

Proposed Procedure Section of Code

35.3.15 **Historic Preservation Procedures.**

35.3.15.1 **General Provisions.** The following are the general provisions applicable to Historic Landmarks, Historic Districts, and Conservation Districts within the City of Denton, as defined under Subchapter 23 of the Denton Development Code.

A. Public Hearings

1. The City Planning and Zoning Commission shall hold public hearings as required in the same manner and with the same notice provisions as provided for zoning regulations in V.T.C.A., Local Government Code § 211.006 – 211.007, as amended, to consider any Historic Landmark, Historic District or Conservation District designation ordinance after receiving a recommendation from the Historic Landmark Commission (HLC).
2. Within thirty (30) days after the public hearing, the City Planning and Zoning Commission shall set forth in writing its recommendation, including the findings of fact that constitute the basis for its decision, and shall transmit its recommendation concerning the proposed ordinance to the City Council along with the recommendation of the HLC.

B. Notices

Any notice required to be given under this Section, if not actually delivered, shall be given by depositing the notice in the United States mail, postage prepaid, addressed to the person or entity to whom such notice is to be given at his last known address. When notice is required to be given to an owner of property, such notice, delivered or mailed by certified or registered mail, may be addressed to such owner who has rendered his property for City taxes as the ownership appears on the last approved City tax roll.

C. Recording of decision

Upon passage of an Historic Landmark designation ordinance by the City Council, the City Secretary shall file a copy of the ordinance with the Denton County Tax Clerk, together with a notice briefly stating the fact of the designation, and shall send a copy of such notice to the owner of the affected property by certified mail.

D. Amendments

The regulations, restrictions and boundaries created under the authority of this Subchapter concerning Historic Landmarks and Historic and Conservation Districts may from time to time be amended, supplemented, changed, modified or repealed pursuant to the public notice and hearing requirements, as amended, herein. If there is a written protest against such change signed by the owners of twenty (20) percent or more either of the area of the lots or land included in such proposed change or of the lots or land immediately adjoining the change and extending two hundred (200) feet therefrom, such amendment shall not become effective except by the favorable vote of three-fourths ($\frac{3}{4}$) of all members on the City Council.

E. Completeness Determination

Every application shall be subject to a completeness determination by the HPO. No application shall be accepted for processing unless it is accompanied by all documents required by and prepared in accordance with the requirements of this Subchapter and all applicable City ordinances, rules, and regulations. An application deemed incomplete shall not bind the City as the official acceptance of the application for filing, and the incompleteness of the application shall be grounds for denial or revocation of the application. The HPO will make his/her completeness determination within 10 days from the date of receipt of the application. An email or comment in the City's permit tracking program is considered a determination in writing. Applications will be deemed complete on the 11th business day after the application is received.

35.3.15.2. **Historic Landmarks.** The City Council may designate buildings, structures, sites, areas and lands in the City as Historic Landmarks. This is a zoning designation in addition to any other use designation. A Historic Landmark does not have to be located in a Historic or Conservation District. The zoning map shall reflect the designation of Historic Landmarks.

A. Procedures for Designation.

1. The owner of the property seeking designation, or owner's representative, the Historic Landmark Commission (HLC), Planning and Zoning Commission, Historic Preservation Officer (HPO), or the City Council may initiate a Historic Landmark designation by filing an application with the HPO.
2. Requests for designation shall be made on a form obtained from the HPO.
3. Nominations prepared and submitted by an authorized agent shall contain the signatures of the owner or owners unless created by resolution of the city council or the HLC.
4. Applications shall be considered by the HLC at a regular meeting which shall make a recommendation to the Planning and Zoning Commission regarding such designation. The Planning and Zoning Commission, after a regular meeting, must make a recommendation to City Council for its consideration. The decision at City Council, after a regular meeting, is final and cannot be appealed.
5. Historic Landmark Commission-approved medallions for designated structures may be prepared and, subject to the approval of the owners, may be affixed to individually designated Historic Landmarks.

B. Criteria for approval, Generally. The following criteria will be used in the designation of a Historic Landmark.

1. Character, interest or value as part of the development, heritage or cultural characteristics of the City, State or the United States;
2. Recognition as a recorded state historic landmark, a national historic landmark or entered into the National Register of Historic Places;
3. Reflects a distinguishing characteristic of an architectural type or specimen;
4. Identification as the work of an architect or master builder whose individual work has influenced the development of the City;
5. Reflects elements of architectural design, detail, material or craftsmanship which represent a significant architectural innovation;
6. Relationship to other distinctive buildings, sites or areas which are eligible for preservation according to a plan based on architectural, historic or cultural motif;
7. Portrayal of the environment of a group of people in an area of history characterized by a distinctive architectural style;
8. Archeological value in that it has produced or can be expected to produce data affecting theories of historic or prehistoric interest;
9. Exemplification of the cultural, economic, social, ethnic or historical heritage of the City, state, or United States;
10. Location as the site of a significant historic event;
11. Identification with a person who significantly contributed to the culture and development of the City, state or United States;
12. A building or structure that because of its location has become of value to a neighborhood, community area or the City; or
13. Value as an aspect of community sentiment or public pride.

35.3.15.3. **Historic and Conservation Districts.** The City Council may designate buildings, structures, sites, areas and lands in the City as part of a Historic or Conservation District and define, amend, and delineate the boundaries thereof. This is a zoning designation in addition to any other use designation. The zoning map shall reflect the designation of Historic and Conservation Districts.

A. **Applications.** Applications for consideration of a proposed District shall be based upon architectural, historical, archeological or cultural importance or value and accompanied by the following information:

1. A map showing the boundaries of the proposed district drawn to a scale of one (1) inch equals two hundred (200) feet and the location of each structure of importance or value identified by a number or letter designation;
2. Any evidence which would show recognition by either the state and/or the national government.
3. A list of specific buildings, structures, sites, areas or lands of importance or value located within the proposed District boundaries and a description of the particular importance or value of each such building, structure, site, area or land.
4. Sufficient photographs of each building, structure, site, area or land of importance or value showing the condition, color, size and architectural detail of each, and where possible:
 - a. Date of construction;
 - b. Builder or architect;
 - c. Chain of uses and ownership;
 - d. Architectural style;
 - e. Materials;
 - f. Construction technique; and
 - g. Recognition by state or national government as architecturally or historically significant, if so designated.

B. **Procedures for Designation.**

1. **Initiation.** Designation as a District may be initiated by the Historic Landmark Commission (HLC) or by written petition in the form prescribed by this Section. Such a request shall designate clearly the land proposed to be included.
2. **Applications.** Requests for designation shall be made on a form obtained from the city HPO. Completed applications shall be returned to the HPO for review and processing as applicable. The HPO is the administrative official with original jurisdiction to review applications and submitted written support for completeness.
3. **Time Limits.** Properly submitted applications shall remain valid for one (1) year from the date it is deemed complete and thereafter shall be expired.
4. **Petition Required.** The applicant must submit with the application, a petition with signatures of more than fifty (50) percent of the owners of the property within the proposed District who collectively own more than fifty (50) percent of the land area within the proposed District. Property ownership shall be verified utilizing the last certified tax rolls of the appropriate county tax assessor collector for the proposed area. For purposes of calculating the support of more than fifty (50) percent of the property owners, each property as listed on the tax rolls shall be counted individually, regardless of whether an individual or group owns multiple properties within the proposed area. Properties owned by governmental entities shall not be counted in the more than fifty (50) percent support

requirement, although their written preference may be submitted to any board, commission or to city council for their consideration. Additionally, for properties owned by more than one (1) party, only one (1) property owner need submit written support in order for the HPO to count the property in the calculation.

5. Decision. Once the HPO receives a completed application, the HPO must call a public hearing in front of HLC. The HLC shall make its recommendation for either approval or denial within thirty (30) days from the date of the public hearing for consideration by the Planning and Zoning Commission. The Planning and Zoning Commission shall schedule a public hearing to be held within sixty (60) days of receipt of the HLC's recommendation and shall forward its recommendation for either approval or denial to the City Council. The city council shall, at a public hearing, review and either approve or deny the proposed district. Upon passage of any ordinance designating an area, or removing the designation of a district, the city shall send notice of the fact by mail to the owner or owners of affected property.
6. Increasing Boundaries. Applications to increase the boundaries of a District may be made when one or more of the following criteria are met:
 - a. When buildings, structures, sites, areas or lands of importance or value related to the district are requested for inclusion; or
 - b. When facts previously undisclosed to or unknown by the HLC are revealed which indicate that a particular building or site is possessed of special architectural, archeological, cultural or historical importance or value.
7. Reducing Boundaries. Applications to reduce the boundaries of a District may be made when one or more of the following criteria are met:
 - a. When it can be shown that a particular building, site, area or land has no historic, architectural archeological or cultural importance or value to the viability of the district; or
 - b. When it can be shown that no degradation of the district, either physical, historical, architectural, archeological or cultural, will result from exclusion of property from the district.
8. Appeal. If the HLC determines at a public hearing that the area is not eligible for a District classification, it shall notify the applicant of the fact in writing. Notice is given by depositing the notice, properly addressed and postage paid, in the United States mail. The notice must be sent to the address shown on the application. The decision of the HLC that an area is not eligible for Historic or Conservation District classification may be appealed to the Planning and Zoning Commission. The Planning and Zoning Commission's determination of eligibility on appeal is final. If the Planning and Zoning Commission determines that the area is not eligible as a District classification, no further applications for a District classification may be considered, for the area of request, for two (2) years from the date of the decision. A property owner in the area of the request may apply for a waiver of the two (2)-year limitation pursuant to the Planning and Zoning Commission and must show changes in circumstances that alter the facts and conditions upon which the first decision was determined.
9. Economic Hardship. Application for inclusion or exclusion may be made when either continued exclusion or inclusion of property within the district would render it an economic hardship for reasonable continuation in its present exterior form. In order to establish such economic hardship, the owner must show that no reasonable alternative use exists which allows the exterior of the building to remain in its original style. In evaluating economic return, the HLC may request the owner to document the value, rents, returns, tax burden and/or contracts pertaining to the property.

10. Established Districts. Requirements of Subchapter 7 "Special Purpose and Overlay Districts" shall apply to the Historic or Conservation Districts, however, any conflict between this Section and other provisions of Subchapter 7 shall be resolved in favor of this Section.
11. Regulations. The ordinance creating the District must contain design guidelines based on the U.S. Secretary of the Interior's Standards for Rehabilitation, and may further contain any additional regulations, special exceptions, or procedures that the City Council considers necessary to conserve the distinctive atmosphere or character of the area, or to minimize potential adverse impacts which could result from the creation of the district. In addition, all property owners must conform to existing building codes and zoning regulating land uses.

C. **Criteria for Approval, Generally.** The purpose of Historic and Conservation Districts is to geographically define areas possessing significant concentration, linkage, or continuity of buildings, structures, sites, areas, or land which are united by architectural, historical, archeological, or cultural importance or significance for preservation purposes. They may also include a landmark or a group of landmarks. A District must meet the following criteria:

1. The proposed district must include buildings, structures, or sites that have common character defining features and be of common form.
2. The proposed district must include buildings, structures, or sites which are similar in size, massing and scale. The proposed district may also have a common streetscape or have similar spatial relationships or contain common visual qualities such as vegetation, vistas, orientation, set back, spacing, site coverage, exterior features, or materials.
3. Any District in the City of Denton that is listed on the National Register of Historic Places is presumed to be qualified for designation as a historic or conservation district or included as part of a larger Historic or Conservation District.
4. For designation as a Historic District, a minimum of fifty-one (51) percent of buildings, structures, or sites in the proposed District must be fifty (50) years of age or be of historical significance.
5. For designation as a Conservaton District, a minimum of two (2) buildings must be fifty (50) years of age or be of historical significance.

35.3.15.4. **Certificates of Appropriateness.** A Certification of Appropriateness (COA) shall be obtained prior to the issuance of a Building Permit. A COA may also be required for work not otherwise requiring a Building Permit. The COA shall be required in addition to, and not in lieu of, any required Building Permit.

A. **General Provisions.**

1. Application. Prior to commencement of any work for which a COA is required, the applicant shall file an application for a COA with Development Services. The application shall contain such information as is requested from a form prepared by the HPO, the provisions of which have been approved by the City Attorney. Applications will be subject to the Completeness Determination in this Subchapter.
2. HPO Discretion. Upon receipt of an application for a COA, the HPO shall determine whether the application is to be administratively reviewed or reviewed by the HLC, using the requirements in this Section. Generally, certificates of appropriateness for exclusively ordinary maintenance and minor exterior alternations may be administratively approved; however, the Director of Planning, his or her designee, or the HPO may place a request for a COA on the agenda to be heard by the HLC at a public meeting based on the significance of the project or its potential for impact to a Historic District or a Historic Landmark.
3. Expiration. The Certificate of Appropriateness shall expire 1 year from the date of issuance; existing COAs shall expire one year from the adoption of this ordinance.

4. Time Bar. After a final decision is reached denying a COA, no further applications may be considered for the subject matter of the denied COA for one (1) year from the date of the final decision unless changed circumstances of a completed action regarding the property or project are sufficient to warrant a new meeting, in opinion of the HPO.
5. Amendment. A COA may be amended by submitting an application for amendment to the HPO. The application shall then be subject to the standard COA review procedure.
6. Emergency procedure. If a structure requiring a COA is damaged and the Building Official determines that the structure or property that is a landmark or that is within a Historic or Conservation District will suffer additional damage without immediate repair, the Building Official may allow the property owner to temporarily protect the structure. In such a case, the property owner shall apply for a COA within ten (10) days of the occurrence, which caused the damage. The protection authorized under this Section must not permanently alter the architectural features of the landmark or of the structure in the Historic or Conservation District.
7. New construction. Design for new construction on the site of a property, either individually designated as a Historic Landmark or located in a Historic or Conservation District, shall conform to applicable adopted design guidelines and a COA shall be required.
8. Appeal. If a COA is subject to Administrative Review and no action is taken by the HPO within ten (10) working days, a COA is deemed to be approved. The applicant may appeal the HPO's decision to deny a COA by submitting to the HPO a written request for appeal within ten (10) days of the decision. The written request for appeal starts the HLC Review procedure in this Subchapter.

B. Administrative Review. The HPO may administratively approve or deny a COA if the proposed work meets the following criteria:

1. Ordinary maintenance. Ordinary maintenance is defined as the process of stabilizing or repairing, deteriorated or damaged architectural features (including but not limited to roofing, windows, columns, siding and repainting), and includes any work that does not constitute a change in design, material, color or outward appearance, and includes in-kind replacement or repair. If the applicant is seeking a COA for ordinary maintenance only, the HPO may review the application to determine whether the proposed work complies with the regulations contained in this Subchapter and all applicable ordinances, and the HPO may administratively approve or deny the work.
2. Minor exterior alteration. Minor exterior alteration shall be defined as the installation of or alteration to awnings, signage, fences, gutters and downspouts, incandescent lighting fixtures, hardscaping comprising more than twenty-five (25) percent of the front or side yard, restoration of original architectural features that constitute a change from existing conditions, painting of wood or other appropriate elements that constitutes a change in color from existing color, and additions and changes not visible from any street, as determined by the HPO, to the rear of the main structure or to an accessory structure. If the applicant is seeking a COA to authorize minor exterior alterations only, the HPO may review the application to determine whether the proposed work complies with the regulations contained in this Subchapter and all applicable ordinances and administratively approve or deny the application.
3. Conservation Districts. If the applicant is seeking a COA to authorize any work, other than demolition or new construction, on sites located in Conservation Districts, the HPO must review the application to determine whether the proposed work complies with the regulations contained in this Subchapter and all applicable ordinances and administratively approve or deny the application.

C. Historic Landmark Commission Review. COAs for all other projects not subject to Administrative Review shall be approved by the HLC at a public meeting pursuant to these procedures.

1. **Compliance Required.** In considering an application for a COA, the HPO and the HLC shall review it for compliance with The United States Secretary of Interior Secretary of the Interior's Standards for the Treatment of Historic Properties (The Standards), any applicable adopted design guidelines and any guidelines provided in this subchapter of the Denton Development Code.
2. **Sustainability Guidelines.** The use of sustainable practices in design is encouraged and the HPO and HLC shall use the Secretary of Interior's Guidelines on Sustainability for Rehabilitating Historic Buildings as a guide for decisions related to renewable energy such as: solar technology, wind power, insulation, HVAC and similarly related topics.
3. **Building Code Requirements.** Historic buildings may be exempted from building code requirements due to their status at the discretion of the Building Official. Applicants should verify with the HPO or the Building Official regarding the possible application to a specific project of certain exemptions to the Energy Code, Building Code and Residential Code.
4. **Effect of Approval.** If a COA has been approved by the HLC, then a certificate will be issued to the applicant, and copies of the certificate will be filed with the Planning Division in the Department of Development Services, and with the Building Official if a building permit is required for the proposed work.
5. **Deemed Approval.** If final action has not been taken by the HLC within sixty (60) days of the posting of the application on the HLC's agenda by the HPO, then the COA will be deemed approved and a certificate will be issued to the applicant. If all other requirements of the Denton Development Code and applicable regulations are met, and a Building Permit is required for the proposed work, the Building Official shall issue a Building Permit to the applicant for the proposed work.
6. **Appeal.** If a COA has been denied, the applicant may appeal the decision in writing to the City Council by filing a written notice with the City Secretary within ten (10) days of receiving the notice of the denial. City Council's decision is final and no further applications shall be considered.

D. Demolition or Removal.

1. **Criteria.** The HLC must consider the following criteria for a COA for Demolition or Removal:
 - a. The state of repair of the building;
 - b. The reasonableness of the cost of restoration or repair;
 - c. The existing and/or potential usefulness, including economic usefulness of the building;
 - d. The purposes behind preserving the structure as an Historic structure; and
 - e. The character of the neighborhood and all other factors it finds appropriate.
2. **Appeal.** Any applicant or the owner of any property located within two hundred (200) feet of any landmark or structure in a Historic or Conservation District requiring a COA for Demolition or Removal, and who is aggrieved by a ruling of the HLC concerning the landmark or structure in a Historic or Conservation District, under the provisions of this Section may, within sixty (60) days after the ruling of the HLC, appeal to the City Council. Following a public hearing to be held within thirty (30) days of the filing of a notice of such appeal with the City secretary, the City Council may, by a simple majority vote, uphold or overturn any ruling of the HLC made pursuant to this Section.

35.3.15.5 Permits Pending Designation.

- A. From and after the date on which the question of whether or not a building, structure, or site within the City should be designated as an Historic Landmark is placed upon the agenda for any special or regular meeting of the HLC or from and after the date on which such agenda is posted in accordance with the provision of Chapter 551 of the Government Code (Texas Open Meetings Act), as amended, or from and after the date that the HLC approves or recommends a Preservation Plan or any amendment of any existing Preservation Plan which embraces or includes the building, structure or site within the City, whichever date first occurs, no Building Permit allowing the construction, reconstruction, alteration, change, restoration, removal or demolition of any exterior architectural feature of any building or structure then existing included or embraced in whole or in part within the scope of such agenda consideration or such preservation plan or such amendment thereof, as the case may be, and no Permit allowing the demolition or removal of all or any part of any such building or structure may be issued by any official of the City nor, if no such Permit is required, may any person or entity construct, reconstruct, alter, change, restore, remove or demolish any exterior architectural feature of any such building or structure until the earliest of the following conditions have been met:
1. A final and binding COA for the removal or demolition, as may be appropriate, has been issued by the HLC;
 2. The HLC fails to make a recommendation that some part or all of any such building or structure be designated an historic landmark or be included within an historic landmark or within a Preservation Plan or an amendment thereof within sixty (60) days following the earliest of the dates described in this Subsection, under the circumstances; or
 3. A final and binding decision has been made by the City Council that no part of any such building or structure shall be designated an historic landmark or shall be included within any designated historic landmark. However, should the City Council fail to act within ninety (90) days from the date an appeal is filed, the requested Permit shall be granted. The ninety (90)-day time limitation may be waived by the appellant to allow the City Council an additional thirty (30) days in which to act.
- B. It shall be the duty of the HPO to furnish the Building Official with a copy or written notice of each such written order or such agenda or such Preservation Plan or amendment thereof, as the case may be, as promptly after the preparation thereof as is practicable. The failure to so furnish the Building Official with a copy or written notice thereof however, shall not have the effect of validating any Building Permit, Removal Permit or Demolition Permit issued without knowledge of any such written order or agenda. In any instance in which any such Permit may not be required, it shall be the duty of the HPO to give notice of any such written order or such agenda or such Preservation Plan or amendment thereof to the owner of any building or structure included within the scope thereof, which notice shall be deemed complete when actually given, orally, or in writing, to such owner or when written notice there is deposited in the United States mail, postage prepaid, certified or registered, with return receipt requested, addressed to such owner, whichever event first occurs.
- C. Any Permit issued to any person from or after the date of any such written order or such agenda or the approval or recommendation of such preservation plan or amendment thereof, as the case may be, shall be null, void and of no force or effect until the earliest of the events described in subsections A.1, A.2 and A.3 of this Section occur.
- D. Notwithstanding any other provision of this Subsection, no building permit, removal permit or demolition permit shall be issued by the building official for any structure located in a national register district except as authorized by this subsection. The Building Official shall notify the HPO immediately of any application requesting a building permit, removal permit or demolition permit for a structure located in a national register district. No such permit shall be issued by the building official before the HLC has made a recommendation or scheduled the structure on its agenda or before the expiration of forty (60) calendar days, whichever is sooner. If a structure is placed on an agenda item it shall be scheduled for a public hearing as soon as adjacent property owners are notified.

35.3.15.6 **Maintenance; omission of repairs**

- A. The exterior of any structure in a designated district, any designated Historic Landmark and any building determined by the HLC to meet the criteria for Landmark designation shall be maintained to ensure structural integrity.
- B. If the HLC finds that there are reasonable grounds to believe that the exterior of any structure in a designated district or any designated historic landmark is structurally unsound or in imminent danger of becoming structurally unsound, the HLC shall notify the HPO, who shall notify in writing the owner of the structure of such fact.
- C. Upon giving a ten (10) day written notice to the owner of record of such structure, the HLC shall hold a public meeting to determine if the structure is structurally unsound or in imminent danger of becoming structurally unsound. The HLC's report may include evidence of economic hardship or willful neglect.
- D. At the conclusion of the meeting, if the HLC finds that the structure is structurally unsound or in danger of becoming structurally unsound and that no valid reason exists as to why the owner cannot or should not undertake to safeguard the structural soundness of the building, it shall in writing notify the owner of record of the finding.
- E. The owner of record of a structure who has been notified by the HLC that such landmark is structurally unsound or in danger of so becoming shall within ninety (90) days of receipt of such notice, satisfy the HLC that reasonably necessary repairs to safeguard the structural soundness of the landmark have been effected.
- F. If the HLC determines that the building is structurally unsound but there are valid reasons why the owner cannot or should not undertake to safeguard the structural soundness of the building, it shall forward to the City Council its recommendation as to what action, if any, should be taken on the structure.
- G. Any applicant or interested person aggrieved by a ruling of the HLC under the provisions of this Section may, within thirty (30) days after the date of such ruling, appeal to the City Council.