Updating a Preservation Ordinance

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Preservation & Design
City of Fort Worth, TX
Why Update a Preservation Ordinance?

WHEREAS, CH 211 authorize, specifically
WHEREAS, CH 211 is that in case of due
and significant, the 2nd
reconstruction, among
WHEREAS, CH 211 the governing body of
preserving body of
each class or kind of 1 district
WHEREAS, CH 214 additional authority to
municipality that is
NOW THEREFORE

Section I. Purpose
The City Council of
enhancement, and pur
significance to use of
The act
(a) protect are
(b) foster civic
(c) protect are
(3) indoor that is

AN ORDINANCE
OF FORT WORTH, CODY, AND
PUBLIC POLICY
FORT WORTH, TEXAS

WHEREAS, the
municipality is to adapt
or general welfare and its
importance and significant

AN ORDINANCE
O NO. 161, AS
OF THE CITY
3.12, "HISTORIC
ARCHITECTURE
SECTION 2.6.1.
"HISTORICITY
MACHINES AND...
WHEREAS, it is

AN ORDINANCE
OF THE CITY OF FORT WORTH, CODY, AND
PUBLIC POLICY
Why Update a Preservation Ordinance?

1. Increase staff efficiency
2. Clarify vague and confusing language
3. Align local ordinance with state and federal preservation standards and best practices
HISTORIC PRESERVATION PROGRAM

Preservation Plan
- Education & Awareness
- Preservation & Economic Development
- Preventative Maintenance
- Stewardship
- Code Enforcement
- Design Guidelines
- Carrots & Sticks (Incentives & Regulations)
- Preservation Policy Development
- Homeowner Workshops
- Demonstration Projects
- Underutilized Properties
- Historic Places at Risk
- Surveys
- Technical Preservation Bulletins
- Pre-application Assistance
- Certificates of Appropriateness
- Designations
- Strategic Partnerships
- Certified Local Government Programs
- Plaque Program
- Publications
- Preservation Month
- Capacity Building
Ordinance Issues in Fort Worth – Baseline Standards?
Ordinance Issues in Fort Worth – Program Creep
Where to begin?

“Think about it, Murray… If we could get this baby runnin’, we could run over hikers, pick up females, chase down mule deer — man, we’d be the grizzlies from hell.”
Fort Worth’s Process

1. Analyzed existing ordinance using a SWOT analysis
2. Collected data from Preservation Program and similar programs nationwide
3. Collected public comments
4. Analyzed data and public comments
5. Formulated policy options for public to consider
6. Presented policy options to public
7. Incorporated public comments on policy options into new Ordinance

Recurring Public Comments

<table>
<thead>
<tr>
<th>Section</th>
<th>Comments</th>
<th>Options</th>
<th>Staff Recommendation</th>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certificates of Appropriateness</td>
<td>Notify Neighborhood Association of every COA application and approval</td>
<td>1. Notify Neighborhood Association of every application and approved administrative COA, or HCLC COA 2. Notify Neighborhood Association of COAs that will go before the HCLC, but not administrative COAs</td>
<td>Recommend option #2</td>
<td>Notification of every application or issued administrative COAs would delay the time it takes homeowners to receive approval of COAs, thus meeting the standards and guidelines by reducing staff efficiency and retaining limited staff resources.</td>
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<tr>
<td>Certificates of Appropriateness</td>
<td>Consult Neighborhood Associations prior to the issuance of any COA, administrative or HCLC</td>
<td>1. Consult Neighborhood Associations prior to the issuance of any COA, administrative or HCLC 2. Notify NA if staff has concern about project for administrative COAs 3. If the project meets the Secretary of the Interior’s standards for the treatment of historic properties and district guidelines, consultation is not recommended for administrative COAs</td>
<td>Recommend options #2 &amp; #3 as appropriate</td>
<td>Administrative COAs: if the project meets the Secretary of the Interior’s standards for the treatment of Historic Properties and District Guidelines, there is unlikely to be consultation. Prior notification would reduce staff efficiency. HCLC COAs: staff already consults with NAs for applications for COAs</td>
</tr>
<tr>
<td>Certificates of Appropriateness</td>
<td>Defer all COA applications for publicly owned buildings to the HCLC</td>
<td>1. Defer all COA applications for publicly owned buildings to the HCLC 2. Do not defer COA applications for publicly owned buildings to HCLC if application meets Standards and Guidelines</td>
<td>Recommend option #2</td>
<td>If the project meets the Secretary of the Interior’s standards for the treatment of historic properties and district guidelines, there is unlikely to be consultation. This would reduce staff efficiency.</td>
</tr>
</tbody>
</table>
Data – Staff Efficiency

Projects Reviewed per Employee, FY 2017

- Fort Worth
- Texas Large Cities
- Comparable Cities

- 536
- 266
- 139
Data – Staff Efficiency

Administrative Review vs. **Historic & Cultural Landmarks** Commission Review

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<tr>
<td>Board Cases</td>
<td>146</td>
<td>172</td>
<td>403</td>
<td>239</td>
<td>252</td>
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<tr>
<td>Administratively Approved</td>
<td>184</td>
<td>429</td>
<td>135</td>
<td>469</td>
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Data – Staff Efficiency

Administrative Review vs. **Urban Design Commission** Review

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<tr>
<th>Fiscal Year</th>
<th>Board Cases</th>
<th>Administratively Approved</th>
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<td>FY2012-2013</td>
<td>141</td>
<td>38</td>
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<tr>
<td>FY2013-2014</td>
<td>211</td>
<td>38</td>
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<tr>
<td>FY2014-2015</td>
<td>316</td>
<td>46</td>
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<tr>
<td>FY2015-2016</td>
<td>718</td>
<td>57</td>
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<tr>
<td>FY2016-2017</td>
<td>568</td>
<td>56</td>
</tr>
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</table>
Data – HSTE

Properties receiving the HSTE, FY 2018
Data – HCLC vs. Staff Qualifications

HCLC MAKE-UP

- Architecture [✓]
- Landscape architecture [✗]
- History [✗]
- Architectural history [✗]
- Urban planning [✗]
- Archaeology [✗]
- Real estate [✗]
- Law [✗]
- Other disciplines related to historic preservation. [✗]

STAFF QUALIFICATIONS

The City of Fort Worth, through a departmental director designated by the city manager, must appoint a Historic Preservation Officer (“HPO”), who has expertise in archaeology, history, architecture, historic architecture, historic preservation, or a closely-related field and meet the relevant Secretary of the Interior’s Professional Qualifications Standards.
Consensus with the Community
Major Changes to FW’s Ordinance

1. Increased administrative review authority for Historic Preservation Officer
2. Consolidated designation criteria from 10 to 8.
3. Placed responsibility upon applicant to prove loss of significance and economic hardship.
4. Aligned Ordinance with Secretary of the Interior’s Standards.
5. Streamlined Historic Site Tax Exemption Program
A Success Story from the Update
A Success Story from the Update
A Success Story from the Update
A Success Story from the Update
Effects of Update

1. Administrative review of COA applications:
   Before update: 59%
   After update: 70%

2. Staff is able to review and approve most COA applications in 2-3 days.

3. Staff is able to devote time to other large projects, such as the strategic update of the City’s Preservation Plan.

4. Historic Site Tax Exemption funds rehabilitation work that meets district design standards.

5. Decrease in demolition requests due to incomplete applications.
An Update Can’t Fix Everything...

Updating a Preservation Ordinance can solve many problems, but it cannot holistically change a Preservation Program.

There were several ideas that the community expressed interest in that couldn’t be incorporated into the update:

1. New financial incentive programs
2. Increase in staff levels/resources
3. New programs, such as a Mothball Ordinance
4. Community education initiatives
5. Unified Standards & Guidelines
Questions?
Old Ordinance vs. New Ordinance

OLD – APPLICATION JURISDICTION

(4) Procedure for review and issuance of a certificate of appropriateness. Upon acceptance of a completed application, the historic preservation officer shall review the project for consistency with applicable city ordinances, the provisions of this article and adopted design guidelines.

a. Historic preservation officer. The historic preservation officer is authorized to issue a certificate of appropriateness for the following types of alteration, repairs, construction and restoration of a building or structure in a historic district:

1. The removal of non-original and non-historic materials;
2. The restoration of existing features or of original detailing proven by documentation such as photographs, architectural evidence or building plans;
3. All emergency repairs and other public, health and safety issues; or
4. Noncontributing structures other than additions.

b. Historic and cultural landmarks commission. The historic and cultural landmarks commission shall conduct a public hearing to consider an application for a certificate of appropriateness within 45 days after it is accepted by the historic preservation officer or as soon thereafter as is reasonably practicable.

NEW – APPLICATION JURISDICTION

(2) Level of Review

a. Once the HPO deemed an application for a COA to be complete, the HPO will determine whether the application will be evaluated for appropriateness by the HPO or the HCLC as set forth in this Historic Preservation Ordinance. The HPO has original jurisdiction to evaluate applications for appropriateness and issue COAs; provided, however, the HPO may refer any application, or any portion thereof, to the HCLC for review and consideration.

1. HPO Review. Except where such jurisdiction conflicts with the powers and duties conferred upon the HCLC pursuant to this Ordinance or Appendix A, Section 2-109 of the City Code, the HPO has original jurisdiction to evaluate applications for appropriateness and issue COAs; provided, however, the HPO may refer any application, or any portion thereof, to the HCLC for review and consideration.

2. HCLC Review. The HCLC has original jurisdiction to evaluate applications for appropriateness, or any portion thereof, and issue COAs for the following:
   i. New construction of a primary structure;
   ii. All waivers from applicable design standards and guidelines;
   iii. Demolition and relocation of individually designated historic properties and contributing historic properties in HC Districts, except those for emergency demolitions;
   iv. Requests for determination of whether individually designated historic properties and contributing historic properties in HC Districts can be reasonably rehabilitated pursuant to the City’s Minimum Building Standards Code, including, but not limited to, Chapter 7, Article 4, Section 7-109 of the City Code;
   v. Historic properties owned by a governmental entity, including, without limitation, the City of Fort Worth, Independent School Districts, and Counties; and
   vi. Referrals from the HPO.
Old Ordinance vs. New Ordinance

OLD – APPLICATION JURISDICTION

NEW - APPLICATION JURISDICTION

(g) Appeals

(1) Appeal of the HPO. An applicant may appeal the decision of the HPO to the HCLC. A written notice of appeal must be filed with the Fort Worth City Secretary’s Office and the HPO within fifteen (15) calendar days after the HPO mails written notification of such decision to the applicant. The written notice of appeal must specify the grounds for appeal. Any appeal to the HCLC will be reviewed *de novo*.
Old Ordinance vs. New Ordinance

OLD - CRITERIA FOR DESIGNATION

Criteria for Designation:
The criteria determining whether sites or structures qualify for designation, sites or districts seeking designation should meet at least 3 of the following criteria:

1. Is distinctive in character, interest or value, strongly exemplifies the cultural, economic, social, ethnic or historical heritage of the City of Fort Worth, State of Texas or the United States
2. Is an important example of a particular architectural type or specimen in the City of Fort Worth
3. Has been identified as the work of an important architect or master builder whose individual work has contributed to the development of the City of Fort Worth
4. Embodies elements of architectural design, detail, materials or craftsmanship which represent a significant architectural innovation, including, but not limited to:
5. Bears an important and significant relationship to other distinctive structures, sites or areas, either as an important collection of properties of architectural style or craftsmanship with few intrusions, or by contributing to the overall character of the area according to a plan based on architectural, historic or cultural motif
6. Possesses significant archaeological value, which has produced or is likely to produce data affecting theories of historic or prehistoric interest
7. Is the site of a significant historic event
8. Is identified with a person or persons who significantly contributed to the culture and development of the City of Fort Worth, State of Texas or the United States
9. Represents a resource, whether natural or man-made, which greatly contributes to the character or image of a defined neighborhood or community area
10. Is designated as a Recorded Texas Historic Landmark or State Archeological Landmark, or is included on the National Register of Historic Places

NEW - CRITERIA FOR DESIGNATION

a. Significance
1. Is distinctive in character, interest or value and exemplifies the cultural, economic, social, ethnic or historical heritage of the City of Fort Worth, State of Texas or the United States
2. Is an important example of a particular architectural type or specimen or embodies elements of architectural design, detail, material, or craftsmanship that represent a significant architectural innovation in Fort Worth.
3. Has been identified as the work of an important architect or master builder whose individual work has contributed to the development of the City of Fort Worth.
4. Has been identified with a person or persons who significantly contributed to the culture and development of the City of Fort Worth, State of Texas, or the United States.
5. Bears a significant relationship to other distinctive buildings, structures, sites, objects, or areas, either as an important collection of properties of architectural style or craftsmanship with few intrusions, or by contributing to the overall character of the area according to a plan based on architectural, historic, or cultural motif.
6. Possesses significant archaeological value, which has produced or is likely to produce data affecting theories of historic or prehistoric interest
7. Is the site of a significant historic event
8. Is designated as a Recorded Texas Historic Landmark or State Antiquities Landmark, or is included on the National Register of Historic Places.

b. Integrity
1. A district’s ability to convey its significance, taking into consideration the following seven factors: location, design, setting, material, workmanship, feeling, and association, as set forth in National Register of Historic Places’ Seven Aspects of Integrity.
1. *Loss of significance.* The historic and cultural landmarks commission may approve a certificate of appropriateness for demolition or relocation when it has determined that the structure is no longer significant. In making this determination, the historic and cultural landmarks commission must find that the owner has established by a preponderance of evidence that the structure has undergone significant and irreversible changes which have caused it to lose the significance and/or quality or features which qualified the structure designation.

2. *Economic hardship.* The owner of the property denied a certificate of appropriateness based on loss of significance shall have the right to introduce evidence to establish that the owner will suffer an unreasonable economic hardship if the certificate of appropriateness is not issued for the demolition or relocation of the structure.

B. *Relocation.* In considering whether to approve or deny an application for a COA for relocation of a historic property, the HCLC or HPO, as appropriate, must consider the totality of the circumstances and weigh the following considerations: alternatives, rarity, structural integrity, nature of threat, streetscape integrity, setting of the existing and recipient sites, and interim and long-term protection.
Old Ordinance vs. New Ordinance

OLD – SOISTHP VS. DISTRICT GUIDELINES

Criteria for evaluation of appropriateness: The intent of the historic designation is to preserve the character, identity and presence of historic structures and sites without constraining creative use and adaptation. Therefore, in determining the appropriateness of proposed changes to an area designated or pending designation the following standards adapted from the Secretary of the Interior’s Standard for Rehabilitation shall be used in conjunction with approved design guidelines and applicable city code.

NEW - SOISTHP VS. DISTRICT GUIDELINES

Criteria for Evaluation of an Application for Appropriateness

a. Criteria for Evaluation of Work other than Demolition or Relocation. In determining the appropriateness of a COA application, the Secretary of the Interior’s Standards for the Treatment of Historic Properties must be applied in conjunction with any applicable city codes and design standards and guidelines adopted by the City Council.
Old Ordinance vs. New Ordinance

OLD – UNREASONABLE ECONOMIC HARDSHIP

NEW - UNREASONABLE ECONOMIC HARDSHIP

b. Claims of unreasonable economic hardship by the historic property owner must not be based on conditions resulting from the following:

1. Evidence of demolition by neglect or other willful and negligent acts by the owner;
2. Purchasing the property for substantially more than market value at the time of purchase;
3. Failure to take into account historic properties in the planning and design stage of development or proposed development;
4. Failure to perform normal maintenance and repairs;
5. Failure to diligently solicit and retain tenants; or
6. Failure to provide normal tenant improvements.
OLD – HISTORIC SITE TAX EXEMPTION

(4) Application submitted after the commencement of work for which a certificate of appropriateness is not required.

   a. The provisions of this subsection (i)(4) shall apply only to work that meets the following conditions:

      1. The work is completed on a structure that is designated as a historic and cultural landmark or that is considered to contribute to a historic and cultural landmark district, including the land necessary for access to and use of said structure;

      2. The work does not require a certificate of appropriateness; and

      3. An application for tax exemption is filed within five years after the completion of the work.

NEW - HISTORIC SITE TAX EXEMPTION

b. An application for a historic site tax exemption must be received and approved by the HPO prior to the commencement of treatment to be eligible to receive the historic site tax exemption. Failure to meet this requirement will bar eligibility for a historic site tax exemption.
Old Ordinance vs. New Ordinance

OLD – HISTORIC SITE TAX EXEMPTION

NEW - HISTORIC SITE TAX EXEMPTION

b. Below are examples of the intended application of the tax exemption as applied to a property receiving the City’s homestead exemption of 20% on the appraised value and no other exemptions (other than the historic site tax exemption).

1. Base Year: Assume appraised value of $100,000.
   - Base year appraised value: $100,000
   - Homestead exemption: $20,000
   - Base year taxable value: $80,000

2. Year 3: Assume appraised value increases to $120,000.
   - Current year appraised value: $120,000
   - Homestead exemption: $24,000
   - Current year taxable value: $96,000
   - Base year taxable value: $80,000
   - Historic site tax exemption: $16,000

3. Year 5: Assume appraised value increases to $140,000.
   - Current year appraised value: $140,000
   - Homestead: $28,000
   - Current year taxable value: $112,000
   - Base year taxable value: $80,000
   - Historic site tax exemption: $32,000
OLD – HISTORIC SITE TAX EXEMPTION

2. The owner of the structure shall be entitled to recover a part or all of the cost of such work through a partial exemption from city ad valorem taxes of up to 50% of the value of the land necessary for access to and use of the structure for a period not to exceed five years. The exemption shall commence in the tax year immediately following the year in which the work is completed. In the event that the tax savings arising from the partial exemption for such one-year period is less than the cost of such work, the partial exemption may be carried over from year to year, for a total period not to exceed five years. The owner will not be eligible for a partial exemption for stabilization subsequent to rehabilitation of the property and receipt of the rehabilitation incentives under subsection (b)(4) below. Nothing in this article relieves the owner from the responsibility to submit an application for the exemption each year to the appraisal district for the county in which the property is located pursuant to the terms of the Texas Tax Code. The historic preservation officer shall assist the owner in filing for such exemption, at the request of the owner.

c. Term of rehabilitation incentives. The term of the rehabilitation incentives shall be a minimum of ten years commencing on the first day of the tax year following verification by the city council of completion of the rehabilitation pursuant to this chapter. In order to encourage early rehabilitation, the term of the rehabilitation incentives may be increased for up to an additional five years. If the rehabilitation is completed and the project passes all final inspections within two years after designation as highly significant endangered, the rehabilitation incentives shall be for a period of 15 years commencing on the first day of the tax year following verification by the city council of completion of the rehabilitation pursuant to chapter. The term of the rehabilitation incentives shall decrease by one year for every year that completion of rehabilitation is delayed, to a minimum term of ten years. Upon expiration of the term of the rehabilitation incentives, the structure and the land necessary for access to and use of the structure shall be taxed at the assessed value.

NEW - HISTORIC SITE TAX EXEMPTION

6. Term

   a. Base Term. The base term for the tax exemption is ten (10) years, commencing on January 1 of the tax year immediately following verification and approval of the tax exemption by the Fort Worth City Council.

   b. Extended Term. To encourage early treatment of structures and land, if substantial treatment is completed and the Fort Worth City Council verifies and approves the historic site tax exemption within two (2) years after being designated as HSE, then the Structure and Land are eligible for an extended term of five years following expiration of the base term, resulting in a total duration of fifteen (15) years. Otherwise, the Structure and Land will only be eligible for the ten (10) year base term.