of the clerk of said county of Richmond, a notice of such designation, amendment or rescission describing the property affected by, in the case of the county of Richmond, its land map block number or numbers and its tax map, block and lot number or numbers and in the case of all other counties, by its land map block and lot number or numbers.

§ 207-3.0 Scope of commission's powers.—a. Nothing contained in this chapter shall be construed as authorizing the commission, in acting with respect to any historic district or improvement therein, or in adopting regulations in relation thereto, to regulate or limit the height and bulk of buildings, to regulate and determine the area of yards, courts and other open spaces, to regulate density of population or to regulate and restrict the locations of trades and industries or location of buildings designed for specific uses or to create districts for any such purpose.

b. Except as provided in subdivision a of this section, the commission may, in exercising or performing its powers, duties or functions under this chapter with respect to any improvement in a historic district or on a landmark site or contain-

ing an interior landmark, or any landscape feature of a scenic landmark, apply or impose, with respect to the construction, reconstruction, alteration, demolition or use of such improvement, or landscape feature or the performance of minor work thereon, regulations, limitations, determinations or conditions which are more restrictive than those prescribed or made by or pursuant to other provisions of law applicable to such activities, work or use.

**§ 207-4.0 Regulation of construction, reconstruction, alterations and demolition.**

a. (1) Except as otherwise provided in paragraph two of this subdivision a, it shall be unlawful for any person in charge of a landmark site or an improvement parcel or portion thereof located in an historic district of any part of an improvement containing an interior landmark, to alter, reconstruct or demolish any improvement constituting a part of such site or constituting a part of such parcel and located within such district or containing an interior landmark, or to construct any improvement upon land embraced within such site or such parcel and located within such district, or to cause or permit any such work to be performed on such improvement or land, unless the commission has previously issued a certificate of no effect on protected architectural features, a certificate of appropriateness or a notice to proceed authorizing such work, and it shall be unlawful for any other person to perform such work or cause same to be performed, unless such certificate or notice has been previously issued.

(2) The provisions of paragraph one of this subdivision a shall not apply to any improvement mentioned in subdivision a of section 207-17.0 of this chapter, or to any city-aided project, or in cases subject to the provisions of section 207-11.0 of this chapter.

(3) It shall be unlawful for the person in charge of any improvement or land mentioned in paragraph one of this subdivision a to maintain same or cause or permit same to be maintained in the condition created by any work done in violation of the provisions of such paragraph one.

b. (1) Except in the case of any improvement mentioned in subdivision a of section 207-17.0 of this chapter and except in the case of a city-aided project, no application shall be approved and no permit or amended permit for the construction, reconstruction, alteration or demolition of any improvement located or to be located on a landmark site or in an historic district or containing an interior landmark shall be issued by the department of buildings, and no application shall be approved and no special permit or amended special permit for such construction, reconstruction or alteration, where required by article seven of the zoning resolution, shall be granted by the city planning commission or the board of standards and appeals, until the commission shall have issued either a certificate of no effect on protected architectural features, a certificate of appropriateness or a notice to proceed pursuant to the provisions of this chapter as an authorization for such work.

c. (1) A copy of every application or amended application for a permit to construct, reconstruct, alter or demolish any improvement located or to be located on a landmark site or in an historic district or containing an interior landmark shall, at the time of the submission of the original thereof to the department of buildings, be filed by the applicant with the commission. A copy of every application, under article seven of the zoning resolution, for a special permit for any work which includes the construction, reconstruction or alteration of any such improvement shall, at the time of the submission of such application or amended application of the city planning commission or the board of standards and appeals, as the case may be, be filed with the commission.

(2) Every such copy of an application or amended application filed with the commission shall include plans and specifications for the work involved, or such other statement of the proposed work as would be acceptable by the department of buildings pursuant to the building code. The applicant shall furnish the commission with such other information relating to such application as the commission may from time to time require.

(3) Together with the copies of such application, or amended application every such applicant shall file with the commission, a request for a certificate of no effect on protected architectural features or a certificate of appropriateness in relation to the proposed work specified in such application.

DIVISION IV SPECIAL REGULATIONS

SECTION 4100 GENERAL PROVISIONS

This DIVISION establishes specific regulations which have limited application within the City of Oklahoma City in order to assure additional consideration for areas of special interest or value.

4100.1 Intent and Purpose

The purposes of this DIVISION are to:

- A. Provide a framework for enabling legislation to aid in the creation of special regulations.
- B. Provide a categorization of all special regulations which may be adopted as a result of the enabling legislation provided herein.
- C. Provide guidelines for the application of all special regulations created to assure conformity with the objectives of good planning and zoning practice.

4100.2 Application

Special Regulations may be adopted within the DIVISION and applied to designated areas of the City when the Planning Commission and City Council find conditions or purposes within said areas that merit special consideration in order to protect the health, safety, and general welfare.

4100.3 Special Regulations Established

The following Special Regulations are hereby established. Any special district adopted as a result of authorization by way of these regulations shall be codified in chronological order immediately following the enabling section in the DIVISION.

Section Special Area Regulations

- 4200 Historical Preservation and Landmark Ordinance
- 4300 Urban Conservation District
- 4400 Airport Zoning Ordinance

4100.4 Modification to Special Regulations

Modifications or changes to the regulations specified within the Special Regulations shall be subject to the provisions of the Zoning Ordinance amendment procedure contained in DIVISION VII.

Contact: Community Development  
200 N. Walker  
Oklahoma City, Okla 73102



25-IV 4200.1 Purpose of Historical Preservation and Landmark Regulations

SECTION 4200 HISTORICAL PRESERVATION AND LANDMARK REGULATIONS

4200.1 Purposes of Historical Preservation and Landmark Ordinance

The City of Oklahoma City hereby declares that the historical, architectural, cultural, and aesthetic features of the City represent some of the finest and most valuable resources of the City, and such resources are the embodiment of the heritage of the people of Oklahoma City. Therefore, it is hereby declared that the purpose of this ordinance, to be known as the Historical Preservation and Landmark Ordinance, shall be as follows:

- A. To promote the creation of historic districts and landmarks for the educational, cultural, economic and general welfare of the public through the preservation, protection, and regulation of buildings, sites, monuments, structures, and areas of historic interest or importance within the City of Oklahoma City.
- B. To safeguard the heritage of the City by preserving and regulating historic landmarks and districts which reflect elements of its cultural, social, political and architectural history.
- C. To preserve and enhance the environmental quality of neighborhoods;
- D. To strengthen the City's economic base by the stimulation of conservation and reuse;
- E. To establish and preserve property values;
- F. To foster economic development;
- G. To insure the harmonious, orderly and efficient growth and development of the municipality;
- H. To promote the use of historical landmarks and districts for the culture, prosperity, education and welfare of the people of the City and visitors to the City.
- I. To establish a preservation plan to accomplish the goal of this Ordinance.

25-IV 4200.2 Historical Preservation and Landmark Regulations - Definitions

4200.2 Definitions

As used in this DIVISION:

- A. Historic district shall mean a geographically definable area with a concentration or linkage of significant sites, buildings, structures or monuments that are unified historically, architecturally or archeologically.
- B. Landmark shall mean an individual structure, building, site, or monument which contributes to the historical, architectural or archeological heritage of the City of Oklahoma City.
- C. Historical resources shall mean sites, districts, structures, buildings, or monuments that represent facets of history in the locality, state or nation; places where significant historical or unusual events occurred; places associated with a personality or group important to the past.
- D. Architectural resources shall mean districts, structures, buildings, monuments, sites, and landscaping that possess local interest or artistic merit, or which are particularly representative of their class or period, or represent achievements in architecture, engineering technology, design or scientific research and development.
- E. Archeological resources shall mean areas or locations occupied as residences or utilized by humans (historic or prehistoric) for a sufficient length of time to construct features or deposit artifacts, which may remain in greater or lesser degrees of preservation and order and which may lend to the increase of knowledge of man about his own development.
- F. Significant characteristics of an archeological resource shall mean the artifacts present, the information to be gathered, or the potential for revealing hitherto unknown, or unclear details of a culture, period or structure.

- G. Certificate of Appropriateness shall mean the official document issued by the Historical Preservation and Landmark Commission approving any application for permission to construct, erect, demolish, relocate, reconstruct, restore or alter any structure designated by the authority of this Ordinance.
- H. Preservation shall mean the adaptive use, conservation, protection, reconstruction, restoration, rehabilitation, or stabilization of sites, buildings, districts, structures, or monuments significant to the heritage of the people of Oklahoma City.
- (1) Adaptive use shall mean the restrained alteration of a historical or architectural resource to accommodate uses for which the resource was not originally constructed, but in such a way so as to maintain the general historical and architectural character.
  - (2) Conservation shall mean the sustained use and appearance of a resource essentially in its existing state.
  - (3) Protection shall mean the security of a resource as it exists through the establishment of the mechanisms of this Ordinance.
  - (4) Reconstruction shall mean the process of recreating or reproducing by new construction all or part of the form and detail of a vanished resource as it appeared at a specified period in time.
  - (5) Rehabilitation shall mean the process of returning a historical or architectural resource to a state of efficiency or soundness by repair or alteration designed to encourage its continued use but without noticeably changing the exterior appearance of the resource.
  - (6) Restoration shall mean the process of accurately recovering all or part of the form and detail of a resource and its setting as it appeared at a particular period of time by means of the removal of later work and the replacement of missing earlier work.

- (7) Stabilization shall mean the process of applying measures designed to halt deterioration and to establish the structural stability of an unsafe or deteriorated resource while maintaining the essential form as it presently exists without noticeably changing the exterior appearance of the resource.
- I. Significant characteristics of historical and architectural resources shall mean those characteristics which are important to or expressive of the historical, architectural or cultural quality and integrity of the resource and its setting and which include, but are not limited to building material, detail, height, mass, proportion, rhythm, scale, setback, setting, shape, street accessories, and workmanship.
- (1) Building materials shall mean the physical characteristics which create the aesthetic and structural appearance of the resource, including but not limited to, a consideration of the texture and style of the components and their combinations, such as brick, stone, shingle, wood, concrete or stucco.
- (2) Detail shall mean architectural aspects which, due to particular treatment, draw attention to certain parts or features of a structure.
- (3) Height shall mean the vertical dimension of a given structure, building or monument.
- (4) Proportion shall mean the relative physical sizes within and between buildings and building components.
- (5) Rhythm shall mean a regular pattern of shapes including, but not limited to, windows, doors, projections, and heights, within a building, structure, monument, or group of same.
- (6) Scale shall mean the harmonious proportion of parts of a building, structure, or monument to one another and to the human figure.

- (7) Setting shall mean the surrounding buildings, structures, or monuments or landscaping which provide visual aesthetic, or auditory quality of the historic or architectural resources.
- (8) Shape shall mean the physical configuration of structures of buildings, or monuments and their component parts including, but not limited to, roofs, doors, windows, and facades.
- (9) Street accessories shall mean those sidewalks or street fixtures which provide cleanliness, comfort, direction or safety and are compatible in design to their surroundings, and include, but are not limited to, trash receptacles, benches, signs, lights, hydrants, and landscaping, including but not limited to trees, shrubbery and planters.
- (10) Ordinary maintenance and repair shall mean any work for which a building permit or any other City permit or certificate is not required and where the purpose of such work is stabilization, and further, where such work will not noticeably change the exterior appearance of the resource. Any work not satisfying all of the above requirements shall not be considered ordinary maintenance and repair, nor shall the construction or enlargement of a driveway or parking area be considered ordinary maintenance and repair.
- (11) Commission shall mean Historical Preservation and Landmark Commission of the City of Oklahoma City.
- (12) Structure shall mean anything constructed or erected, the use of which requires permanent location on the ground or which is attached to something having a permanent location on the ground and includes, but is not limited to, buildings, fences, walls, driveways, sidewalks, and parking areas.

A. Creation. There is hereby created the Historical Preservation and Landmark Commission of The City of Oklahoma City. Its members shall be appointed by the Mayor with the approval of the City Council except as to the member to be elected by the Planning Commission. Such Commission shall be composed as follows, all of whom shall be residents of Oklahoma City:

- (1) One member shall be a registered architect;
- (2) One member shall be a licensed real estate broker;
- (3) One member shall be a historian;
- (4) One member shall be a City Planner or a landscape architect;
- (5) One member shall be an attorney;
- (6) Four members shall be residents of Oklahoma City with knowledge of or interest in historical preservation;
- (7) One member of the Planning Commission who shall be elected by the Planning Commission

All members of the Commission shall serve without compensation.

B. Terms of Membership. The term of each Commission member shall be for three (3) years or until his or her successor takes office. Members may be appointed to fill the remainder of vacant terms. It is intended that the Historical Preservation and Landmark Commission shall be the successor to the formerly existing Historical Preservation Commission. Therefore, all members of the Historical Preservation Commission serving on the date of the final enactment of this Ordinance shall automatically assume similar positions as members of the Historical Preservation and Landmark Commission and the Chairman shall fulfill the same terms which he would have been served as Chairman of the Historical Preservation Commission.

- C. Removal of Members. Members of the Commission may be removed by the Mayor for cause upon the filing of written charges and after a public hearing before the City Council for insufficiency, neglect of duty or malfeasance.
- D. Meetings and Rules of Commission. The Commission shall be empowered to adopt rules for the conduct of its business. The Commission shall elect a Chairman who shall serve for one (1) year and who shall be eligible for re-election. All meetings of the Commission shall be open to the public. Any person, or his duly appointed representative, shall be entitled to appear and be heard on any matter before the Commission. The Commission shall keep a record of its proceedings, a copy of which shall be filed for public view in the Office of the City Clerk. A quorum shall consist of five (5) members of the Commission unless there is a vacancy in the membership, in which case it shall be a majority of the active members and action taken at any meeting shall require the affirmative vote of a majority of the voting members of the Commission. The Director of Community Development or the designated representative of such Director shall act as secretary of the Commission and shall attend and keep the minutes of all meetings. He or she shall act in an advisory capacity only and may participate in the Commission's discussions but shall have no vote. The Community Development Department shall assist the Commission in discharging its duties.
- E. Duties of Historical Preservation and Landmark Commission. Unless otherwise specified in this Article, the duties of the Historical Preservation and Landmark Commission shall be as follows:
  - (1) Prepare or cause to be prepared a comprehensive inventory of historical, architectural, and archeological resources within the City.
  - (2) Prepare or cause to be prepared a general historical preservation plan to be incorporated within the comprehensive plan.

- (3) Prepare findings of fact relating to the recommendation for designation of historical, architectural and archeological resources.
- (4) Prepare findings of fact pursuant to action taken by the Commission relating to Certificates of Appropriateness.
- (5) Make recommendations to the Council concerning the acquisition of development rights, facade easements and the development of historical preservation plans.
- (6) Make recommendations to the Council concerning grants from federal and state agencies, private groups and individuals and the utilization of budgetary appropriations to promote the preservation of historic, architectural, or archeological resources; and, when so directed by Council, the Commission may oversee historical projects or programs.
- (7) Recommend to the Council the need for employing staff and making contracts with technical experts for the furtherance of the Commission's work.
- (8) Promulgate rules governing the meetings of the Commission and the standards for materials presented to the Commission.
- (9) Increase public awareness of the value of historic, architectural or archeological resources by developing and participating in public information programs and by recommending the update of the preservation program, and by the giving of advice to owners or residents of such resources as to the problems and techniques of preservation work; and further, by placing monuments and markers at historical sites as chosen by the Commission.
- (10) Keep minutes and records of all meetings and proceedings including voting records, attendance, resolutions, findings of facts, determinations and decisions.
- (11) Make recommendations to the Council and/or Planning Commission regarding historic designations, Certificates of Appropriateness, and amendment and enforcement of this Ordinance and the Oklahoma City Code.
- (12) Comment and make recommendations concerning actions undertaken by other City agencies or actions of other governmental units with respect to the effect of such actions upon historical, architectural and archeological resources.



- (13) Investigate complaints, conduct hearings and recommend the commencement of actions to enforce the provisions of this Article.
- (14) Conduct a periodic review of the status of designated landmarks and historic districts and provide periodic reports on the findings of said review, along with any resolutions for action as considered appropriate, to the Council.
- (15) Any other functions imposed by this Ordinance or which may be specified by the City Council.

F. Mediation Hearings.

- (1) Citizens may file with the Secretary of the Commission formal written complaints concerning alleged violations of this Ordinance.
- (2) Upon receipt by the Commission of such a written complaint charging any property owner, resident or occupant of a historical preservation district or a historical landmark district with violation of any provision of this Ordinance, the Commission may schedule a mediation hearing to consider such complaint.
- (3) The Secretary of the Commission shall promptly notify the complainant and the person or persons alleged to have committed the violation by registered or certified mail, return-receipt requested, of the time and place of the hearing and the nature of the complaint, and invite the parties to appear and to be heard.
- (4) Attendance at such hearing shall be voluntary.
- (5) Such hearing shall be held for the purpose of mediating the dispute which is the subject of the filed complaint and for the further purpose of fostering compliance with this Ordinance.
- (6) Nothing in this section shall be construed so as to require any person, including officers and employees of this City, to delay the filing of any complaint, information or other charging instrument or to delay the filing of any complaint, information or other charging instrument, or to delay the prosecution of any action in law or equity, until the Historical Preservation and Landmark Commission shall have considered a matter at a mediation hearing.

- A. Creation. There is hereby created the "HL" Historical Landmark Zoning District.
- B. General Provisions and Description. The "HL" Historical Landmark District and its regulations may be applied to property located in any other zoning district, whether residential, commercial, industrial or agricultural, in accordance with the provisions of the Historical Preservation and Landmark Ordinance. The "HL" Historical Landmark District is intended to be an overlay zoning district and the regulations imposed by such district shall be in addition to the regulations of the underlying zoning district applicable to the subject parcel. All provisions of the Historical Preservation and Landmark Ordinance, including the definitions contained therein, but not including the Regulations of the "HP" Historical Preservation District, shall be applicable to this District.
- C. District Identification. Tracts, buildings or sites designated by the City Council as being within the "HL" Historical Landmark District shall be identified on the Official Zoning Map of the City and in other official writings by the suffix "HL".
- D. District Regulations. The following regulations shall be applicable to the "HL" Historical Landmark District and shall control the use of all properties within such district, to-wit.
  - (1) The erection, moving, demolition, reconstruction, restoration, or alteration of any structure is prohibited unless a Certificate of Appropriateness is granted by the Oklahoma City Historical Preservation and Landmark Commission.
  - (2) All structures and grounds shall be maintained in good condition in keeping with the historical nature of the site designated.
  - (3) All interior portions of structures shall be kept in such good repair to the extent necessary to prevent structural deterioration.
  - (4) Full compliance shall be had with all provisions and procedures of the Historical Preservation and Landmark Ordinance.

- E. Ordinary Maintenance or Repair. Nothing in this Division shall be construed to prevent ordinary maintenance or repair of any structure except exterior change.
- F. Permitted Uses. Property located within the "HL" Historical Landmark District may be used for any purpose, and only those purposes, permitted within the basic zoning district in which such property is located, subject to compliance with all regulations imposed by such basic zoning district and subject to compliance with all provisions of this Division.

- A. Creation. The Historical Preservation Zoning District is hereby created.
- B. General Provisions. All property within the City previously designated as "HP" Historical Preservation District at the time of the final passage of this Ordinance and all property subsequently included within this district shall be subject to and shall comply with the regulations and restrictions of this Division. All provisions of the Historical Preservation and Landmark Ordinance, including the definitions contained therein, shall be applicable to this District. The "HP" Historical Preservation District is intended to be a basic zoning district and is not intended to be an overlay zoning district.
- C. District Identification. Sites designated by the City Council as being within the "HP" Historical Preservation District shall be identified on the Official Zoning Map of the City and in other official writings by the symbol "HP".
- D. District Restrictions. Unless otherwise specifically provided in this ARTICLE the following restrictions shall apply to this District:
  - (1) The erection, moving, demolition, reconstruction, restoration or alteration of any structure is prohibited unless a Certificate of Appropriateness is granted by the Oklahoma City Historical Preservation and Landmark Commission subsequent to review and analysis by that body;
  - (2) All structures and grounds shall be kept in good repair;
  - (3) All interior portions of structures shall be kept in such good repair to the extent necessary to prevent structural deterioration;
  - (4) All structures and grounds shall be maintained in good condition in keeping with the historical nature of the site designated.
  - (5) All driveways shall have hard surface pavement;
  - (6) Outside storage of materials or supplies on a permanent basis is prohibited; and

- (7) All external signs and advertising displays shall be prohibited, except for identification name plates which shall be placed flat against the front exterior wall of a residence, museum or art gallery. One (1) temporary sign not exceeding two (2) feet square offering a property for sale, is permitted. All existing signs or displays not in conformance with the provisions of this ARTICLE shall be removed.
- (8) Parking and/or operation of all vehicles shall be allowed only on hard surface pavement in driveways and except for periods of loading and unloading, not to exceed seventy-two (72) hours, all boats, commercial vehicles of more than two (2) axles, recreational vehicles and trailers shall be parked completely to the rear of the front wall of the main building located on the subject property and in the case of a corner lot, any such vehicle shall be screened from view from the side street abutting the subject property.
- (9) All provisions and procedures of the Historical Preservation and Landmark Ordinance shall be complied with fully.

E. Uses Permitted. A building or premises shall be used only for the following purposes:

- (1) Single family dwelling, provided that no more than one (1) single family dwelling per lot shall be permitted.
- (2) Servants' or caretakers' quarters, either attached to or separate from a single family dwelling.
- (3) Temporary buildings for use incidental to construction work, which buildings shall be removed upon the completion or abandonment of the construction work.
- (4) Open or public park, playground, or recreation area, but excluding recreation facilities or services furnished on payment of a fee or admission charge.
- (5) Private park, recreation area, and clubhouse, when owned and maintained by members of a homeowners association or organization actively engaged in supporting the preservation of homes of architectural and/or historical significance.
- (6) Directional and information signs subject to the provisions of Chapter 3, Article III.
- (7) Private garage

- F. Uses Permitted on Review. A special exception to permit the following uses within this District may be granted by the Board of Adjustment:
- (1) Multiple family dwelling, not to exceed a four (4) family dwelling;
  - (2) Museum, art gallery or other similar public building;  
or
  - (3) Church or synagogue.
- G. Height Regulations. No building shall exceed 3 1/2 stories or 40 feet in height, whichever is greater.
- H. Area and Setback Regulations.
- (1) Front yard. There shall be a front yard having a depth of not less than 25 feet.
  - (2) Side yard. There shall be a side yard on each side of the building which shall have a width of not less than 5 feet; however, on corner lots where the side yard abuts the street there shall be a minimum setback of 15 feet on the side abutting such street.
  - (3) Rear yard. There shall be a rear yard having a depth of not less than 10 feet.
  - (4) Minimum lot width. The minimum lot width shall be 50 feet measured at the front building line.
  - (5) Screening requirement. All parking lots and other similar uses shall be screened from abutting property and abutting streets by sight-proof screening not less than 6 feet in height.
- I. Ordinary Maintenance or Repair Except as Previously Provided. Nothing in this Division shall be construed to prevent ordinary maintenance or repair of any structure.
- J. Uses Adjacent to Historical Preservation District. Any use permitted in a Residential, Commercial, Business, or Industrial District while lying adjacent to or across the street from structures or areas falling within the "HP" Historical Preservation District, shall be screened or designed as appropriate, to minimize its effect upon such structures or area. This required screening or design is specifically made applicable to all properties and uses whether coming into existence prior to the enactment date of this Ordinance or subsequently coming into existence.

A. Procedure

- (1) The City of Oklahoma City may designate tracts and sites for inclusion within the Historical Landmark District and/or the Historical Preservation District in the same manner prescribed for the designation of other zoning districts by this Code and subject to compliance with this Article; however, all designations of tracts and sites for inclusion within the Historical Landmark District shall be reviewed and considered by the Historical Preservation and Landmark Commission. Such Commission shall forward its recommendation regarding a proposed district designation to the Planning Commission and City Council.
- (2) Notice of consideration of a district designation by the Historical Preservation and Landmark Commission shall be the same as is required for consideration of the adoption or amendment of zoning district boundaries by the Planning Commission as such is prescribed in Division VII, of this Planning and Zoning Code. As a part of such notice, the Director of Community Development shall notify the owner or owners of record of affected properties by certified mail with return receipt requested of the proposed designation, including a copy of the proposed designation ordinance, a letter outlining the basis for the designation, and the obligations and restrictions which result from such designation.
- (3) The initiation of a proposal of designation may be made by the Commission, the Council, the Department of Community Development, the Planning Commission or on the application of the owners of the parcel to be designated or their authorized agents. Any such application shall be made upon forms or pursuant to standards set by the Commission for this purpose.
- (4) The Commission may solicit and present expert testimony or documentary evidence regarding the historical, and architectural, archeological, or cultural importance of the property proposed for designation.

- (5) As part of every such designation, or amendment of a designation, the Commission shall state in written form the attributes of the area or site designated as such attributes relate to and comply with the review criteria for district designation as provided in this Article. In addition, the Commission shall state in writing whether or not, in its review, a designation is in compliance with prior actions of the City Council approving plans, programs or authorizations for public trusts, agencies or authorities of the City. It shall be the duty of the Director of Community Development or Director's designate, to report to the Commission as to the existence of such plans, programs or authorizations which might have application to the property proposed for designation, and further to offer a professional opinion as to whether or not the proposed designation is in accordance with such plans, programs, or authorization.
- (6) The Director of Community Development shall officially notify the Commission of all approvals or disapprovals of designation ordinances at the next regular meeting of the Commission following Council action.
- (7) The Commission shall have the authority to effect the amendment or repeal of any designation of a site, structure, building, district or monument in the same manner and according to the same procedure as provided herein for the original designation.

B. District Designation: Criteria

A site, structure, building, district or monument may be designated for preservation as a landmark or historic district and thus may be included within the Historical Preservation District or the Historical Landmark District if such possesses the following attributes within the categories below, to-wit:

(1) Historical, Cultural Category

- (a) Such has significant character, interest or value as part of the development, heritage or cultural characteristics of the locality, state or nation; or is associated with the life of a personality significant to the past; or



- (b) Such is the site of a historic event with a significant effect upon the development, heritage or cultural characteristics of the locality, state or nation; or
- (c) Such exemplifies the cultural, political, economic, social or historic heritage of the community; or

(2) Architectural, Engineering Category

- (a) Such portrays the environment in an era of history characterized by a distinctive architectural style; or
- (b) Such embodies those distinguishing characteristics of an architectural type or engineering specimen; or
- (c) Such is the work of a designer or architect or contractor whose individual work has influenced the development of the community or of this nation, or
- (d) Such contains elements of a design, detail, materials or craftsmanship which represents a style unique to the past; or
- (e) Such is a part of or related to a square, park or other distinctive area and thus should be developed and preserved according to a plan based on a historical, cultural or architectural motif or
- (f) Such represents an established and familiar visual feature of the neighborhood, community or skyline owing to its unique location or singular physical characteristics;

(3) Archeological Category:

- (a) Such has yielded, based upon physical evidence, or is likely to yield information important to history or pre-history; or

- (b) Such is part of or related to a distinctive geographical area which should be developed or preserved according to a plan based on cultural, historic or architectural motif.

C. Certificate of Appropriateness

1. Certificate of Appropriateness: When Required

A Certificate of Appropriateness shall be required in the following instances before the commencement of work upon any structure or site located within the "HL" Historical Landmark District or the "HP" Historical Preservation District, to-wit:

- (a) Whenever such work requires a building or fence permit issued by the City.
- (b) Whenever such work includes the application of paint to a previously unpainted brick or masonry exterior surface or the construction or enlargement of a driveway or parking area.
- (c) Whenever such work includes the erection, moving, demolition, reconstruction, restoration or alteration of the exterior of any structure or site, except when such work satisfies all the requirements for ordinary maintenance and repair as defined in this Ordinance.

2. Certificate of Appropriateness: General Provisions and Procedures

- (a) No building or fence permit shall be issued by the Director of Community Development for any structure or site located within the "HL" Historical Landmark District or the "HP" Historical Preservation District until the application for such permit has been reviewed by the Commission and a Certificate of Appropriateness approved by the Commission.

- (b) When applying for such a permit, the applicant shall furnish two (2) copies of all detailed plans, elevations, perspectives and specifications and the Director of Community Development shall forward to the Commission such application for a building permit within five (5) days of receipt thereof. Any applicant may request a meeting with the Commission before submitting an application and may consult with the Commission during the review of the permit application.
- (c) Upon review of the application, the Commission shall determine whether the proposed work is of a nature which will adversely affect any historical or architectural resource and whether such work is appropriate and consistent with the spirit and intent of this Ordinance and the designating ordinance. The Commission shall apply the criteria established by this Ordinance and based thereon shall approve or disapprove such Certificate of Appropriateness. If the Commission disapproves such a Certificate of Appropriateness, no permit shall be issued and the applicant shall not proceed with the proposed work.
- (d) The Commission shall develop such guidelines as it may find necessary to supplement the provisions of this Ordinance and to inform owners, residents and general public of those techniques which are considered most proper for undertaking work relating to historical and architectural resources. The Commission shall have the opportunity to advise the Council concerning provisions in the building, electrical, plumbing, heat and air and housing codes and other codes which affect preservation work.
- (e) It is not the intent of this Ordinance to limit new construction to any one period or architectural style, but to preserve the integrity of historic and architectural resources and to insure the compatibility of new work constructed in the vicinity. In the case of the disapproval of plans by the Commission, the Commission shall state in writing the reasons for such disapproval and may include suggestions of the Commission in regard to actions the applicant might take to secure the approval of the Commission as to the issuance of a Certificate of Appropriateness.

(f) With regard to the development of a property containing a designated archeological resource, a Certificate of Appropriateness shall be required prior to the issuance of the permit for which the applicant has applied; and further, the following requirements shall be satisfied, to wit:

1. Archeological resources shall be protected from inappropriate or improper digging by demonstration by the applicant that the appropriate permits and standards are met for study as set by the State Historical Society.
2. Any discovered materials shall be properly recorded, reported, stored or exhibited according to the standards set by the State Historical Society.
3. All development affecting the designated archeological resource shall provide for the permanent preservation of the resource or provide for the completion of the necessary work as recommended by a qualified archeologist.
4. Prior to the hearing by the Commission for issuance of the Certificate of Appropriateness, the applicant or the Commission shall cause to have presented the comments and recommendations of a qualified archeologist with respect to the resource under consideration and the application which would affect it.

(g) The Commission may approve Certificates of Appropriateness subject to certain conditions. Work performed pursuant to the issuance of a Certificate of Appropriateness shall conform to the requirements of such certificate, if any. It shall be the duty of the Director of Community Development to inspect from time to time any work performed pursuant to a Certificate of Appropriateness to assure such compliance. In the event that such work is not in compliance, the Community Development Director shall issue a stop work order. The Commission may request by resolution that the Community Development Director inspect the work and issue a stop work order.

(h) The painting, erection, moving, demolition, reconstruction or alteration sanctioned by the granting of the Certificate of Appropriateness shall commence within six months of its issuance and shall be completed within two years of its issuance.

(1) If a building permit is required to fulfill the terms of the Certificate of Appropriateness, application for the building permit shall be made within six months of the issuance of the Certificate of Appropriateness. After application for the building permit is made, construction shall commence and be completed according to the terms of the building permit.

(3) Certificate of Appropriateness: Review Criteria

The Commission shall be guided by the following criteria:

- (a) The purpose and intent of this ordinance.
- (b) The degree to which the proposed work may destroy or alter all or part of a resource.
- (c) The degree to which the proposed work would serve to isolate the resource from its historical or architectural surroundings, or would introduce visual, audible, vibratory or polluting elements that are out of character with the resource and its setting; or that adversely affect the physical integrity of the resource.
- (d) The compatibility of the building materials with the aesthetic and structural appearance of the resource, including but not limited to, the consideration of texture, style, color or the components and their combinations of elements such as brick, stone, concrete, shingle, wood or stucco.
- (e) The compatibility of the proposed design to the significant characteristics of the resource, including but not limited to, a consideration of a harmony of materials, details, height, mass, proportion, rhythm, scale, setback, shape, street accessories and workmanship.

A. Minimum Maintenance

Designated landmarks, or structures, buildings, or monuments within landmark districts shall be maintained to meet the minimum requirements of codes and ordinances governing the public health, safety and welfare. The Commission on its own initiative, may file a resolution with the appropriate officer(s) requesting said officer(s) to proceed under the appropriate codes to require correction of defects or initiation of repairs. All persons in charge of a landmark, or a structure, building or monument within a historic district shall keep in good repair all of the exterior portions of such resources, including appropriate landscaping.

B. Historical Preservation and Landmark Commission Review

All matters regarding property or sites situated within the Historical Preservation District or the Historical Landmark District shall be reviewed and considered by the Historical Preservation and Landmark Commission prior to final action by the Planning Commission, the Traffic Commission, the Board of Adjustment or the City Council.

C. Appeals

Any person aggrieved by a decision of the Commission shall have such right of appeal as may be otherwise provided by law.

D. Taxes

Nothing in this Ordinance shall be construed as reason for an increased valuation of property for purposes of ad valorem taxation because of historical designation.

E. Appeal to Council of the City of Oklahoma City

- (1) Right of Appeal: Effect of Certificate of Appropriateness Prior to Expiration of Appeal Period. Any person aggrieved by any decision of the Historical Preservation and Landmark Commission in granting or denying a Certificate of Appropriateness may appeal said decision to the Council of The City of Oklahoma City as provided for herein. No Certificate of Appropriateness granted by the Commission shall become effective until the expiration of the appeal period provided for in Subsection (2) below.

Historical Preservation and Landmark Regulations - Miscellaneous Provisions

- (2) Method of Appeal. All appeals to the Council shall be taken within ten (10) days from the date of the decision by filing a notice of appeal with the Secretary of the Historical Preservation and Landmark Commission. The notice shall specify the grounds for the appeal. Upon receipt of notice of appeal, the Secretary of the Commission shall forthwith transmit to the City Clerk all papers constituting the record in the case, together with the written decision, ruling or order of the Commission. The appeal shall be heard by the Council as soon as said matter can be placed upon the Council agenda by the City Clerk in the regular course of Council business.
- (3) Effect of Appeal. An appeal to the Council from a decision by the Commission shall stay all proceedings in furtherance of the decision being appealed.
- (4) Decision on Appeal by Council. In deciding an appeal, the Council shall use the same standards and criteria of review as set forth in the Historical Preservation and Landmark Ordinance. Upon review, the Council may affirm, reverse or modify the decision of the Historical Preservation and Landmark Commission. Any person aggrieved by the ruling of the Council on said appeal shall have such further rights of appeal as provided by law.
- (5) Right of Appeal to Council not Exclusive Method of Appeal. The right of appeal to the Council as provided for herein shall not be the exclusive method of appeal from decisions of the Historical Preservation and Landmark Commission and any person aggrieved by any decision of the Commission shall have such other rights of appeal as may be provided by law.

F. Property Owned by Public Agencies

The requirements, provisions and purposes of this Act shall apply to all property owned by the City of Oklahoma City or any other public agency; provided, however, designation pursuant to this Act shall not affect the validity of prior actions of the City Council approving plans, programs or authorizations for public trusts, agencies or authorities of the City without an express amendment of such plan, program or authority.

G. Demolitions

1. General Provisions

No structure or site within any "HL" Historical Landmark District or "HP" Historical Preservation District shall be demolished or removed unless such demolition shall be approved by the Commission and a Certificate of Appropriateness for such demolition shall be granted. Applications for demolition permits shall be filed with the Director of Community Development.

2. Procedure and Postponement Orders

- (a) The Commission shall hold a public hearing for the purpose of considering Certificates of Appropriateness for demolition or removal. After such hearing the Commission may approve the Certificate of Appropriateness thereby authorizing the demolition or may postpone the demolition for a period of time not to exceed 180 days.
- (b) At the conclusion of such period of postponement as specified in the Commission's order, the Commission may within forty-five (45) days thereafter hold a second public hearing for purpose of considering whether or not the Commission should recommend to the City Council that additional postponement of demolition be ordered.
- (c) In the event the Commission should make such recommendation of additional postponement to the City Council, the City Council shall hold a public hearing for the purpose of considering such additional postponement of demolition.
- (d) After such public hearing the City Council may enter an order approving the demolition or may enter an order postponing demolition for an additional period not to exceed 120 days from the date of such order. At the conclusion of this final period postponement, the Director of Community Development shall issue a permit approving the demolition permit.



3. Criteria for Review of Demolition

The Commission and City Council shall be guided by the following criteria in considering Certificates of Appropriateness and authorizations for demolition of structures or sites within the "HL" Historical Landmark District and the "HP" Historical Preservation District, to-wit:

- (a) The purposes and intent of this Ordinance.
- (b) The degree to which the proposed removal of the historical resources would serve to destroy the integrity and continuity of the Historical Landmark District or Historical Preservation District of which it is a part.
- (c) The nature of the resource as a representative type of style of architecture, socioeconomic development, historical association or other element of the original designation criteria applicable to such structure or site.
- (d) The condition of the resource from the standpoint of structural integrity and the extent of work necessary to stabilize the structure.
- (e) The alternatives available to the demolition applicant, including:
  - (1) Donation of the subject structure or site to a public or benevolent agency.
  - (2) Donation of a part of the value of the subject structure or site to a public or benevolent agency, including the conveyance of development rights and facade easement.
  - (3) The possibility of sale of the structure or site, or any part thereof, to a prospective purchaser capable of preserving such structure or site.
  - (4) The potential of such structure or site for renovation and its potential for continuing use.
  - (5) The potential of the subject structure or site for rezoning in an effort to render such property more compatible with the physical potential of the structure.

- (6) The ability of the subject structure or site to produce a reasonable economic return on investment of its owner; provided however, that it is specifically intended that this factor shall not have exclusive control and effect, but shall be considered along with all other criteria contained in this Section.

Pensacola, Florida

RESOLUTION NO. \_\_\_\_

A RESOLUTION TO  
BE ENTITLED:A RESOLUTION ESTABLISHING AN ARCHAEOLOGICAL  
REVIEW PROCEDURE ON PROPERTY OWNED BY THE  
CITY OF PENSACOLA; PROVIDING AN EFFECTIVE  
DATE.

WHEREAS, the City of Pensacola is America's first settlement and most historic city and has documented undisturbed and informative archaeological deposits which are a valuable record of Pensacola's past; and

WHEREAS, these archaeological remains contain unique information of not only Pensacola, but of the colonial way of life that began this country; and

WHEREAS, these remains have been destroyed in the past without a review of their importance; and

WHEREAS, the spirit and direction of this City are founded upon and reflect its historic past; and

WHEREAS, the present governmental and non-governmental historic and archaeological perservation programs and activities are inadequate to insure future protection future generations a genuine opportunity to appreciate and enjoy the rich heritage of our City; NOW THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA:

SECTION 1. That the historical and cultural foundations of the City could be preserved as a living part of our community life and development in order to give a sense of orientation to the citizens of Pensacola.

SECTION 2. That, although the major burdens of historic and archaeological preservation have been borne and major effort initiated by federal and State agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the City government to accelerate its archaeological preservation by federal, State and private means.

SECTION 3. That the attached Archaeological Review Procedure be approved and implemented for all City owned property to preserve the unique archaeological resources within the City of Pensacola.

SECTION 4. This resolution shall take effect immediately upon its adoption by the City Council and shall be published as required by law.

Adopted: \_\_\_\_\_

Approved: \_\_\_\_\_

ATTEST: \_\_\_\_\_

CITY OF PENSACOLA  
ARCHAEOLOGICAL REVIEW PROCEDURE

I. Intent

The following archaeological review procedure shall apply to all proposed construction projects on property owned by the City of Pensacola and identified on the attached map. This procedure is patterned after the Federal archaeological review procedure established in Section 106 of the National Historic Preservation Act of 1966. The procedure is designed to identify, evaluate and preserve the limited non-renewable archaeological remains and artifacts on City-owned property. Where possible, the intent of this policy is to undertake the review procedure in early stages of project planning so that no construction delays occur.

II. Responsibility

The Department of Community Design and Planning shall be responsible for coordinating the archaeological review procedure for City-owned property. Technical assistance in the review procedure shall be provided by a professional archaeologist meeting the standards of the Society of Professional Archaeology and having substantial experience in the archaeology and history of Pensacola. Said archaeologist will be appointed by the City Council to serve in this capacity.

III. Procedure

A. Initial Determination. Prior to the development of preliminary plans for proposed construction projects on City-owned property, the Director of Community Design & Planning, the City Department Head responsible for the proposed project, the City Manager and the appointed Archaeologist shall confer to review the nature and extent of the ground disturbance associated with the project. Proposed construction projects include but are not limited to building construction, renovation, additions, landscaping, underground utility activities, and disturbances within street rights-of-way.

B. Review of Project Impact. Based on the preliminary review required in III.A. above, if the proposed project is determined not to cause ground disturbance to the property, or there is no potential for archaeological deposits, then the archaeological review procedure will not be undertaken. If the proposed project is determined to cause ground disturbance to the property and there is a potential for archaeological deposits, then the following review procedure shall be initiated.

1. The Department Head responsible for the proposed project shall work with the appointed Archaeologist to determine if the site proposed for development

contains significant archaeological resources. The criteria used to make this determination shall include, but not be limited to:

a) National Register of Historic Places Criteria set forth in 36CFR800.10 which include sites:

- (1) That are associated with events that have made a significant contribution to the broad patterns of our history; or
- (2) That are associated with the lives of persons significant in our past; or
- (3) That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- (4) That have yielded, or may be likely to yield, information important in prehistory or history.

b) Inventory of significant archaeological sites identified by the Florida Bureau of Archaeological Research; and

c) Field survey of City-owned properties for possible archaeological potential prepared by UWF Archaeology Department.

2. If the presence of archaeological deposits is unknown and the location is at least of moderate potential for archaeological sites, a field assessment survey and possible (testing) (limited exploratory excavation) of that property shall be conducted, subject to the approval of the City Manager.

3. Determination of Effect. For each property determined to contain significant archaeological resources, the appointed Archaeologist and the applicable Department Head shall determine if the proposed project will affect the archaeological resources. The findings of effect shall include: 1) no adverse effect, or 2) adverse effect. If the findings indicate no adverse effect, then the archaeological review procedure stops. If the findings indicate an adverse effect, then a preliminary case report stating such findings shall be prepared.

4. Preliminary Case Report. The appointed Archaeologist shall prepare a written preliminary report presenting the archaeological significance of the site, the determination of effect findings and the recommended archaeological activity, if any, to preserve the archaeological resources. This report shall be forwarded to the Department of Community Design & Planning, the applicable Department Head, the City Manager and the State Historic Preservation Office for comments.
  - a) Contents of the report shall address: a verification of the legal and historical status of the property; an assessment of the historical, architectural, archaeological, or cultural significance of the property; a statement indicating the special value of features to be most affected by the undertaking; an evaluation of the total effect of the undertaking upon the property; a critical review of any known feasible and prudent alternatives and recommendations to remove or mitigate the adverse effect.
5. Memorandum of Agreement. In consultation with the Director of the Department of Community Design & Planning, the applicable Department Head, the City Manager and the appointed Archaeologist, a proposed memorandum of agreement shall be prepared specifying actions to be taken to avoid or mitigate any adverse effects. Estimates of costs for such actions proposed to avoid or mitigate adverse effects shall be addressed in the memorandum. The proposed memorandum of agreement will be presented to the City Council for review and approval.

#### IV. Funding

- A. Public Lands. All archaeological activities established in this policy shall be funded by the City, or in the case of a leased site, the assigned leasee.
  1. Initial determination, review of project impact and preliminary case report activities performed by the appointed Archaeologist will be compensated through a limited work-as-needed contract approved by the City Manager.
  2. Funding for implementing memorandums of agreement shall be decided on a case by case basis by the City Council.
  3. Funding from other sources, such as the State of Florida and private sources to undertake archaeological activities will also be pursued by the City and the appointed Archaeologist.

V. Prohibitions.

It shall be the policy of the City Council to prohibit the search for and/or removal of any archaeological material greater than 50 years old on City property. If such removal occurs, it will be considered a theft. This prohibition includes employees of the City and contractors working on City-owned property.

VI. Disposition of Archaeological Materials

All archaeological materials excavated under this policy shall become the property of the City of Pensacola. Such materials shall be housed in facilities which meet the standards set forth in the Society for American Archaeology Standards for Quality Control. While such materials cannot be sold, the materials may be loaned or donated to appropriate State or non-profit associations with standard curatorial facilities.

VII. Archaeological Review of Private Property

The appointed Archaeologist shall be informed of all meetings of the Architectural Review Board and the Planning Board in order to monitor the sub-surface impact of proposed private construction projects and make suggestions to the owners and/or developers of the project site to perform voluntary archaeological activities. All archaeological activities suggested by the appointed Archaeologist and agreed to by the private property owner shall be funded by the private property owner.

VIII. Definitions

- A. **Impact area** - the land area, or areas, where land may be disturbed or the environment changed in such a way as to effect their historic value.
- B. **Significant data** - data that can be used to answer research questions, including questions of present importance to scholars and questions that may be posted in the future.
- C. **Archaeological data** - material remains (artifacts, refuse, etc.) produced purposely or accidentally by human beings, and in the spatial relationships among such remains.
- D. **Archaeological artifacts** - objects made or used by humans in historic or prehistoric times greater than 50 years old.
- E. **Ecofacts** - plant and animal remains associated with past human activities.

