



REPORT TO CITY PLAN COMMISSION

Plan Commission Informal Public Hearing Date: August 13, 2019

Common Council Public Hearing Date: September 4, 2019

Item: Text Amendments – Section 23-22 Words and terms defined, and 23-651 Historic Preservation of Chapter 23 Zoning Ordinance of the Municipal Code

Case Manager: Don Harp

BACKGROUND

Planning Staff worked with the Historic Preservation Commission on several occasions in 2019 to develop the proposed amendments to Section 23-22 Words and terms defined and 23-651 Historic Preservation of Chapter 23 Zoning Ordinance of the Municipal Code.

GENERAL INFORMATION

The proposed amendments to Section 23-22 Words and terms defined and 23-651 Historic Preservation of Chapter 23 Zoning Ordinance of the Municipal Code are in response to:

1. 2015 Wisconsin Act 176 requires cities, villages, towns, and counties hold a public hearing before designating a historic landmark or establishing a new historic district and to notify, by 1st class mail, any affected owner of the proposed designation or establishment (Wis. Stat. 62.23(7)(em)2). The Act also allows a property owner affected by a decision of a historic preservation commission to appeal the decision to the governing body of the local unit of government, and allows that governing body (Common Council) to overturn the historic preservation commission's decision by a simple majority vote (Wis. Stat. 62.23(7)(em)3).
2. 2017 Wisconsin Act 317 (62.23(7)(em)2m) which states, "In the repair or replacement of a property that is designated as a historic landmark or included within a historic district or neighborhood conservation district under this paragraph, a city shall allow an owner to use materials that are similar in design, color, scale, architectural appearance, and other visual qualities." This language was drawn from the Secretary of the Interior's Standards for Rehabilitation and gives very specific guidance to commissions that only apply to repairs and replacements.
3. Interpretation memo dated February 21, 2019 from the Wisconsin Historical Society.
4. Based on the recommendation of the Wisconsin Historical Society, all the 180 historic preservation ordinances across the State of Wisconsin should be updated to address this legislative action affecting local historic preservation ordinances.

SUMMARY OF PROPOSED AMENDMENTS

1. Update historic preservation regulations to be consistent with Wisconsin State Statutes:
 - Hold a public hearing before designating a historic landmark or establishing a new historic district and notify, by 1st class mail, any affected owner of the proposed designation or establishment.
 - Allow the property owner affected by a decision of the Historic Preservation Commission to make an appeal to the Common Council rather than the Community and Economic Development Committee to overturn the Historic Preservation Commission’s decision by a simple majority vote.
2. Clarify, expand, and add definition terms to be consistent with Wisconsin State Statutes.
3. Make certain amendments to the standards for granting a Certificate of Appropriateness for exterior construction, reconstruction and alterations consistent with the interpretation written by the Wisconsin Historical Society (attached memo dated February 21, 2019).

ATTACHMENTS

1. The text recommended for deletion will be identified by ~~striketrough~~. Proposed text to be added within the ordinance will be underlined.
2. Memo prepared by the Wisconsin Historical Society dated February 21, 2019.

RECOMMENDATION

Pending public comments, staff recommends the text amendments identified by ~~striketrough~~ be deleted and underlined be added to Section 23-22 Words and terms defined and Section 23-651 Historic Preservation of Chapter 23 Zoning Ordinance of the Municipal Code as attached to this report **BE APPROVED**.



DATE: February 21, 2019
TO: Wisconsin Local Historic Preservation/Landmark Commissions
FROM: State Historic Preservation Office
RE: Interpretation of Recently Enacted Commission Review Legislation

State Statutes grant units of government the authority to enact ordinances to regulate historic places for the purpose of preserving these properties' significant characteristics. To do so, units of government may pass ordinances creating landmark commissions to designate historic places. Subject to these provisions, commissions may designate and regulate historic landmarks and all property within landmark historic districts to preserve the character of both individual historic landmarks as well as the character of each district.

Effective April 2018 new language related to commission review of historic properties was added to State Statutes:

In the repair or replacement of a property that is designated as a historic landmark or included within a historic district or neighborhood conservation district under this section, the [unit of government] shall allow an owner to use materials that are similar in design, color, scale, architectural appearance, and other visual qualities.

This language was drawn from the Secretary of the Interior's Standards for Rehabilitation, and gives very specific guidance to commissions that only apply to repairs and replacements.

Questions have arisen about whether this language requires commissions to approve all new materials. In our interpretation, this new language does not change the role of the commission, but rather empowers it to determine if a material or product is an appropriate replacement. All other powers of commissions under their local ordinances remain.

During the commission's COA review process, the commission should first determine if repair or replacement is a component of the application. If no, proceed according to established process. If yes, the commission, using its expertise, should determine if the repair or replacement materials are sufficiently "similar" to original materials. The commission, not the owner, makes this determination. If the commission rules that the material is not similar, it has the authority to deny a certificate of appropriateness. In the commission's decision documentation, it should clearly state that it reviewed this question and give factual reasons why the material is or is not similar in design, color, scale, architectural appearance, and other visual qualities.

This legislation does not give an owner unilateral approval for any material or project they propose. Ultimately it is the commission's responsibility to review each project application objectively against their ordinance and to provide a professional opinion of appropriateness.

ARTICLE XVII. HISTORIC PRESERVATION

Section 23-22. Words and terms defined.

Historic Preservation

(20) **Historic preservation repair** means the act or process of applying measures, except for painting, necessary to prolong or replace deteriorated, decayed or damaged existing exterior features of a local historic structure, local historic site or contributing structure or any part thereof by using ~~the like~~ materials that are identical in design, color, scale, architectural appearance, and other visual qualities including, but limited to, alignment, character, context, directional expression, height, location, materials, massing, proportion, relationship of solids to voids, rhythm, setting, size, volume, etc. or where possible, to original materials. The term “historic preservation repair” includes the installation of roof singles, windows, doors or other architectural features where the original opening will not be enlarged, reduced or altered.

(24) **Identical (materials)** means for the purpose of Section 23-651, means exactly the same in design, color, scale, architectural appearance, and other visual qualities including, but limited to, alignment, character, context, directional expression, height, location, materials, massing, proportion, relationship of solids to voids, rhythm, setting, size, volume, etc.

~~(24)~~ (25) **Important person or persons** means an individual or a group of individuals who has made significant contributions to Appleton, the state or the nation, including but not limited to medicine, politics, commerce, history, engineering and/or architecture.

~~(25)~~ (26) **Improvement** means any building, structure, or object constituting a physical betterment of real property, or any part of such betterment.

~~(26)~~ (27) **Improvement parcel** means a lot or parcel of land together with the buildings and structures thereon, which has been assigned a tax parcel number by the City Assessor’s Office. The term “improvement parcel” shall also include any unimproved area of land which has been assigned a tax parcel number by the City Assessor’s Office.

~~(27)~~ **Like materials** means the use of materials that are nearly identical in shape, size and design of existing materials.

(35) **Similar (materials)** means for the purpose of Section 23-651, means nearly but not exactly the same in design, color, scale, architectural appearance, and other visual qualities including, but not limited to, alignment, character, context, directional expression, height, location, materials, massing, proportion, relationship of solids to voids, rhythm, setting, size, volume, etc. or alike; having a general resemblance, although allowing for some degree of difference. This term is to be interpreted to mean that one thing has a resemblance in many respects, nearly corresponds, in somewhat like, or has a general likeness to some other thing but not identical in form and substance.

~~(35)~~ (36) **Work** means demolition or historic preservation alteration or repair.

Sec. 23-651. Historic preservation.

(a) **Purpose.** It is hereby declared a matter of public policy that the protection, enhancement, preservation and use of improvements or sites of special character or special architectural, archeological or historic interest or value is a public necessity and is required in the interest of the health, prosperity, safety and welfare of the people. The purpose of this section is to:

- (1) Effect and accomplish the protection, enhancement and preservation of such improvements, sites and districts which represent or reflect elements of Appleton’s cultural, social, economic, political, artistic and architectural history;

- (2) Safeguard Appleton’s historic, prehistoric and cultural heritage, as embodied and reflected in such historic structures, sites and districts;
- (3) Foster civic pride in the notable accomplishments of the past;
- (4) Stabilize and improve property values and enhance the visual and aesthetic character of Appleton;
- (5) Protect and enhance Appleton’s attractions to residents, tourists and visitors, and serve as a support and stimulus to business and industry.

(b) **General.** This section shall in no way be construed to undermine or supersede and shall be consistent with the existing adopted City of Appleton Municipal Code which protects the public health, safety and welfare of Appleton residents. Ordinary maintenance and repairs shall be made to ensure compliance with Article 4 of Chapter 4 of the Municipal Code.

(c) **Definitions.** See Section 23-22 Words and terms defined, under the reference “HISTORIC PRESERVATION”.

(d) **Organization.** The Historic Preservation Commission is hereby created and shall consist of five (5) regular members and two (2) alternates appointed by the Mayor and subject to approval by the Common Council as vacancies occur or terms expire.

(e) **Members and qualifications.** If possible, one (1) regular member shall be an architect; one (1) shall be an alderperson; two (2) regular members shall have historian, restoration craftsman, or architectural history credentials or expertise, or other historic preservation related disciplines such as urban planning, American Studies, American Civilization, cultural geography or cultural anthropology; one (1) regular member shall be a licensed real estate broker with two (2) alternates appointed from any of the above qualifications. All members shall be selected for their knowledge of and interest in matters pertaining to this section. Alternate members shall have full voting power in the event one (1) or more regular members have declared a conflict of interest or in the event one (1) or more regular members are absent.

(f) **Terms.** The term for each member shall be three (3) years on staggered terms except, the alderperson will be appointed annually at the Common Council annual reorganizational meeting. The term for each member shall expire May 1 of each year.

(g) **Reorganizational meeting.** The Historic Preservation Commission shall reorganize in May of each year by electing a chair, vice-chair, contact person and secretary. All meetings of the Commission shall be held at the call of the chairman or at such times as the Commission determines.

(h) **Designation of local historic structures, local historic sites and local historic districts.** The Historic Preservation Commission shall have the power to recommend local designation of historic structures, historic sites and historic districts within the City of Appleton limits. Such designation shall be made based on the review of the local historic structure, local historic site and local historic district designation criteria identified in subsection (i) of this section. Local designation of historic sites, historic structures and historic districts shall be recommended to the ~~Community and Economic Development Committee who will review and recommend to the~~ Common Council for a final approval. Once designated, such local historic structures, local historic site and local historic district shall be subject to all the provisions of this chapter.

(i) **Local historic structure, local historic site and local historic district designation criteria.** For purposes of this chapter, a local historic structure, local historic site or local historic district designation may be placed on any improvement parcel, natural area, improvement, or any area of particular historic, architectural, archeological or cultural significance to the City of Appleton, the state or the nation, which is determined to have historical significance by meeting at least one (1) of the following criteria:

- a. Criterion 1: Are identified with important events that exemplify or reflect the broad cultural, political, economic or social history of the nation, state or community; or
- b. Criterion 2: Are identified with an important person or persons that have made specific contributions to national, state or local history; or
- c. Criterion 3: Embody the distinguishing characteristics of an architectural type or specimen inherently valuable for a study of a period, style, method of construction, or of indigenous materials or craftsmanship, or that represents a significant and distinguishable entity whose components lack individual distinction; or
- d. Criterion 4: Are representative of the notable work of a master builder, designer or architect who influenced his age; or
- e. Criterion 5: Have yielded, or may be likely to yield, information important to prehistory or history.

(j) **Operating guidelines.** The Historic Preservation Commission may adopt specific operating guidelines subject to Common Council approval for local historic structure, local historic site and local historic district designation, providing such operating guidelines are in conformance with the provisions of this chapter. It is important to ensure that these operating guidelines are reviewed on a regular basis to ensure they are appropriate to the architectural and site characteristics of the full range of the City of Appleton's designated local historic structures, local historic sites and local historic districts and that they adequately reflect current understandings of appropriate restoration and rehabilitation techniques.

(k) **Procedure for designation of local historic structures and sites.**

- (1) **Application process.** Application forms for designation of local historic structures and local historic sites shall be submitted to the Community and Economic Development Department. After submittal and acceptance of a complete application through initial review by the Director, the complete application, which includes the written application and supporting materials are then filed with the City Clerk.
- (2) **Informal Public hearing at Historic Preservation Commission.** At least fourteen (14) days prior to such informal public hearing, the Community and Economic Development Department shall mail the informal public hearing notice, by 1st Class mail, to the alderperson of the aldermanic district, owners of record of the proposed local historic structure designation or local historic site designation and owners situated within one hundred (100) foot radius of the nominated local historic structure or site, as listed in the Office of the City Assessor. The informal public hearing notice shall identify the purpose, date, time and place of the informal public hearing.
 - ~~a. Notice of public hearing for designation of local historic structures and local historic sites shall be given by a Class 2 newspaper notice. The notice of public hearing shall identify the purpose, date, time and place of the public hearing.~~
 - ~~b. At least ten (10) days prior to such hearing, the Community and Economic Development Department shall notify the alderperson of the aldermanic district and property owners of record and owners of property in whole or in part situated within a one hundred (100) foot radius of the nominated structure or site, as listed in the Office of the City Assessor.~~
 - e. a. The Historic Preservation Commission shall then conduct such informal public hearing and, in addition to the notified persons, may hear expert witnesses and review records as it deems necessary.
- (3) **Action by the Historic Preservation Commission.** After the close of the informal public hearing, the Historic Preservation Commission shall review the criteria in subsection (i) a., b., c., d. and e. of this

section and either recommend approval or denial of the proposed local historic structure designation or local historic site designation to the ~~Community and Economic Development Committee~~ Common Council, unless time is extended by agreement between the Historic Preservation Commission and the owner or owner's agent in charge of the property.

~~(4) **Action by the Community and Economic Development Committee.** After receiving and reviewing the report and recommendation of the Historic Preservation Commission, the Community and Economic Development Committee may either approve or deny the proposed local historic structure designation or local historic site designation, or refer the matter back to the Historic Preservation Commission. The Community and Economic Development Committee's recommendation and report to approve or deny such designation shall be forwarded to the Common Council who will make the final decision.~~

~~(5)~~ (4) **Action by the Common Council.**

a. ~~After receiving and reviewing the report and recommendation of the Community and Economic Development Committee, the Common Council shall either approve or deny the proposed local historic structure designation or local historic site designation, or refer the matter back to the Historic Preservation Commission. Notice of public hearing for proposed local historic structure designation or local historic site designation shall be given by a Class 2 newspaper notice. The notice of public hearing shall identify the purpose, date, time and place of the public hearing.~~

b. ~~The City Clerk shall send written notice of the action taken by the Common Council to the property owner(s) or owner's agent, Community and Economic Development Department, Inspections Supervisor and the City Assessor. At least fourteen (14) days prior to such public hearing, the City Clerk shall mail the public hearing notice by 1st Class mail, to the alderperson of the aldermanic district, owners of record of the proposed local historic structure designation or local historic site designation and owners situated within one hundred (100) foot radius of the nominated local historic structure or site, as listed in the Office of the City Assessor. The public hearing notice shall identify the purpose, date, time and place of the public hearing.~~

c. ~~After the close of the public hearing, the Common Council shall review the report and recommendation of the Historic Preservation Commission. The Common Council shall either approve or deny the proposed local historic structure designation or local historic site designation, or refer the matter back to the Historic Preservation Commission.~~

d. ~~City Clerk shall send written notice of the action taken by the Common Council to the property owner(s) or owner's agent, Community and Economic Development Department, Inspections Supervisor and the City Assessor.~~

(1) **Procedure for designation of local historic districts.**

(1) **Historic district designation criteria.** For preservation purposes, the Historic Preservation Commission shall select geographically defined areas within the city of Appleton to be designated as a local historic district and shall, in cooperation with the property owner(s) or owner's agent prepare a Historic Preservation Plan for each area. A local historic district may be designated for any geographic area of particular historic, architectural or cultural significance to the city of Appleton, after review of the criteria in subsection (i) a., b., c., d. and e. of this section.

a. **Local Historic Preservation Plan.** Each local historic preservation plan shall include the following:

1. a brief description of the district,

2. identification of the current property owners of record, of the contributing structures,
 3. identification of the uses/functions of each property in the district,
 4. a legal description of the district boundaries,
 5. a map showing the legal boundaries of the district,
 6. current photographs of the contributing structures,
 7. a historical/cultural and architectural analysis supporting the historic/cultural significance of the district, and
 8. a statement of preservation objectives and specific guidelines for future historic preservation alterations, historic preservation repairs or demolition activities within the district.
- (2) **Application process.** Application forms for local historic district designations shall be submitted to the Community and Economic Development Department. After submittal and acceptance of a complete application through initial review by the Director, the complete application, which includes the written application, the Local Historic Preservation Plan and supporting materials are then filed with the City Clerk.
- (3) **Informal public hearing at Historic Preservation Commission.** At least ~~ten (10)~~ fourteen (14) days prior to such hearing, the Community and Economic Development Department shall mail the informal public hearing notice, by 1st Class mail, notify to the alderperson of the aldermanic district or districts, owners of record within the proposed local historic district and owners of property in whole or in part situated within a one hundred (100) foot radius of the nominated local historic district, as listed in the Office of the City Assessor. The notice of informal public hearing shall identify the purpose, date, time and place of the informal public hearing.
- (4) **Action by the Historic Preservation Commission.** After the close of the informal public hearing, the Historic Preservation Commission shall review the criteria in subsection (i) a., b., c., d. and e. of this section and either recommend approval or denial of the proposed local historic district designation and adoption of the proposed Local Historic Preservation Plan to the ~~Community and Economic Development Committee~~ Common Council, unless time is extended by agreement between the Historic Preservation Commission and the owner(s) or owner's agent in charge of the property.
- ~~(5) Action by the Community and Economic Development Committee. After receiving and reviewing the report and recommendation of the Historic Preservation Commission, the Community and Economic Development Committee may either approve or deny the proposed local historic district designation and adopt the proposed Local Historic Preservation Plan, or refer the matter back to the Historic Preservation Commission. The Community and Economic Development Committee's recommendation and report to approve or deny such designation and adoption of the Local Historic Preservation Plan shall be forwarded to the Common Council who will make the final decision.~~
- ~~(6)~~ (5) **Action by the Common Council.**
- a. Notice of public hearing for designation of local historic districts and adoption of the Local Historic Preservation Plan shall be given by a Class 2 newspaper notice. The notice of public hearing shall identify the purpose, date, time and place of the public hearing.
 - b. At least ~~ten (10)~~ fourteen (14) days prior to such hearing, the City Clerk shall mail the public hearing notice by 1st Class mail, notify to the alderperson of the aldermanic district or districts, owners of record within the proposed local historic district, and owners of property

in whole or in part situated within a one hundred (100) foot radius of the nominated local historic district, as listed in the Office of the City Assessor.

- c. ~~After the close of the public hearing, the Common Council shall review~~ After receiving and reviewing the report and recommendation of the ~~Community and Economic Development Committee, Historic Preservation Commission.~~ Historic Preservation Commission. ~~†~~The Common Council shall either approve or deny the proposed local historic district designation and the proposed Local Historic Preservation Plan, or refer the matter back to the Historic Preservation Commission. Designation of the local historic district shall constitute adoption of the proposed Local Historic Preservation Plan prepared for that local historic district and denotes the implementation of said plan.
- d. The City Clerk shall send written notice of the action taken by the Common Council to the property owners or owner's agent, Community and Economic Development Department, Inspections Supervisor and the City Assessor.

(m) **Recognition of locally designated historic structures, historic sites and historic districts.** At such time as a locally designated historic structure, historic site or historic district has been properly designated, the Historic Preservation Commission, in cooperation with the property owner(s) or owner's agent, may allow a suitable plaque, marker or other appropriate identifier declaring that such property is a local historic structure, local historic site, local historic district, or a contributing structure.

(n) **Certificate of Appropriateness provision: Regulation for exterior construction, reconstruction, historic preservation alteration and demolition.**

- (1) No owner or owner's agent in charge of a local historic structure, local historic site or contributing structure shall be issued a permit by the Division of Inspections for any work identified in subsection (n)(2) a. and b. of this section, unless a Certificate of Appropriateness has been granted by the Historic Preservation Commission.
- (2) An owner or owner's agent in charge of a local historic structure, local historic site or contributing structure shall apply for and receive approval of a Certificate of Appropriateness from the Historic Preservation Commission prior to performing any of the following work:
 - a. Historic preservation alterations or demolition of all or any part of a local historic structure, local historic site or contributing structure;
 - b. Historic preservation alterations or demolition of any improvement upon a local historic structure, local historic site or contributing structure.
- (3) **Application process.** Application forms for a Certificate of Appropriateness shall be submitted to the Community and Economic Development Department. After submittal and acceptance of a complete application through initial review by the Director, the complete application, which includes the written application and supporting materials are then forwarded to the Historic Preservation Commission.
 - a. **Standards for granting Certificate of Appropriateness for exterior construction, reconstruction and historic preservation alterations.** In determining whether to approve or deny a Certificate of Appropriateness for a historic preservation alteration, the Historic Preservation Commission shall approve the application if one (1) or more of the following can be demonstrated:
 1. In the case of a local historic structure, local historic site or a contributing structure, the proposed work utilizes materials that are similar in design, color, scale, architectural appearance, and other visual qualities including, but limited to, alignment, character, context, directional expression, height, location, materials, massing, proportion, relationship of solids to voids, rhythm, setting, size, volume, etc. to the original exterior materials used in the

~~construction of such local historic structure, local historic site, or contributing structure; and would not detrimentally change, destroy or adversely affect any exterior feature of such local historic structure, local historic site, or contributing structure upon which said work is to be done;~~

2. In the case of the construction of a new improvement upon a local historic structure, local historic site, or a contributing structure, the exterior materials of such improvement are similar in design, color, scale, architectural appearance, and other visual qualities including, but limited to, alignment, character, context, directional expression, height, location, materials, massing, proportion, relationship of solids to voids, rhythm, setting, size, volume, etc. to the original exterior materials used in the construction of such local historic structure, local historic site, or contributing structure;
3. In the case of any improvement made to a contributing structure, the proposed exterior historic preservation alteration shall conform to the purpose of this section and to the objectives and design criteria of the local historic preservation plan for the applicable local historic district.

- b. ***Standards for granting Certificate of Appropriateness for demolition.*** In determining whether to approve or deny a Certificate of Appropriateness for any demolition of all or part of a local historic structure, a local historic site or a contributing structure, the Historic Preservation Commission shall approve the application if one (1) or more of the following can be demonstrated:

1. The local historic structure or local historic site or contributing structure is in such deteriorated condition that it is not economically feasible to renovate or restore it, provided that any economic hardship or difficulty claimed by the owner or owner's agent has not been self-created or is not the result of any failure to maintain the local historic structure, local historic site or contributing structure in good repair.
2. The local historic structure, local historic site or contributing structure is of such local architectural or historical significance that its demolition would not be detrimental to the public interest and would not be contrary to the general welfare of the people of the city of Appleton and the state;
3. The denial of the demolition permit would result in the loss of reasonable and beneficial use of or economic return from the property.

- (4) ***Review and decision by the Historic Preservation Commission.*** The Historic Preservation Commission, within twenty-five (25) business days from the date the Certificate of Appropriateness application was accepted by the Director, shall either approve or deny the application, unless the time is extended by agreement between the Historic Preservation Commission and the owner or owner's agent in charge of the property. The Historic Preservation Commission shall clearly state the reasons why the exterior materials are similar or are not similar in design, color, scale, architectural appearance, and other visual qualities including, but limited to, alignment, character, context, directional expression, height, location, materials, massing, proportion, relationship of solids to voids, rhythm, setting, size, volume, etc. to the original exterior materials used in the construction of such local historic structure, local historic site, or contributing structure.

(5) ***Appeals.***

- a. If the Historic Preservation Commission denies the Certificate of Appropriateness, the Historic Preservation Commission shall, at the request of the owner or person in charge of such property,

work with the owner or owner's agent in charge of such property in an attempt to obtain a Certificate of Appropriateness within the standards of this section.

b. In addition, if the Historic Preservation Commission denies the application for a Certificate of Appropriateness due to the proposal failing to conform to the standards for granting a Certificate of Appropriateness as identified in this section, the owner or owner's agent may appeal such decision to the ~~Community and Economic Development Committee~~ Common Council.

1. The owner or owner's agent in charge of such property shall file a written appeal specifying the grounds for such an appeal with the Director no later than thirty (30) days from the date of the decision of the Historic Preservation Commission. Failure by the owner or owner's agent in charge of such property to file a written appeal in accordance with the abovementioned provisions shall be deemed to constitute a withdrawal of the application for a Certificate of Appropriateness.

2. After consideration of the appeal, the ~~Community and Economic Development Committee,~~ Common Council by majority vote may either affirm the decision of the Historic Preservation Commission or approve the issuance of the Certificate of Appropriateness, in which case the Director shall issue the Certificate of Appropriateness.

(6) ***Other permits and approvals.*** The approval of a Certificate of Appropriateness shall not relieve the property owner or owner's agent from applying for and obtaining all necessary permits and approvals pursuant to the Municipal Code prior to the commencement of such proposed work.

(7) ***Violation; penalty.*** Failure to comply with the approved Certificate of Appropriateness or failure to obtain a Certificate of Appropriateness prior to the issuance of a building permit shall be a violation of this section. Administration and enforcement shall be as prescribed in the enforcement section of this chapter.

(o) ***Exempt work from Certificate of Appropriateness provisions.*** Historic preservation repairs ~~not including painting,~~ made to a local historic structure or local historic site or contributing structure may be undertaken without a Certificate of Appropriateness, provided the work involves repairs to existing exterior features of a local historic structure or local historic site, or the replacement of existing exterior features of a local historic structure, local historic site or contributing structure with ~~like~~ materials that are identical in design, scale, architectural appearance, and other visual qualities including, but limited to, alignment, character, context, directional expression, height, location, materials, massing, proportion, relationship of solids to voids, rhythm, setting, size, volume, etc. to the original exterior materials used in the construction of such local historic structure, local historic site, or contributing structure and provided the work does not change the exterior appearance of the local historic structure, local historic site or contributing structure and does not require the issuance of a building permit. Painting is exempt from the Certificate of Appropriateness provisions.

(p) ***Procedure to rescind a local historic structure designation, local historic site designation and local historic district designation.***

(1) ***Application process.***

a. ***Rescind a local historic structure designation or local historic site designation.*** The property owner or owner's agent in charge of a local historic structure or local historic site shall submit an application form to rescind a local historic structure designation or local historic site designation to the Community and Economic Development Department. After submittal and acceptance of a complete application through initial review by the Director, the complete application, which includes the written application and supporting materials are then filed with the City Clerk.

b. ***Rescind a local historic district designation.*** The majority (greater than fifty percent (50%)) of the property owners and/or owner's agents in charge of a contributing structure shall submit an

application form to rescind a local historic district designation and the applicable local historic preservation plan to the Community and Economic Development Department. After submittal and acceptance of a complete application through initial review by the Director, the complete application, which includes the written application and supporting materials are then filed with the City Clerk.

(2) ***Public Hearing at Historic Preservation Commission.***

- a. Notice of public hearing to rescind a local historic structure designation, local historic site designation, or local historic district designation and the applicable local historic preservation plan shall be given by a Class 2 newspaper notice. The notice of public hearing shall identify the purpose, date, time and place of the public hearing.
- b. At least ~~ten (10)~~ fourteen (14) days prior to such hearing, the Community and Economic Development Department shall mail the public hearing notice, by 1st Class mail, notify to the alderperson of the aldermanic district, owners of record, and owners of property in whole or in part situated within a one hundred (100) foot radius of the local historic structure, local historic site or local historic district, as listed in the Office of the City Assessor.
- c. The Historic Preservation Commission shall then conduct such public hearing, and in addition to the notified persons, may hear expert witnesses and review records as it deems necessary.

(3) ***Action by the Historic Preservation Commission.*** After the close of the public hearing, the Historic Preservation Commission shall review the rescission criteria in subsection (p)(3)a.1., 2., 3., and 4. of this section and either recommend approval or denial of the proposed rescission to the ~~Community and Economic Development Committee~~ Common Council.

- a. ***Rescission Criteria.*** Rescission can occur for any one (1) or more of the following:
 1. The property owner has requested the designation to be rescinded for economic hardship or health reasons;
 2. For the failure to adhere to the specific standards of the historic district in which the property is located;
 3. For the failure to adhere to the specific standards of the zoning district the property is located; or
 4. The designated historic structure, site or district no longer meets the criteria of designation or retains the integrity necessary for designation.

~~(4) ***Action by the Community and Economic Development Committee.*** After receiving and reviewing the report and recommendation of the Historic Preservation Commission, the Community and Economic Development Committee may either approve or deny the proposed application to rescind a local historic site designation, local historic structure designation or local historic district designation and the applicable local historic preservation plan, or refer the matter back to the Historic Preservation Commission. The Community and Economic Development Committee's recommendation and report shall be forwarded to the Common Council who will make the final decision.~~

~~(5)~~ (4) ***Action by the Common Council.***

- a. After receiving and reviewing the report and recommendation of the ~~Community and Economic Development Committee~~, Historic Preservation Commission the Common Council shall either approve, deny, or postpone the proposed application to rescind a local historic site designation, a local historic structure designation or a local historic district designation and

the applicable local historic preservation plan, or refer the matter back to the Historic Preservation Commission.

- b. The City Clerk shall send written notice of the action taken by the Common Council to the property owner(s) or owner's agent, Community and Economic Development Department, Inspections Supervisor and the City Assessor.

(q) ***Building permit.***

- (1) No building permit shall be issued by the Division of Inspections for historic preservation alteration, demolition or removal of a nominated local historic structure, local historic site, or a structure identified as contributing to a nominated local historic district, from the initial meeting date when the Historic Preservation Commission has been presented with a nomination through the date of final disposition of the nomination by the Common Council. No building permit shall all be issued for the following reasons: historic preservation alteration, removal or demolition. An exception shall be permitted when historic preservation alteration, repair, removal or demolition is authorized by formal resolution of the Common Council as necessary for public health, welfare or safety. In no event shall the delay be for more than sixty (60) days.

(Ord 139-95, §1, 12-20-95, Ord 45-00, §1, 6-10-00; Ord 98-12, §1, 10-9-12)