

AN ORDINANCE OF THE CITY OF WAXAHACHIE, TEXAS AMENDING THE CITY ZONING ORDINANCE, ORDINANCE NO. 1897, AS AMENDED, TO ADD A NEW SECTION 31-A; CREATING AN HISTORIC OVERLAY DISTRICT FOR PURPOSES OF DESIGNATING HISTORIC LANDMARKS AND HISTORIC AREAS; PROVIDING DEFINITIONS; CREATING PROCEDURES FOR DESIGNATION OF HISTORIC OVERLAY DISTRICTS AND REMOVAL OF SUCH DESIGNATIONS; PROVIDING FOR CERTIFICATES OF APPROPRIATENESS FOR ALTERING OR RESTORING HISTORIC STRUCTURES AND FOR NEW CONSTRUCTION IN HISTORIC OVERLAY DISTRICTS; PROVIDING CRITERIA AND PROCEDURES FOR APPROVING CERTIFICATES OF APPROPRIATENESS; PROVIDING EXCEPTIONS; PROVIDING PROCEDURES FOR DEMOLITION OR REMOVAL OF HISTORIC STRUCTURES; PRESCRIBING DUTIES FOR MAINTAINING STRUCTURES WITHIN HISTORIC OVERLAY DISTRICTS; PROVIDING FOR ENFORCEMENT; PROVIDING A SEVERABILITY CLAUSE; AND, PROVIDING AN EFFECTIVE DATE.

SECTION 31.A HISTORIC OVERLAY DISTRICTS

31. A.1 GENERAL PURPOSE AND DESCRIPTION:

The City hereby declares that as a matter of public policy, the protection, preservation and enhancement of districts and landmarks of architectural, archaeological, cultural and historic importance is necessary to promote the economic, cultural, educational and general welfare of the citizens of Waxahachie. The unique identity of the City of Waxahachie and the history of the area since its founding, which produced significant historic, architectural, archaeological and cultural resources, require this ordinance to:

1. Safeguard the City's historic and cultural heritage, as embodied and reflected in such historic areas, places, buildings and structures, by appropriate regulations.
2. Promote economic stability and prosperity of the community by encouraging the most appropriate use of such significant property in Waxahachie.
3. Protect and enhance the City's attractions to tourists and visitors, as well as provide support and stimulus to business and industry.
4. Ensure the identification and evaluation of buildings, structures, places and areas of historical, architectural and cultural importance or value; and to provide efficient procedures for that process, and any necessary adjustments or variances from unduly harsh application of the provisions of this ordinance.
5. To balance the rights of the public which justify preservation of the City's history and culture, with those of private property owners who own and control property, and are entitled to the reasonable use and return from their assets.

31. A.2 CREATION OF DISTRICT:

A. Nature of District

The City may designate a site, building, structure, landscape or object as a historic landmark and a unique area as a historic area together with the public rights of way in and surrounding the landmark or area, by establishing a Historic Overlay District that combines with one or more base zoning districts pursuant to the procedures set forth in Section 10 of the City's zoning ordinance.

1. Permitted uses within the Historic Overlay District shall be those allowed in the base zoning district.

2. Unless expressly modified by or limited by an action taken pursuant to this Section 31A, the height and area standards, special requirements and other regulations shall be those applicable within the base zoning district.

B. Criteria for Historic Landmarks:

A Historic Overlay District may be established to preserve historic landmarks of exemplary architectural, archaeological, cultural or historic value having one or more of the following characteristics:

1. Possesses significance in history, architecture, archeology, or culture of the city, county, state or nation.
2. Is associated with events that have made a significant contribution to the broad patterns of local, regional, state or national history.
3. Is associated with the lives of persons significant in Waxahachie's past.
4. Embodies distinctive characteristics of a type, period or method of construction.
5. Represents the work of a master designer, builder or craftsman.
6. Represents an established and familiar visual feature of the City of Waxahachie.
7. Is the location of a significant event.

C. Criteria for Historic Area

A Historic Overlay District may be established to preserve a historic area if the area contains properties that meet one or more of the criteria for designation contained for a historic landmark and constitutes a unique section of the City of Waxahachie that contributes to the heritage of the community.

D. Request for Designation

1. A property owner or the Heritage Preservation Commission (HPC) may request establishment of a Historic Overlay District to designate certain sites, buildings, structures, landscapes or objects as historic landmarks, or to designate certain areas as historic areas. A property owner must obtain a favorable recommendation by the HPC following a public hearing as set forth in Subsection 2 before the request for a Historic Overlay District will be acted upon by the Planning and Zoning Commission and the City Council.
2. The HPC may recommend on its own initiative or upon the request of a property owner that a building, site, structure, landscape or object be preserved as a historic landmark or that a unique area be preserved as a historic area. The Commission shall conduct a public hearing following notice in writing to the owners of such property. Prior to such hearing, the HPC shall conduct studies and research and make a report on the historic significance of the exteriors of buildings, structures, features, sites, objects and surroundings in the area of the proposed district. At the public hearing, commissioners, owners and other interested parties may present testimony or documentary evidence that will become part of a record regarding the historic, architectural or cultural importance of the proposed historic landmark or historic area. The record may also contain staff reports and public comments. Following the public hearing, the HPC shall formulate its recommendation to the Planning and Zoning Commission and the City Council concerning establishment of a Historic Overlay District.

C. Process for Designation

1. The HPC shall make its recommendation on the proposed Historic Landmark or Historic Area to the Planning and Zoning Commission within thirty (30) days from the date of the public hearing on the proposed designation of the historic landmark or historic area, coupled with a request to establish a Historic Overlay District for the site or area.
2. Upon receipt of the HPC recommendation, the Planning and Zoning Commission shall give notice, conduct its public hearing and make recommendations to the City Council in the same manner and according to the same procedures as provided in Section 10.
3. The City Council shall give notice, follow the publication procedure, hold public hearings and make its determination on the Historic Overlay District in the same manner and in accordance with the procedures for a zoning amendment, as provided in Section 10.
4. Upon establishment of the Historic Overlay District designating a historic landmark or historic area, the Historic Overlay District shall be recorded on the official zoning map of the City of Waxahachie. All zoning maps shall identify the Historic Overlay District with the suffix "H". The boundaries of each Historic Overlay District shall be described in detail and shall be filed in the city secretary's office for public inspection.

31. A.3 **PROCEDURE FOR REMOVAL OF HISTORIC DESIGNATION:**

A. Application.

The owner of an historic landmark or property within a historic area may request the removal of the property from the Historic Overlay District by filing with the City an application for removal of the overlay district, in accordance with procedures for rezoning the site set forth in Section 10 of this ordinance, together with the appropriate fee established by the City Council. The application for removal of the overlay district shall be supported by evidence:

1. that the applicant cannot realize a reasonable rate of return on the value of the property and will suffer unreasonable economic hardship if the designation as an historic landmark is not removed, or
2. that other unusual and compelling circumstances justify the removal of the designation.

The application shall also contain information pertaining to the future use and disposition of the designated historic landmark or land within a historic area.

B. Action by HPC

1. The applicant shall first present the application for removal of the Historic Overlay District to the HPC for its recommendation. The HPC shall conduct a public hearing to consider the request within 30 days of receipt of the application.
2. In formulating its recommendation on the request for removal to the Planning and Zoning Commission and City Council, the Heritage Preservation Commission shall balance the historic, architectural, cultural or archeological value of the historic designation of the property and, if the property is within an historic area, the effect of removing the historic designation on such historic area, against the merits of removing the historic designation. The Heritage Preservation Commission may recommend either (1) that the designation of the property as Historic Overlay District be removed immediately, (2) that Council action to

consider removing the Historic Overlay District be delayed for a period of up to 180 days while the HPC develops a plan to preserve the site's historic value, or (3) that the Historic Overlay District not be removed.

C. Action by Planning and Zoning Commission and City Council

1. Upon receipt of the HPC recommendation, the Planning and Zoning Commission shall give notice, conduct its public hearing and make recommendations to the City Council concerning removal of the Historic Overlay District in the same manner and in accordance with the procedures for a zoning amendment in Section 10. The Commission shall take into account the criteria set forth in Subsection B.
2. The City Council shall give notice, follow the publication procedure, hold public hearings and make its determination concerning removal of the Historic Overlay District or delay of its decision in the same manner and in accordance with the procedures for a zoning amendment in Section 10. The Council shall take into account the criteria set forth in Subsection B.

D. Alternatives to Removal of the Designation.

1. In any case in which the HPC recommends that action to remove an historic landmark designation be delayed, and the City Council approves such delay, the HPC shall use the period of the delay to attempt to develop an alternative plan to preserve the landmark's historic value. This plan may involve the transfer to a new owner of the land and improvements which are subject of the designation, either by gift, purchase or other means, or the acquisition of the building, structure or object and its relocation for preservation at another site, or any other measure which in the HPC's judgment will effectively relieve an unreasonable economic hardship or respond to the unusual and compelling circumstances and at the same time will allow the public benefits of the designation to be continued.
2. If the Council determines to delay its decision on the request to remove the Historic Overlay District, it shall not act to consider removing the designation within the period of the delay until it receives a report from the HPC, through the Planning and Zoning Commission, either recommending such a plan or stating that the Commission has been unable to develop such a plan.
3. The HPC shall deliver its alternative plan to the Planning and Zoning Commission and to the City Council within the 180-day period of delay. Upon receipt of the alternative, or in the event the HPC cannot negotiate a solution for preserving a designated structure within 180 days, the request for removal of the Historic Overlay District shall be scheduled for action by the Commission and by the City Council in accordance with Section 10 of this Zoning Ordinance.

31. A.4 **CERTIFICATE OF APPROPRIATENESS FOR ALTERATION, RESTORATION, OR NEW CONSTRUCTION WITHIN HISTORIC OVERLAY DISTRICTS:**

A. Prohibition on Alteration or Development

1. Within a Historic Overlay District, no person shall alter any building, site, structure, landscape or object designated as a historic landmark or alter any portion of the exterior of a structure within a historic area, or place, construct, maintain, expand or remove any structure on such site without first obtaining a Certificate of Appropriateness from the HPC.

2. No building permit shall be issued until an application for a Certificate of Appropriateness has been reviewed and approved by the HPC. The Certificate of Appropriateness shall be in addition to, and not in lieu of, any building permit that may be required by any other ordinance of the City of Waxahachie.

B. Procedures for Certificate of Appropriateness

1. Prior to the commencement of any work requiring a Certificate of Appropriateness, the property owner shall file an application for such a certificate with the Heritage Preservation Commission. The Commission, if requested, shall aid the property owner in preparation and completion of the application. The application form shall contain the following:
 - (a) Name, address, telephone number of the applicant, and a detailed description of the proposed work.
 - (b) Location and photographs of the property and adjacent properties (historical photographs may also be helpful).
 - (c) Drawings and/or descriptions of the proposed changes.
 - (d) Samples of materials to be used, to include samples and information on any materials to be used that differ from existing or original materials.
 - (e) If the proposal includes signs or lettering, a scale drawing showing the type of lettering to be used, all dimensions and colors, a description of materials to be used, method of illumination (if any), and a plan showing the sign's location on the property.
 - (f) Site plan if site modifications are requested.
 - (g) Any other reasonable information that the Commission may deem necessary in order to visualize the proposed work.
2. An application for a certificate of appropriateness shall be submitted to the Historic Preservation Officer or other designated City official as stipulated by the City Manager. The HPC shall hold a public meeting on the application within thirty (30) days of receipt of the completed application. All applications received ten (10) days in advance of the next meeting will be reviewed and discussed at the next scheduled Commission meeting.
3. The HPC shall make a final decision on the application within forty-five (45) days of the application filing date. If no action has been taken by such date, a Certificate of Appropriateness shall be deemed issued by the Commission.
4. All decisions of the HPC shall be in writing and will be sent to the applicant and the Building Official within ten (10) working days of the Commission's decision. A copy will be filed with the City Secretary's office for public inspection.

C. Criteria

The HPC shall take into account the following criteria for determining whether to issue a Certificate of Appropriateness.

1. Local Design Guidelines based on the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitation of Historic Buildings shall be used in this process. If no local Design Guidelines have been established for historic landmarks or historic districts, then the Secretary of the Interior's Standards shall serve as guidelines.

2. The judgment of new construction proposals and the rehabilitation of non-historic buildings will be based on the compatibility of the design within the context of the property's adjacent and nearby historic buildings.
3. The design of new buildings may have key elements of an existing or previous building of the historic period, including massing, scale, fenestration and materials. Buildings may not be absolute reproductions and shall appear as clearly contemporary.
4. Infill buildings between contributing buildings shall be similar in setback, roof form, cornice line and materials, to one of the adjacent buildings. The height of the new buildings shall relate to the heights of adjacent structures. New buildings should not tower over existing buildings. Exterior building finishes shall be similar to that of surrounding historic structures.
5. When constructing an addition to a historic building, it shall be done in a manner so that there is the least possible loss of historic materials and so that character defining features are not obscure, damaged or destroyed. Every effort should be made to locate the addition at the rear of the building or on an inconspicuous side of a historic building; and limiting its size and scale in relationship to the historic building.
6. The new addition should be designed in a manner that makes it clear what is historic and what is new. Design for the new work may be contemporary or may reference design motifs from the historic building. In either case, it should always be clearly differentiated from the historic building and be compatible in terms and mass, materials and relationship of solids to voids.

D. Appeal from Action of HPC Concerning Applications for Permits

1. An applicant for a Certificate of Appropriateness dissatisfied with the action of the HPC on the application may appeal the decision to the City Council within fifteen (15) days after receipt of notification of such action. The applicant shall be advised by the Historic Preservation Officer of the time and place of the hearing at which his appeal will be considered and shall have the right to attend and be heard as to his reasons for filing the same.
2. In determining the appeal, the City Council shall consider the same factors as the HPC, the report of the HPC and any other matters presented at the hearing on the appeal.
3. The City Council shall affirm, modify or reverse the decision by the HPC on the application for the Certificate of Appropriateness, and may impose such conditions as are necessary to assure that the proposed action meets the criteria for approval. If the application is disapproved, the City Council may indicate what changes in the plans and specifications would meet the conditions for protecting the distinctive historical character of the district. The applicant and the HPC shall be notified of the Council's decision by the Historic Preservation Officer.

E. Issuance of Permits

1. Upon approval of an application for a Certificate of Appropriateness, the Building Official shall be authorized to issue a building permit or other permits required to undertake the action proposed in the application consistent with all applicable City standards.
2. No change shall be made in the scope of work for any building permit after issuance of Certificate of Appropriateness without submittal of an

application to amend the Certificate, which shall be considered by the HPC in the same manner as provided above. If a property owner wishes to change the scope of work under a Certificate of Appropriateness, the property owner shall consult the Heritage Preservation Officer who shall have the authority to approve non-substantive changes. If the Heritage Preservation Officer deems the requested changes to be substantive, such changes shall be referred to the Heritage Preservation Commission for action.

31. A.5 MINOR IN KIND REPAIRS AND ORDINARY MAINTENANCE

1. Nothing in this Section 31.A shall be construed to prevent minor in kind repairs or ordinary maintenance. Minor in kind repairs and ordinary maintenance, including painting, do not require a Certificate of Appropriateness.
2. Local design guidelines should be consulted when performing minor in-kind repairs or ordinary maintenance. If no local design guidelines have been established, then the Secretary of the Interior's Standards shall serve as guidelines. The Heritage Preservation Officer is also available as an additional resource and should be consulted concerning questions about minor in-kind repairs and ordinary maintenance. If the Heritage Preservation Officer deems a Certificate of Appropriateness necessary, the procedures in Section 31.A.4 shall apply.

31. A.6 DEMOLITION OR REMOVAL OF HISTORIC LANDMARKS

A. Demolition Permit Required.

A permit for the demolition of a historic landmark or structure within a Historic Overlay District shall not be granted by the Chief Building Official without the review and approval of a completed application by the Heritage Preservation Commission.

B. Application.

Certain information must be submitted by the applicant along with an application for a permit for demolition prior to the Heritage Preservation Commission making a ruling on demolition. The applicant must supply the following information before the application is considered complete:

1. Information describing the condition of the structure.
2. An estimate of the cost of restoration or repair.
3. Demonstration that adaptive use or restoration of the structure has been seriously considered.
4. Any available historic records of the building (drawings, photographs).
5. Architectural drawings for the proposed new construction which is intended to replace the historic structure if applicable.
6. Any improvements proposed by the property owner to be placed on the land or new development that would mitigate the loss of the historic structure if applicable.
7. Any other information deemed appropriate by the Commission to assist in rendering a decision on the application.

C. Action on Application.

The Heritage Preservation Commission shall review the application within thirty (30) days, during which time it shall consider the state of repair of the building,

reasonableness of the cost of restoration or repair, the existing and/or potential usefulness, the purpose behind preserving the structure, the character of the neighborhood, and all other factors it finds appropriate. If the Commission determines that, in the interest of preserving historical values, the structure should be preserved, it shall notify the building official that the application has been disapproved. If disapproved, the applicant may appeal to the City Council in the same manner as for a Certificate of Appropriateness. If demolition is approved, the HPC shall notify the building official so the appropriate permit(s) can be issued for demolition.

31. A.7 **DUTY TO MAINTAIN**

No owner or person with an interest in real property designated as a historic landmark or included in a historic area shall allow such property to fall into a serious state of disrepair without requesting a demolition permit.

Examples of a state of serious disrepair shall include, but are not limited to, the following:

1. Deterioration of exterior walls or other vertical supports.
2. Deterioration of roofs or other horizontal members.
3. Deterioration of exterior chimneys.
4. Deterioration or crumbing of exterior stucco or mortar.
5. Ineffective waterproofing of exterior walls, roofs, or foundations, including broken windows or doors.
6. Deterioration of any feature so as to create a hazardous condition that could lead to the claim that demolition is necessary for the public safety.
7. Deterioration of ornamental features.

31. A.8 **ENFORCEMENT**

A. Compliance Required.

All work performed pursuant to a Certificate of Appropriateness issued under this Ordinance shall conform to all requirements included herein and all other City codes. It shall be the duty of the building inspector to periodically inspect any such work to ensure compliance.

B. Enforcement Proceedings.

In the event that work being performed is found to not be in accordance with the Certificate of Appropriateness or upon notification of such fact by the Heritage Preservation Commission, the Building Official shall issue a stop work order and all work shall immediately cease. No further work shall be undertaken on the project as long as a stop work order is in effect. All other remedies authorized under this Zoning Ordinance shall be applicable to non-compliance with a Certificate of Appropriateness.

31.A.9 **DEFINITIONS**

For purposes of this Section 31.A, the following definitions apply:

- A. **Certificate of Appropriateness** - a signed and dated document evidencing the approval of the Heritage Preservation Commission and/or Heritage Preservation

Officer for work proposed by an owner or applicant within a Historic Overlay District.

- B. **Demolition** - an act or process (not withstanding acts of God, criminal activity, etc.) which destroys a site or structure in its entirety, or which destroys a part of a site or structure and permanently impairs its structural, historic or architectural integrity.
- C. **Design Guidelines** - guidelines adopted by the Heritage Preservation Commission for property designated as a Historic Landmark or Historic Area to protect, perpetuate and enhance the historical, cultural, architectural or archaeological character of an object, site, structure or district.
- D. **Heritage Preservation, Heritage Commission or Commission** - the Heritage Preservation Commission of the City of Waxahachie, as established by Ordinance 2002, as amended.
- E. **Heritage Preservation Officer (HPO)** - a staff person for the City of Waxahachie whose duties encompass all historic preservation activities for the city as established by Ordinance 2002, as amended.
- F. **Historic Area** - an area which includes two (2) or more structures or sites which satisfy one (1) or more of the criteria set out in Section 31.A.2.B, together with their accessory buildings, fences, located within a geographically definable area possessing a significant concentration, linkage or continuity of objects, sites or structures united by past events or aesthetically by plan or physical development, and other appurtenances. A Historic Area may have within its boundaries other structures that, while not of such historical, cultural, architectural or archaeological significance as to be designated as a Historic Landmark, nevertheless contribute to the overall visual setting of or characteristics of the Historic Area.
- G. **Historic Landmark** - a structure or property that is of value in preserving the historical, cultural, architectural or archaeological heritage, or is an outstanding example of design or a site closely related to an important personage, act or event in history, and which satisfy one (1) or more of the criteria set out in Section 31.A.2.B.
- H. **Minor In-kind Repairs** - small scale repairs to correct minor problems or damage to the exterior. Minor in-kind repairs do not include a change in design, material or outward appearance, only in-kind replacement or repair. Examples of minor in-kind repair include, but are not limited to touch-up painting, replacement of a window pane, caulking, securing loose boards, etc.
- I. **Ordinary Maintenance** - any work, the purpose and effect of which is to correct any deterioration or decay of or damage to a structure or property, or any part thereof, and to restore the same, as nearly as may be practicable, to its condition prior to such deterioration, decay or damage, using the same materials or those materials available which are as close as possible to the original and all of which must comply with applicable codes and ordinances. Ordinary Maintenance does not include a change in design, material or outward appearance, but does include in-kind replacement or repair. Examples of Ordinary Maintenance include, but are not limited to: replacement or repair of roofing materials, painting or other minor architectural features, etc.
- J. **Secretary of the Interior's Standards** - the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitation of Historic Buildings, reported at 36 Code of Federal Regulations 67.7, as amended or as recodified.

31. A.10 **TAX INCENTIVES**

The owner of property within a Historic Overlay District may qualify for the tax incentives set forth in Section 1-7 of Ordinance No. 2002 by complying with the criteria identified in that section in accordance with the procedures set forth in Section 1-8 thereof.

PASSED, APPROVED AND ADOPTED on this 7th day of March, 2005.



Nancy Ross
City Secretary

Joe Jenkins
MAYOR