

#16  
12-2-04

ORDINANCE NO.

1 AN ORDINANCE AMENDING CHAPTERS 2-1, 11-1, 25-2, 25-3, 25-6, 25-10, AND  
2 25-11 OF THE CITY CODE RELATING TO THE HISTORIC LANDMARK  
3 COMMISSION, AD VALOREM TAX EXEMPTIONS AND ABATEMENTS,  
4 HISTORIC LANDMARKS AND HISTORIC AREA COMBINING DISTRICTS,  
5 HISTORIC SIGN DISTRICTS, AND BUILDING, DEMOLITION, AND  
6 RELOCATION PERMITS; AND REPEALING SECTIONS 2-1-292 AND 2-1-295  
7 OF THE CITY CODE.  
8

9 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:  
10

11 PART 1. The council finds that:

- 12 (A) the tax provisions contained in this ordinance are adopted under the authority  
13 provided in Article 8, Section 1-f (*Ad Valorem Tax Relief*) of the Texas  
14 Constitution and Section 11.24 (*Historic Sites*) of the Texas Tax Code; and  
15 (B) the provision continuing the current tax exemption for residential owner-  
16 occupied properties designated as historic landmarks before December 1, 2004  
17 furthers legitimate governmental interests, including encouraging  
18 neighborhood preservation, continuity, and stability, and recognizing the  
19 reliance on the current tax exemption by the property owners.

20 PART 2. Section 2-1-291 of the City Code are amended to read:

21 § 2-1-291 CREATION AND MEMBERSHIP.

- 22 (A) The Historic Landmark Commission is created.  
23 (B) The Historic Landmark Commission is composed of nine [11] members  
24 appointed by the council.  
25 (C) This section prescribes Historic Landmark Commission membership  
26 composition and qualifications.  
27 (1) The commission shall represent the general ethnic makeup of the  
28 community.  
29 (2) The commission shall include a Heritage Society of Austin board  
member and an architect registered in the State of Texas. [at least one]

1 representative from each of the following organizations or successor  
2 organizations:

- 3 (a) ~~the Heritage Society of Austin, Inc.;~~  
4 (b) ~~the School of Architecture of the University of Texas at Austin;~~  
5 (c) ~~the Austin Chapter of the American Institute of Architects;~~  
6 (d) ~~the Travis County Historical Commission; and~~  
7 (e) ~~the Travis County Bar Association.]~~

8 (3) Council may consider appointing as members:

- 9 (a) a person who meets the Secretary of the Interior's professional  
10 standards for expertise in "history" or "architectural history" as  
11 described in Code of Federal Regulations Title 36, Chapter I, Part  
12 61 (Procedures For State, Tribal, And Local Government Historic  
13 Preservation Programs);  
14 (b) an attorney licensed by the State of Texas;  
15 (c) a real estate professional;  
16 (d) a structural engineer;  
17 (e) the owner of a residential historic landmark; and  
18 (f) the owner of a commercial historic landmark.

19 ~~[(3) If available to serve, at least one member must be a real estate~~  
20 ~~professional and at least one member must be a professional historian.]~~

21 (4) Representatives of a single business or professional interest may not  
22 constitute a majority of the membership of the commission.

23 (5) Members must have:

- 24 (a) knowledge of and experience in the architectural, archaeological,  
25 cultural, social, economic, ethnic, or political history of the City;  
26 and  
27 (b) a demonstrated interest or competence in or knowledge of historic  
28 preservation.

1 (D) Members serve for a term of two years. A member may not serve more than  
2 four terms.

3 (E) After a member's term expires, the member shall serve until reappointed or  
4 replaced by the council. A person appointed to fill an unexpired term shall  
5 serve for the remainder of the term.

6 **PART 3.** Section 11-1-22 of the City Code is amended to read:

7 **§ 11-1-22 DETERMINATION OF EXEMPTION AMOUNT.**

8 (A) Except as provided in Subsection (B), for a property designated as a historic  
9 landmark before December 1, 2004 the [The] following percentage of the  
10 assessed value of a property designated "H" Historic and approved for tax  
11 exemption shall be exempt from ad valorem taxes levied by the city:

12 (1) 100 percent of the assessed value of the historic structure and 50 percent  
13 of the assessed value of the portion of the land the chief appraiser for the  
14 county appraisal district determines is reasonably necessary for access to  
15 and use of the historic structure for:

16 (a) an owner-occupied historic residential property that is not fully or  
17 partially leased to another person; and

18 (b) a property owned by a nonprofit corporation, as defined in the  
19 Texas Nonprofit Corporation Act; and [-]

20 (2) 50 percent of the assessed value of the historic structure and 25 percent  
21 of the assessed value of the portion of the land the chief appraiser for the  
22 county appraisal district determines is reasonably necessary for access to  
23 and use of the historic structure for any other historic property, including  
24 property used for a commercial purpose.

25 (B) This subsection applies to a property designated as a historic landmark before  
26 December 1, 2004 that changed ownership after November 30, 2004, or  
27 designated as a historic landmark after November 30, 2004.

28 (1) The following percentage of the assessed value of a property designated  
29 "H" Historic and approved for tax exemption shall be exempt from ad  
30 valorem taxes levied by the city:

31 (a) subject to the limitation of Paragraph (2), 100 percent of the  
32 assessed value of the historic structure and 50 percent of the  
33 assessed value of the portion of the land the chief appraiser for the

1 county appraisal district determines is reasonably necessary for  
2 access to and use of the historic structure for:

3 (i) an owner-occupied historic residential property that is not fully  
4 or partially leased to another person; and

5 (ii) a property owned by a nonprofit corporation, as defined in the  
6 Texas Nonprofit Corporation Act; and

7 (b) 50 percent of the assessed value of the historic structure and 25  
8 percent of the assessed value of the portion of the land the chief  
9 appraiser for the county appraisal district determines is reasonably  
10 necessary for access to and use of the historic structure for any  
11 other historic property, including property used for a commercial  
12 purpose.

13 (2) An exemption under Subparagraph (b)(2) may not exceed the greater of  
14 \$2,000 or 50 percent of the ad valorem tax that the City would otherwise  
15 levy on the property.

16 **PART 4.** Chapter 11-1 of the City Code is amended to add a new Article 3 to read:

17 **ARTICLE 3. HISTORIC AREA DISTRICT TAX ABATEMENT PROGRAMS.**

18 **Division 1. General Provisions.**

19 **§ 11-1-51 AUTHORITY; APPLICABILITY; EXEMPTION APPLICATION.**

22 (A) The tax abatements contained in this article are adopted under the authority  
23 provided in Article 8, Section 4-f (*Ad Valorem Tax Relief*) of the Texas  
24 Constitution and Section 11.24 (*Historic Sites*) of the Texas Tax Code.

25 (B) These abatements apply only to city property taxes and not to taxes owing to  
26 other taxing units.

27 (C) Nothing in this division relieves a person from the responsibility to apply each  
28 year to the appraisal district for an exemption in accordance with the Texas  
29 Tax Code.

30 **§ 11-1-52 DEFINITIONS.**

31 In this article:

32 (1) **ABATEMENT** means a tax abatement, as described in this article.  
3

- 1 (2) APPRAISAL DISTRICT means the Travis Central Appraisal District or  
2 its successor.
- 3 (3) COMMITMENT TO REPAY means a legal instrument requiring the  
4 owner of historic property granted an abatement or historic conservation  
5 easement to repay to the City all prior taxes abated upon a finding that  
6 the historic property has been totally or partially destroyed or  
7 significantly altered by the willful act or negligence of the owner or the  
8 owner's agent in violation of this code.
- 9 (4) CONTRIBUTING STRUCTURE means a structure that contributes to  
10 the historic character of a historic area (HD) combining district, was  
11 built during the period of significance for the district, and which retains  
12 its appearance from that time. An altered structure may be considered a  
13 contributing structure if the alterations are minor and the structure  
14 retains its historic appearance and contributes to the overall visual and  
15 historic integrity of the district. A structure is designated as a  
16 contributing structure by the ordinance establishing the historic area  
17 (HD) combining district.
- 18 (5) DIRECTOR means the director of the Neighborhood Planning and  
19 Zoning Department.
- 20 (6) HISTORIC DISTRICT means a historic area (HD) combining district  
21 created in accordance with Chapter 25-2 (*Zoning*).
- 22 (7) HISTORIC LANDMARK means a structure or site designated as a  
23 historic landmark combining district in accordance with Chapter 25-2  
24 (*Zoning*).
- 25 (8) LANDMARK COMMISSION means the City's Historic Landmark  
26 Commission.
- 27 (9) POTENTIALLY CONTRIBUTING STRUCTURE means a structure  
28 that could qualify as a contributing structure if its historic appearance  
29 were restored, as determined by the Landmark Commission.
- 30 (10) PRE-RESTORATION VALUE means the most recent appraisal of the  
31 value of property by the appraisal district before an application is  
32 submitted for an abatement. If, while a property is eligible for an  
33 abatement, the appraisal district reappraises the property and the value is  
34 reduced, the pre-restoration value equals the value after reappraisal for  
5 the remaining duration of the abatement.

(11) RESTORATION means work performed in accordance with the requirements of this article and Title 25 (*Land Development*).

(12) VALUE means the most recent appraisal of the value of an historic property by the appraisal district. If, while a historic property is receiving an abatement, the appraisal district reappraises the historic property and the value is reduced, the value equals the value after reappraisal for the remaining duration of the abatement.

## **Division 2. Abatement Process.**

### **§ 11-1-61 APPLICATION FOR ABATEMENT.**

- (A) An applicant must file an application for an abatement with the director.
- (B) An application must be signed by the owner of the property, be acknowledged before a notary public, and include:
- (1) the legal description of the property;
  - (2) construction plans for the proposed work showing how the exterior and interior of the property is to be restored, including descriptions of the materials;
  - (3) proof that the property is a contributing structure or a potentially contributing structure;
  - (4) proof of compliance with the historic area (HA) combining district preservation plan;
  - (5) estimates of the costs for the restoration of the exterior and interior of the property;
  - (6) a proforma and a development budget, if an estimated abatement is over \$100,000;
  - (7) a projection of the construction time and completion date;
  - (8) a complete application for a certificate of appropriateness, if required;
  - (9) the proposed use of the property;
  - (10) a draft commitment to repay on a form provided by the City;
  - (11) an authorization for inspection of the property by members of the Landmark Commission and City staff;

- 1 (12) the duration of any previous property tax relief granted to any portion of  
2 the property under to this article or any other ordinance adopted in  
3 accordance with Section 11.24 (*Historic Sites*) of the Texas Tax Code;
- 4 (13) proof, including a tax certificate, that no property taxes or City fees,  
5 fines, or penalties are delinquent on the property;
- 6 (14) an affidavit stating that all property taxes are current and that no city  
7 fees, fines, or penalties are owed on property owned by a business  
8 association in which the applicant has an ownership interest;
- 9 (15) a description of City Code violations, if any, on the property within the  
10 previous five years;
- 11 (16) a letter of intent from a financial institution or potential investors; and
- 12 (17) any other information the director determines is necessary to  
13 demonstrate eligibility, including information showing compliance with  
14 all applicable City health and safety regulations.

15 **§ 11-1-62 DETERMINATION OF ELIGIBILITY.**

- 16 (A) The Landmark Commission shall determine whether a property is eligible for  
17 an abatement, subject to appeal to the Planning Commission.
- 18 (B) After receipt of a complete application for an abatement, the director shall  
19 schedule a hearing on eligibility before the Landmark Commission.
- 20 (C) The director shall schedule an application for a certificate of appropriateness,  
21 if required, to be heard by the Landmark Commission at the same time as the  
22 determination of eligibility.

23 **§ 11-1-63 CRITERIA FOR ELIGIBILITY.**

24 The Landmark Commission shall issue a certificate of eligibility designating the  
25 property as in need of tax relief to encourage its preservation only if the application  
26 satisfies the following requirements:

- 27
- 28 (1) The restoration must comply with the historic area (HD) combining  
29 district preservation plan.
- 30 (2) The property is a contributing structure, or the Landmark Commission  
31 determines that it is a potentially contributing structure.

- 1 (3) If the application is for a potentially contributing structure, the work for  
2 which the certificate is requested must restore the historic appearance of  
3 the structure.
- 4 (4) The cost of restoration must exceed the percentage of pre-restoration  
5 value specified in the applicable section of Division 3 (*Abatement*  
6 *Programs*).
- 7 (5) Only restoration done after issuance of the certificate of eligibility is  
8 included in determining whether the proposed restoration exceeds the  
9 specified percentage of pre-restoration value.
- 10 (6) Only restoration involving work for which a certificate of  
11 appropriateness or City permit is required is included in determining  
12 whether the proposed work exceeds the specified percentage of pre-  
13 restoration value.
- 14 (7) The applicant obtains a certificate of appropriateness, if required.

15 **§ 11-1-64 NOTICE OF DENIAL; APPEAL.**

- 16 (A) If the Landmark Commission determines that an applicant is not eligible for an  
17 abatement, the director shall notify the applicant in writing by United States  
18 mail sent to the address shown on the application.
- 19 (B) An applicant may appeal the Landmark Commission's decision to the Planning  
20 Commission. To appeal, the applicant must file a written request with the  
21 director not later than the 31<sup>st</sup> day after the date written notice of the decision  
22 is given to the applicant.
- 23 (C) On appeal, the Planning Commission shall consider only whether the  
24 Landmark Commission erred in its determination that the applicant is not  
25 eligible for the abatement under Section 11-1-63 (*Criteria For Eligibility*).

26 **§ 11-1-65 COUNCIL REVIEW OF ABATEMENTS THAT EXCEED \$50,000.**

- 27 (A) The director shall schedule an application for an abatement that exceeds  
28 \$50,000 for review by the city council not later than the 90<sup>th</sup> day after a  
29 certificate of eligibility is granted.
- 30 (B) The city council may, by resolution, approve or deny any portion of an  
31 application over \$50,000.



1       **§ 11-1-66   COMPLETION OF RESTORATION.**

- 2       (A) Except as provided in Subsection (B), all restoration must be completed and a  
3       certificate of occupancy must be obtained for the property within two years  
4       after the date of the certificate of eligibility.
- 5       (B) The deadline for completion of restoration may be extended by the Landmark  
6       Commission for additional periods of up to one year each.
- 7       (C) The certificate of eligibility expires automatically if restoration is not  
8       completed within the period prescribed by this section.

9       **§ 11-1-67   LETTER OF VERIFICATION.**

- 10      (A) To receive an abatement after restoration is completed, an owner must apply to  
11      the director for a letter of verification and submit to the director:
- 12          (1) the certificate of eligibility;
- 13          (2) a signed statement, acknowledged before a notary public, certifying that  
14          the restoration has been completed in compliance with any certificates  
15          of appropriateness or preliminary certificates of appropriateness along  
16          with receipts or other documentation proving that the required  
17          restoration has actually been done;
- 18          (3) an executed commitment to repay that:
- 19              (a) is approved as to form by the city attorney;
- 20              (b) provides that any unpaid repayment is a lien against the property;
- 21              (c) indemnifies the City against all claims arising out of the granting of  
22              an abatement;
- 23              (d) binds the owner and his successors, heirs, and assigns;
- 24              (e) runs with the land; and
- 25              (f) is filed in deed records of the appropriate county;
- 26          (4) a copy of the city council resolution if the abatement exceeds \$50,000;  
27          and
- 28          (5) a certificate of occupancy, if applicable.
- 29

1       **§ 11-1-68   REVIEW BY DIRECTOR; CRITERIA.**

- 2           (A) The director shall inspect the property to verify compliance with the  
3               requirements of this article.
- 4           (B) The director shall issue a letter of verification only if no property taxes or City  
5               fees, fines, or penalties are delinquent on the property, and the property  
6               complies with all applicable City Code provisions.

7       **§ 11-1-69   DIRECTOR'S DECISION.**

- 8           (A) If the director determines that an applicant meets all applicable requirements  
9               and qualifies for an abatement, the director shall send a letter of verification to  
10              the appraisal district and the applicant, indicating the applicable abatement and  
11              the value and duration of the abatement.
- 12           (B) The director shall provide subsequent letters of verification to the appraisal  
13              district on an annual basis for the duration of the abatement.

14       **§ 11-1-70   NOTICE OF DENIAL; APPEAL.**

- 15           (A) If the director determines that the applicant is not eligible for an abatement, the  
16               director shall notify the applicant in writing by United States mail sent to the  
17               address shown on the application.
- 18           (B) An applicant may appeal the director's decision to the Planning Commission.  
19               To appeal, the applicant must file a written request with the director not later  
20               than the 31<sup>st</sup> day after the date written notice of the decision is given to the  
21               applicant.
- 22           (C) On appeal, the Planning Commission shall consider only whether the director  
23               erred in determining that the applicant is not eligible for the abatement under  
24               Section 11-1-68 (*Review By Director; Criteria*).

25                               **Division 3. Abatement Programs.**

26       **§ 11-1-81   RESIDENTIAL ABATEMENT PROGRAM.**

- 27           (A) An abatement under this section may be granted only once within a 10 year  
28               period for the same property.
- 29           (B) To be eligible for an abatement:
- 30               (1) a property must be owner-occupied;

- 1 (2) a property must be a contributing structure or a potentially contributing  
2 structure, but may not be a historic landmark;
- 3 (3) the cost of restoration that is completed must be at least 25 percent of the  
4 pre-restoration value, excluding the value of the land;
- 5 (4) at least five percent of the pre-restoration value must be spent on  
6 improvements to the exterior of the property; and
- 7 (5) the improvements must comply with the historic area (HD) combining  
8 district preservation plan.
- 9 (C) An abatement under this section is equal to the taxes assessed on the added  
10 value of the property over the pre-restoration value.
- 11 (D) An abatement begins the first day of the first tax year after verification and has  
12 a duration of seven years.

13 **§ 11-1-82 COMMERCIAL ABATEMENT PROGRAM**

- 14 (A) An abatement under this section may be granted only once within a 15 year  
15 period for the same property.
- 16 (B) To be eligible for an abatement:
- 17 (1) a property must be an income-producing property;
- 18 (2) a property must be a contributing structure or a potentially contributing  
19 structure, but may not be a historic landmark;
- 20 (3) the cost of restoration that is completed must be at least 40 percent of the  
21 pre-restoration value, excluding the value of the land;
- 22 (4) at least five percent of the pre-restoration value must be spent on  
23 improvements to the exterior of the property; and
- 24 (5) the improvements must comply with the historic area (HD) combining  
25 district preservation plan.
- 26 (C) An abatement under this section is equal to the taxes assessed on the added  
27 value of the property over the pre-restoration value.
- 28 (D) An abatement begins the first day of the first tax year after verification and has  
29 a duration of ten years.
- 30

1       **§ 11-1-83   REVITALIZATION AREA PROGRAM.**

2       (A) This section applies in the area bounded by Interstate 35 from Manor Road to  
3       Riverside Drive, Riverside Drive from Interstate 35 to Highway 71, Highway  
4       71 from Riverside Drive to Highway 183, Highway 183 from Highway 71 to  
5       Manor Road, and Manor Road from Highway 183 to Interstate 35.

6       (B) An abatement under this section may be granted only once within a 15 year  
7       period for the same property.

8       (C) This subsection applies to residential property.

9           (1) To be eligible for an abatement:

10               (a) a property must be owner-occupied;

11               (b) a property must be a contributing structure or a potentially  
12               contributing structure;

13               (c) the cost of restoration that is completed must be at least 20 percent  
14               of the pre-restoration value, excluding the value of the land;

15               (d) at least five percent of the pre-restoration value must be spent on  
16               improvements to the exterior of the property; and

17               (e) the improvements must comply with the historic area (HD)  
18               combining district preservation plan.

19           (2) An abatement under this subsection is equal to the taxes assessed on the  
20           added value of the property over the pre-restoration value.

21           (3) An abatement begins the first day of the first tax year after verification  
22           and has a duration of ten years.

23       (D) This subsection applies to a commercial property.

24           (1) To be eligible for an abatement:

25               (a) a property must be an income-producing property;

26               (b) a property must be a contributing structure or a potentially  
27               contributing structure;

28               (c) the cost of restoration that is completed must be at least 30 percent  
29               of the pre-restoration value, excluding the value of the land;

(d) at least five percent of the pre-restoration value must be spent on improvements to the exterior of the property; and

(e) the improvements must comply with the historic area (HD) combining district preservation plan.

(2) An abatement under this section is equal to the taxes assessed on the added value of the property over the pre-restoration value.

(3) An abatement begins the first day of the first tax year after verification and has a duration of ten years.

**PART 5.** Sections 25-1-21(49) and (50) of the City Code are amended to read:

(49) HISTORIC DISTRICT means an area included in a historic area (HD) combining district.

(50) HISTORIC LANDMARK means a structure or site [area] designated as a historic landmark (H) combining district.

**PART 6.** Section 25-2-32(F) of the City Code is amended to add a new combining district and map code to read as follows and renumber the remaining combining districts and map codes accordingly:

(2) historic area HD

**PART 7.** Section 25-2-171 of the City Code is amended to read:

**§ 25-2-171 HISTORIC LANDMARK (H) COMBINING DISTRICT AND HISTORIC AREA (HD) COMBINING DISTRICT PURPOSES [PURPOSE].**

(A) The purpose of a historic landmark (H) combining district is to protect, enhance, and preserve individual structures[, or sites[, or areas]] that are of architectural, historical, archaeological, or cultural significance.

(B) The purpose of a historic area (HD) combining district is to protect, enhance, and preserve areas that include structures or sites that are of architectural, historical, archaeological, or cultural significance.

**PART 8.** Section 25-2-242 of the City Code is amended to read:

**§ 25-2-242 INITIATION OF ZONING OR REZONING.**

Zoning or rezoning of property may be initiated by the:

(1) Council;

- (2) Land Use Commission;
- (3) record owner; [or]
- (4) Historic Landmark Commission, if the property is, or is proposed to be, designated as a historic landmark (H) combining district or [in] a historic area (HD) combining district; or
- (5) for a proposed historic area (HD) combining district, petition of the owners of at least 50 percent of the land in the proposed district.

**PART 9.** Chapter 25-2, Subchapter B, Article 2, Division 3 of the City Code is repealed and replaced by a new Division 3 to read:

**Division 3. Historic Landmarks And Historic Area Districts.**

**§ 25-2-351 CONTRIBUTING STRUCTURE DEFINED.**

In this division, CONTRIBUTING STRUCTURE means a structure that contributes to the historic character of a historic area (HD) combining district, was built during the period of significance for the district, and which retains its appearance from that time. An altered structure may be considered a contributing structure if the alterations are minor and the structure retains its historic appearance and contributes to the overall visual and historic integrity of the district. A structure is designated as a contributing structure by the ordinance establishing the historic area (HD) combining district.

**§ 25-2-352 HISTORIC DESIGNATION CRITERIA.**

- (A) The council may designate a structure or site as a historic landmark (H) combining district if:
- (1) the property is at least 50 years old, unless the property is of exceptional importance as defined by National Register Bulletin 22, National Park Service (1996);
  - (2) the property retains sufficient integrity of materials and design to convey its historic appearance; and
  - (3) the property:
    - (a) is individually listed in the National Register of Historic Places; or is designated as a Texas Historic Landmark, State Archeological Landmark, or National Historic Landmark; or

(b) meets the criteria prescribed by at least two of the following clauses:

- (i) the property embodies the distinguishing characteristics of a recognized architectural style, type, or method of construction; represents technological innovation in design or construction; contains features representing ethnic or folk art, architecture, or construction; represents the significant work of a noted architect, builder or artisan; represents a rare example of an architectural style; or bears a physical or contextual relation to other historically or architecturally significant structures or areas;
- (ii) the property is substantially associated with persons, groups, institutions, businesses, or events of historical significance which contributed to the social, cultural, economic development, or political history of the city, state, or nation; or the property is representative of a culture or group of people in a historical era through its architecture, method of construction, or use;
- (iii) the property possesses archeological significance because it has, or is expected to, yield significant data concerning the human history or prehistory of the region;
- (iv) the property possesses value to the community because it significantly represents the cultural, economic, social, ethnic, artistic, or historical heritage of the city or an area of the city; or because it has a location, physical characteristics, or other unique features which greatly contribute to the character or image of the city, a neighborhood, or a population group; or
- (v) the property is a significant natural or designed landscape or landscape feature with artistic, aesthetic, cultural, or historical value to the city.

(B) The council may designate an area as a historic area (HD) combining district if at least 51 percent of the principal structures within the proposed district are contributing structures.

(C) The council may enlarge the boundary of an existing historic area (HD) combining district if the additional structure, group of structures, or area adds historic, archeological, or cultural value to the district.

(D) The council may reduce the boundary of an existing historic area (HD) combining district if:

- (1) the structure to be excluded does not contribute to the historic character of the district;
- (2) excluding the structure or area will not cause physical, historical, architectural, archeological, or cultural degradation of the district; or
- (3) a reasonable use of the structure that allows the exterior to remain in its original style does not exist.

#### § 25-2-353 APPLICATION REQUIREMENTS.

- (A) An application to designate a structure or site as a historic landmark (H) combining district or an area as a historic area (HD) combining district must demonstrate that the structure, site, or area satisfies the criteria for designation and include the information required by administrative rule.
- (B) An application for a historic area (HD) combining district must include an inventory of the principal structures included in the proposed district and an evaluation of whether each structure qualifies as a contributing structure. An evaluation under this subsection must be made by a person who meets the Secretary of the Interior's professional standards for expertise in "history" or "architectural history" as described in Code of Federal Regulations Title 36, Chapter I, Part 61 (*Procedures For State, Tribal, And Local Government Historic Preservation Programs*).

#### § 25-2-354 HISTORIC LANDMARK COMMISSION PUBLIC HEARING REQUIREMENT.

- (A) The Historic Landmark Commission shall hold a public hearing on a zoning or rezoning application that requests:
  - (1) designation of a historic landmark (H) or historic area (HD) combining district; or
  - (2) an amendment or removal of a historic landmark (H) or historic area (HD) combining district designation.
- (B) The director of the Neighborhood Planning and Zoning Department shall give notice of the public hearing under Section 25-1-132(A) (*Notice Of Public Hearing*). The Director of the Neighborhood Planning and Zoning Department shall also provide notice of the public hearing by posting signs on the property.



1 (C) The Historic Landmark Commission shall make a recommendation to the Land  
2 Use Commission on a zoning or rezoning application governed by this section  
3 not later than the 14th day after the Historic Landmark Commission closes the  
4 public hearing on the application.

5 (D) The director of the Neighborhood Planning and Zoning Department shall  
6 forward the recommendation of the Historic Landmark Commission to the  
7 Land Use Commission and council.

8 **§ 25-2-355 HISTORIC LANDMARK COMMISSION REVIEW.**

9 (A) The Historic Landmark Commission shall consider the criteria established in  
10 Section 25-2-352 (*Historic Designation Criteria*) when reviewing an  
11 application for a historic landmark (H) or historic area (HD) combining  
12 district.

13 (B) If the Historic Landmark Commission recommends designation of a historic  
14 landmark (H) or historic area (HD) combining district, it shall send a  
15 recommendation to the Land Use Commission and the council that includes:

- 16 (1) a statement of the reasons for recommending designation of the district;  
17 (2) a legal description of the boundary of the district;  
18 (3) maps, charts, and photographs of the structures, sites, or areas located in  
19 the district;  
20 (4) findings that support the criteria for designating the district and that  
21 establish the importance of the district; and  
22 (5) for a historic area (HD) combining district, a historic area district  
23 preservation plan and list of designated contributing structures as  
24 described in Section 25-2-356 (*Historic Area District Ordinance And*  
25 *Preservation Plan Requirement*).

26 **§ 25-2-356 HISTORIC AREA DISTRICT ORDINANCE AND PRESERVATION**  
27 **PLAN REQUIREMENT.**

28 (A) An ordinance zoning or rezoning property as a historic area (HD) combining  
29 district must:

- 30 (1) describe the character-defining features of the district;  
1 (2) include a plan to preserve those features; and  
32 (3) list the designated contributing structures.

(B) A preservation plan may:

- (1) modify regulations relating to building setbacks, building height, compatibility, landscaping, parking, or signs; or
- (2) prescribe regulations relating to design, scale, or architectural character of, or materials for:
  - (a) the exterior of a contributing structure or a new structure; or
  - (b) public facilities, including street lighting, street furniture, signs, landscaping, utility facilities, sidewalks, and streets.

**§ 25-2-357 DESIGNATION ON ZONING MAP.**

The director of the Neighborhood Planning and Zoning Department shall add as a suffix to the base district designation on the zoning map:

- (1) the letter "H" to reflect a historic landmark designation; or
- (2) the letters "HD" to reflect a historic area designation.

**§ 25-2-358 NOTICE OF DESIGNATION TO TAX APPRAISAL DISTRICT.**

(A) The city clerk shall file with the county tax appraisal district a:

- (1) copy of an ordinance zoning property as a historic landmark or historic area combining district; and
- (2) notice stating that the council has granted the historic designation.

(B) The city clerk shall mail a copy of the notice described in Subsection (A)(2) to the notice owner by certified mail.

**§ 25-2-359 MEDALLIONS.**

With the approval of the owner, a person may place a medallion approved by the Historic Landmark Commission on a structure or site that is designated as a historic landmark.

**PART 10.** Sections 25-2-374(B) and (G) of the City Code are amended to read:

(B) Before the Land Use Commission may hold a hearing, the Historic Landmark Commission must hold a public hearing if the proposed NC combining district contains:

- (1) a designated historic landmark or historic district; or

(2) except as provided in Subsections (F) and (G), a structure with historic significance, as determined by the Cultural and Historic Resources Survey of the City of Austin.

(G) If a waiver is granted under Subsection (F):

(1) a hearing at the Historic Landmark Commission on a proposed NC combining district is required only if the district includes a designated historic landmark or historic district; and

(2) an NC combining district, if established, may include only the property to be restricted to civic uses.

**PART 11.** Section 25-2-594(B) of the City Code is amended to read:

(B) This section does not apply to a site plan for:

(1) property zoned as a historic landmark ~~(EL)~~ or historic area (HD) combining district;

(2) property designated as a historic landmark by the state or federal government;

(3) property located in a National Register Historic District ~~[national register historic district]~~ established by the federal government;

(4) remodeling of or addition to an existing structure;

(5) restoration of a damaged structure within one year of the date of damage;

(6) a change of use;

(7) property located in the area bounded by Seventh Street from San Antonio Street to Shoal Creek, Shoal Creek from Seventh Street to Fifteenth Street, Fifteenth Street from Shoal Creek to West Avenue, West Avenue from Fifteenth Street to Martin Luther King, Jr. Boulevard, Martin Luther King, Jr. Boulevard from West Avenue to San Antonio Street, San Antonio Street from Martin Luther King, Jr. Boulevard to Eleventh Street, Eleventh Street from San Antonio Street to Guadalupe Street, Guadalupe Street from Eleventh Street to Tenth Street, Tenth Street from Guadalupe Street to San Antonio Street, and San Antonio Street from Tenth Street to Seventh Street; or

(8) the following uses:

- (a) carriage stable;
- (b) family home;
- (c) group home;
- (d) local utility services;
- (e) major utility facilities;
- (f) outdoor entertainment;
- (g) outdoor sports and recreation;
- (h) park and recreation services;
- (i) religious assembly;
- (j) safety services;
- (k) transitional housing; or
- (l) transportation terminal.

**PART 12.** Section 25-2-807(A) of the City Code is amended to read:

(A) This section applies to a site if:

- (1) the structure and land are zoned as a historic landmark (H) or historic area (HD) combining district;
- (2) the property is owned and operated by a non-profit entity;
- (3) the property is directly accessible from a street with at least 40 feet of paving;
- (4) the site has at least one acre of contiguous land area;
- (5) at least 80 percent of the required parking is on site;
- (6) a single commercial use does not occupy more than 25 percent of the gross floor area;
- (7) civic uses occupy at least 50 percent of the gross floor area; and

- 1 (8) the property owner does not discriminate on the basis of race, color,  
2 religion, sex, national origin, sexual orientation, age, or physical  
3 disability in leasing the property.

4 **PART 13.** Section 25-2-839(E) of the City Code is amended to read:

- 5 (E) A telecommunication tower described in Subsection (F) or (G) must comply  
6 with the requirements of this subsection.

- 7 (1) The tower may not be located;

8 (a) on or within 300 feet of property that is zoned as a historic  
9 landmark (H) or historic area (HD) combining district or included  
10 in a National Register District [~~or City Historic District~~];

11 (b) within 50 feet of a day care services (commercial) use; or

12 (c) within 50 feet of a dwelling unit.

- 13 (2) The tower must be of monopole construction and designed to  
14 accommodate at least two antenna array.

- 15 (3) The antenna array may not exceed tower height by more than 10 feet.

- 16 (4) Guys and guy anchors must be at least 20 feet from adjoining property.

- 17 (5) The tower must be:

18 (a) enclosed by security fencing; and

19 (b) screened from street view by landscaping at least six feet high.

- 20 (6) The tower must be identified by a sign visible from outside the  
21 screening. The sign must state in letters at least two inches high the  
22 name and telephone number of the tower manager and the Federal  
23 Communications Commission license number.

24 **PART 14.** Section 25-2-981(B) of the City Code is amended to read:

- 25 (B) This article does not apply to:

26 (1) property zoned central business district or downtown mixed use district;

27 (2) a lot containing one single-family residence;

28 (3) a lot containing one duplex residence, unless the residence exceeds  
29 4,000 square feet of gross floor area or has more than six bedrooms;

- (4) a two-family residential use;
- (5) a secondary apartment special use;
- (6) substantial restoration of a building within one year after the building is damaged;
- (7) restoration of a building [with] designated as a historic landmark [designation]; or
- (8) interior or facade remodeling, if the front and side exterior walls of the building remain in the same location.

**PART 15.** Section 25-2-1052(A) of the City Code is amended to read:

(A) This article does not apply to:

- (1) construction for a residential use permitted in an urban family residence (SF-5) or more restrictive zoning district;
- (2) property in a historic landmark (HL) or historic area (HD) combining district;
- (3) a structural alteration that does not increase the square footage, area, or height of a building; or
- (4) a change of use that does not increase the amount of required off-street parking.

**PART 16.** Section 25-3-192(C) of the City Code is amended to read:

(C) A plot plan must be submitted with the building or construction permit application. A building or construction permit may not be issued unless a plot plan complies with this chapter and Title 25 (Land Development) [the Land Development Code]. A plot plan must provide the following information, if applicable:

- (1) all information required by Chapter 25-11 (*Building, Demolition, And Relocation Permits; Special Requirements For Historic Structures* [~~Landmarks~~]) or 25-12 (*Technical Codes*) to be on a plot plan;
- (2) locations and types of easements;
- (3) the locations of proposed utility connections;

- (4) the 100 year floodplain, as calculated to exist under fully developed conditions in accordance with the Drainage Criteria Manual;
- (5) building location and gross building square footage;
- (6) proposed use that complies with the Land Use Allocation Map;
- (7) number of bedrooms;
- (8) locations, quantity, and dimensions of sidewalks, pedestrian ramps, driveways, parking areas, parking spaces, and off-street loading areas;
- (9) information that shows compliance with accessibility requirements;
- (10) landscaping, screening, and fencing;
- (11) locations of protected trees, significant tree clusters, and 8-inch survey trees;
- (12) an erosion and sedimentation control plan;
- (13) lot size, setbacks, building height, building coverage, and impervious coverage; and
- (14) other information that may be required by administrative rules.

**PART 17.** Section 25-6-593(B) of the City Code is amended to read:

- (B) A person must provide at least 50 percent of the parking spaces required by Appendix A (*Tables Of Off-Street Parking And Loading Requirements*) for a use occupying a historic landmark [structure] or located in a historic district.

**PART 18.** Section 25-10-122 of the City Code is amended to read:

**§ 25-10-122 HISTORIC LANDMARK COMMISSION REVIEW.**

- (A) If a person files an application for a sign permit in the historic sign district, the building official shall [:] immediately notify the historic preservation officer.
- (B) The historic preservation officer shall review the application and determine whether it complies with the historic sign district guidelines described in Subsection (F), if any. If the application complies with the guidelines, the historic preservation officer shall approve the application. Otherwise, the historic preservation officer shall:

1 (1) immediately notify the presiding officer of the Historic Landmark  
2 Commission of the application; and

3 (2) give at least 10 days' written notice to the applicant and land owner of  
4 the date, time, and place of the meeting at which the Landmark  
5 Commission will consider the application.

6 (C) ~~[(B)]~~ The applicant or land owner may waive the 10 day notice of the hearing.

7 (D) ~~[(C)]~~ In reviewing a sign permit application, the Historic Landmark  
8 Commission shall consider:

9 (1) the proposed size, color, and lighting of the sign;

10 (2) the material from which the sign is to be constructed;

11 (3) the proliferation of signs on a building or lot;

12 (4) the proposed orientation of the sign with respect to structures; and

13 (5) other factors that are consistent with the Historic Landmark Preservation  
14 Plan, the character of the National Register District, and the purpose of  
15 historic landmark regulations.

16 (E) ~~[(D)]~~ The Historic Landmark Commission shall approve a sign permit  
17 application if it determines that the proposed sign:

18 (1) will not adversely affect a significant architectural or historical feature  
19 of the historic sign district; and

20 (2) as applicable, is consistent with the Historic Landmark Preservation  
21 Plan, the character of the National Register District, and the purpose of  
22 the historic landmark regulations.

23 (F) The Historic Landmark Commission may adopt historic sign district guidelines  
24 that describe typical signs that comply with the criteria prescribed by  
25 Subsections (D) and (E).

26 (G) ~~[(E)]~~ If the Historic Landmark Commission does not review a sign permit  
27 application by the 40th day after the date the application is filed, the  
28 application is considered approved by the Historic Landmark Commission.

29 (H) ~~[(F)]~~ The applicant or land owner may appeal a decision of the Historic  
30 Landmark Commission under this section to the City Council in accordance  
31 with Chapter 25-1, Article 7, Division 1 (*Appeals*).



1 PART 19. Chapter 25-11 of the City Code is renamed to read:

2 **CHAPTER 25-11. BUILDING, DEMOLITION, AND RELOCATION PERMITS;**  
3 **SPECIAL REQUIREMENTS FOR HISTORIC STRUCTURES.**

4 PART 20. Chapter 25-11, Article 4 of the City Code is renamed to read:

5 **ARTICLE 4. SPECIAL REQUIREMENTS FOR HISTORIC STRUCTURES.**

6 PART 21. Chapter 25-11, Article 4, Division 1 is renamed to read:

7 **Division 1. Historic Structures Generally**

8 PART 22. Section 25-11-211 of the City Code is amended to add the following new  
9 definitions to read:

10 (3) CONTRIBUTING STRUCTURE means a structure that contributes to  
11 the historic character of a historic area (HID) combining district, was  
12 built during the period of significance for the district, which retains its  
13 appearance from that time, and is designated as a contributing structure  
14 by the ordinance establishing the historic area (HID) combining district. .

15 (4) HISTORIC PRESERVATION OFFICER means the person appointed  
16 by the city manager in accordance with Section 2-1-296(B) (*Staff*  
17 *Assistance; Historic Preservation Officer*).

18 PART 23. Section 25-11-212 of the City Code is amended to read:

19 **§ 25-11-212 CERTIFICATE REQUIRED**

20 (A) Until a person obtains a certificate of appropriateness, demolition, or removal,  
21 as applicable, from the commission or the building official, the person may  
22 not:

23 (1) change, restore, remove, or demolish an exterior architectural or site  
24 feature of a designated historic landmark or a contributing structure; or

25 (2) change, restore, remove or demolish an exterior architectural or site  
26 feature of a structure for which a designation is pending under Section  
27 25-11-213 (*Pendency Of Designation*).

28 (B) Except for a change to the exterior color of a historic landmark, the [The]  
29 prohibition of Subsection (A) does not apply if the historic preservation officer  
30 determines that a change or restoration:

(1) is [to] ordinary repair or maintenance that does not involve changes in architectural and historical value, style, or general design;

(2) is an accurate restoration or reconstruction of a documented missing historic architectural element of the structure or site, unless a variance or waiver is requested; or

(3) does not change the appearance of the structure or site from an adjacent public street, and is limited to construction of:

(a) a ground-floor, one-story addition or outbuilding with less than 600 square feet of gross floor area; or

(b) a pool, deck, fence, back porch enclosure, or other minor feature.

(C) A criminal penalty for a violation of this section applies only to a person who has actual or constructive notice that:

(1) the structure is a designated historic landmark or contributing structure;  
or

(2) a designation is pending under Section 25-11-213 (Pendency Of Designation).

**PART 24.** Section 25-11-214 of the City Code is amended to read:

**§ 25-11-214 BUILDING, REMOVAL, AND DEMOLITION PERMITS IN NATIONAL REGISTER DISTRICT OR APPROVED HISTORIC SURVEY.**

(A) In this section "National Register Historic District [~~national register district~~]" means an area designated in the Federal Register under the National Preservation Act of 1966, as amended, for which maps depicting the area are available for inspection by the public at the Neighborhood Planning and Zoning Department.

(B) This section applies to a structure:

(1) located in a National Register Historic District; or

(2) listed in a professionally prepared survey of historic structures approved by the historic preservation officer.

~~[(2) listed in City of Austin Comprehensive Survey of Cultural Resources;~~  
~~or~~

~~(3) listed in East Austin, An Architectural Survey.~~

1 ~~(C)~~ This section does not apply to a geographical area designated as a historical  
2 district under Chapter 25-2 (Zoning).]

3 (C) ~~(D)~~ When the building official receives an application requesting a building  
4 permit, removal permit, or demolition permit for a structure to which this  
5 section applies, the building official shall immediately:

6 (1) post a sign on the site; and

7 (2) notify the commission.

8 (D) ~~(E)~~ The commission shall hold a public hearing on an application described  
9 in Subsection (C) ~~(D)~~ as soon as adjacent property owners are notified.

10 (E) ~~(F)~~ The building official may not issue a building permit, removal permit, or  
11 demolition permit for a structure to which this section applies until the earlier  
12 of:

13 (1) the date the commission makes a recommendation regarding the  
14 structure; or

15 (2) the expiration of 45 ~~[40]~~ days after the date the building official notifies  
16 the commission.

17 **PART 25.** Section 25-11-215 of the City Code is repealed and replaced with a new  
18 Section 25-11-215 to read:

19 **§ 25-11-215 NOTICE TO HISTORIC PRESERVATION OFFICER REGARDING**  
20 **CERTAIN PERMITS AND SITE PLANS.**

21 (A) The building official must notify the historic preservation officer before the  
22 building official may issue a permit to demolish or relocate a structure.

23 (B) The director of the Watershed Protection and Development Review  
24 Department must notify the historic preservation officer of the filing of a site  
25 plan that indicates the demolition or removal of a structure.

26 **PART 26.** Sections 25-11-216(A), (B), and (D) of the City Code are amended to read:

27 (A) The owner of a designated historic landmark or contributing structure shall  
28 maintain the exterior to ensure the structural soundness of the landmark or  
29 structure.

30 (B) If the Building Standards Commission or the commission determines that there  
31 are reasonable grounds to believe that a designated historic landmark or  
32 contributing structure is structurally unsound or in imminent danger of

1 becoming structurally unsound, the Building Standards Commission or the  
2 commission shall notify in writing the record owner of the determination.

3 (D) After the public hearing:

- 4 (1) if the Building Standards Commission determines that the designated  
5 historic landmark or contributing structure is structurally unsound or in  
6 danger of becoming structurally unsound and that there is not a valid  
7 reason why the owner cannot or should not safeguard the structural  
8 soundness of the building, the Building Standards Commission shall  
9 notify the record owner of the determination in writing; or
- 10 (2) if the Building Standards Commission determines that the designated  
11 historic landmark or contributing structure is structurally unsound or in  
12 danger of becoming structurally unsound and that there are valid reasons  
13 why the owner cannot or should not safeguard the structural soundness  
14 of the building: [;]
- 15 (a) the Building and Standards Commission [it] shall send to the  
16 council its recommendation and the commission's recommendation  
17 regarding what action, if any, should be taken on the structure; and
- 18 (b) the council shall determine what action, if any, should be taken on  
19 the structure

20 **PART 27. Section 25-11-241 of the City Code is amended to read:**

21 **§ 25-11-241 APPLICATION FOR CERTIFICATE.**

- 22 (A) This subsection applies to an application for a certificate of appropriateness if  
23 a building permit for the exterior of a designated historic landmark or  
24 contributing structure is required.
- 25 (1) An applicant must submit a written application for a building permit to  
26 the building official that includes two copies of each plan and other  
27 document pertaining to the work.
- 28 (2) The building official shall provide a copy of the application to the  
29 historic preservation officer ~~[chair of the commission]~~ not later than the  
30 fifth day after the day that the building official receives the application  
31 from the applicant.
- 32 (B) This subsection applies to an application for a certificate of appropriateness if  
33 a building permit for the exterior of a designated historic landmark or  
34 contributing structure is not required.

1 (1) An applicant must submit a written application for a certificate to the  
2 historic preservation officer ~~[chair of the commission]~~.

3 (2) The application must include a description of each proposed change to  
4 the landmark or structure.

5 (C) This subsection applies to an application for a certificate of demolition or  
6 certificate of removal for a designated historic landmark or contributing  
7 structure.

8 (1) An applicant must submit a written application for a demolition or  
9 relocation permit to the building official.

10 (2) The building official shall immediately provide a copy of the application  
11 to the historic preservation officer ~~[chair of the commission]~~.

12 (D) After the historic preservation officer receives an application from the  
13 building official, the historic preservation officer shall review the application  
14 and on or before the fifth day:

15 (1) approve the application under Section 25-11-212(B) (Certificate  
16 Required); or

17 (2) forward the application to the chair of the commission.

18 **PART 28.** ~~Section 25-11-242(B) of the City Code is amended to read:~~

19 (B) When the chair of the commission receives an application under Section 25-  
20 11-241(C) ~~(Application For Certificate)~~, the commission shall hold a public  
21 hearing on the application not later than the 45th ~~[30<sup>th</sup>]~~ day after the day the  
22 application is filed with the building official.

23 **PART 29.** Sections 2-1-292 and 2-1-295 of the City Code are repealed and the  
24 remaining subsections renumbered accordingly.

1 **PART 30.** This ordinance takes effect on \_\_\_\_\_, 2004.

2 **PASSED AND APPROVED**

3  
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6 \_\_\_\_\_, 2004

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Will Wynn  
Mayor

7  
8  
9  
10  
11 **APPROVED:** \_\_\_\_\_  
12 David Allan Smith  
13 City Attorney

14  
15 **ATTEST:** \_\_\_\_\_  
Shirley A. Brown  
City Clerk

**DRAFT**