

ARTICLE V. NONCONFORMING USES

Sec. 98-301. Continuation of nonconforming use; change of use.

Except as otherwise provided in this article, the nonconforming use of a building existing at the time this chapter becomes effective (December 6, 1994) may be continued and the use of a nonconforming building may be changed to another use of the same or a more restricted classification, but where such use is changed to a more restricted classification it shall not thereafter be changed back to a use of a less restricted classification. A nonconforming building which is or may hereafter become vacant and which shall remain unoccupied or its nonconforming use discarded for a continuous period of one year, shall not thereafter be occupied except by a use which conforms to regulations of the district in which it is located. A nonconforming building may be maintained or kept in good repair except as otherwise provided in this section. No existing building may be enlarged, extended, reconstructed or altered unless its use is changed to a use permitted in the district in which such building is located, except in the event such enlargement, extension, reconstruction or alteration is required by court decision, law, or ordinance. No nonconforming building shall be moved in whole or in part to any other location on the lot unless every portion of such building is made to conform to all the regulations of the district in which it is located. A nonconforming building which is damaged by fire, explosion, flood, wind, earthquake or other calamity or act of God or the public enemy to the extent of 50 percent or more of its reasonable value may not be restored except in conformity with the regulations of the district in which it is located.

Secs. 98-302—98-330. Reserved

ARTICLE VI. HISTORIC PRESERVATION

Sec. 98-331. Purpose.

The city council hereby declares that as a matter of public policy the protection, enhancement, and perpetuation of landmarks or districts of historical and cultural importance and significance is necessary to promote the economic, cultural, educational, and general welfare of the public. It is recognized that the city represents the unique confluence of time and place that shaped the identity of generations of citizens, collectively and individually, and produced significant historic, architectural, and cultural resources that constitute their heritage. This article is intended to:

- (1) protect and enhance the landmarks and districts which represent distinctive elements of the city's historic, architectural, and cultural heritage;
- (2) foster civic pride in the accomplishments of the past;
- (3) protect and enhance the city's attractiveness to visitors and the support and stimulus to the economy thereby provided;
- (4) insure the harmonious, orderly, and efficient growth and development of the city;
- (5) promote economic prosperity and welfare of the community by encouraging the most appropriate use of such property within the city;

- (6) encourage stabilization, preservation, restoration, and improvements of such properties and their values.

Sec. 98-332. Designation of Historic Landmarks.

(a) These provisions pertaining to the designation of historic landmarks both inside and outside of the historic preservation district constitutes a part of the comprehensive zoning plan of the city.

(b) The city council may, from time to time, following recommendation either for or against such designation by the Planning and Zoning Commission, designate certain sites and/or structures in the city as Historic Landmarks, and define, amend, or eliminate the boundaries of designation. Such sites shall bear the words "Historic Landmark" in their zoning designation. Such designation and the requirement thereof shall be in addition to any other zoning district designation or requirement established in the city's zoning ordinance and in this chapter. All zoning maps shall reflect the Historic Landmark by the letters "HL" as a suffix to the use designated.

(c) Property owners of proposed historic landmarks shall be notified by certified mail no less than fifteen (15) calendar days prior to the Planning and Zoning Commission hearing on the recommended designation. At the Commission's public hearing, owners, interested parties, and technical experts may present testimony or documentary evidence which will become part of a record regarding the historic, architectural, or cultural importance of the proposed Historic Landmark.

(d) The proposed Historic Landmark shall be submitted to the Planning and Zoning Commission at the earliest available meeting and no later than thirty (30) days from the date of the designation request. The Commission shall give notice and conduct its hearing on the proposed designation at the earliest possible meeting and within forty-five (45) days of receipt of a proposed landmark designation. Such hearing shall be in the same manner and according to the same procedures as specifically provided in this chapter. The Commission shall make its recommendation to the city council within forty-five (45) days subsequent to the hearing on the proposed designation.

(e) The city council shall schedule a hearing of the Planning and Zoning Commission's recommendation to be held within forty-five (45) days of receipt of the recommendation of the Commission. The city council shall give notice, follow the publication procedure, hold required hearings, and make its determination in the same manner as provided in this chapter.

(f) Upon designation of a historic landmark, the city council shall cause the designated site(s)/structure(s) to be recorded on the official zoning map.

Sec. 98-333. Designation of Historic Preservation District(s).

(a) These provisions pertaining to the designation of historic preservation districts constitute a part of the comprehensive zoning plan of the city.

(b) The city council may, from time to time, following recommendation either for or against such designation by the Planning and Zoning Commission, designate certain areas in the city as Historic Preservation Districts, and define, amend, or eliminate the

boundaries of designation. Such districts shall bear the words "Historic Overlay" in their zoning designation. Such designation and the requirements thereof shall be in addition to any other zoning district designation or requirement established in the city's zoning ordinance and in this chapter. All zoning maps shall reflect the Historic Preservation District by the letters "HO" as a suffix to the use designated. Changes to the same may be initiated by any person by request submitted to the Planning and Zoning Commission.

(c) Property owners within a proposed historic preservation district shall be notified by certified mail no less than fifteen (15) days prior to the Planning and Zoning Commission hearing on the recommended designation. At the Commission's public hearing, owners, interested parties, and technical experts may present testimony or documentary evidence which will become part of a record regarding the historic, architectural, or cultural importance of the proposed historic preservation district.

(d) The proposed addition of or modification to a historic preservation district shall be submitted to the Planning and Zoning Commission at the earliest available meeting and no later than thirty (30) days from the date of the designation request. The Commission shall give notice and conduct its hearing on the proposed designation at the earliest possible meeting and within forty-five (45) days of receipt of a proposed landmark designation. Such hearing shall be in the same manner and according to the same procedures as specifically provided in this chapter. The Commission shall make its recommendation to the city council within forty-five (45) days subsequent to the hearing on the proposed designation.

(e) The city council shall schedule a hearing of the Planning and Zoning Commission's recommendation to be held within forty-five (45) days of receipt of the recommendation of the Commission. The city council shall give notice, follow the publication procedure, hold required hearings, and make its determination in the same manner as provided in this chapter.

(f) Upon designation of a historic preservation district, the city council shall cause the designated district to be recorded on the official zoning map.

Sec. 98-334. Criteria for Designation of Historic Landmarks and Districts.

(a) Historic Landmarks are sites, structures, or features that possess significance in history, architecture, military, political, economic, scientific, archeology, culture or other value. A Historic Landmark may be designated if it exhibits two or more of the following characteristics:

- (1) Represents an established and familiar visual feature of the city;
- (2) Is believed to be of basic and vital importance for preservation of culture, neighborhoods and/or economic development;
- (3) Is associated with events that have made a contribution to the patterns of local, regional, state and/or national history;
- (4) Is associated with events that are significant to our past;
- (5) Is associated with an individual or group having a profound influence on the history of the city; or

- (6) Is a prototype of, or an outstanding example of a period, style, architectural movement or construction.

(b) Historic Preservation Districts may be designated if the properties within the proposed district contain a density of established sites, structures, or features that possess significance in history, architecture, military, political, economic, scientific, archeology, culture or other value. A Historic Preservation District may be designated if the proposed district exhibits a density of properties with the following characteristics:

- (1) Represents an established and familiar visual feature of the city;
- (2) Is believed to be of basic and vital importance for preservation of culture, neighborhoods and/or economic development;
- (3) Is associated with events that have made a contribution to the patterns of local, regional, state and/or national history;
- (4) Is associated with events that are significant to our past;
- (5) Is associated with an individual or group having a profound influence on the history of the city; or
- (6) Is a prototype of, or an outstanding example of a period, style, architectural movement or construction.

Sec. 98-335. Approval for Alteration or New Construction Within Historic Preservation Districts or Affecting Historic Landmarks.

No person shall carry out any exterior construction, reconstruction, alteration, restoration, rehabilitation, demolition, or relocation of any historic landmark or any property within a historic preservation district, nor shall any person make any material change to other exterior elements visible from a public right-of-way which will affect the appearance and cohesiveness of any historic landmark or any property within a historic preservation district without receiving approval from the Planning and Zoning Commission. New construction within a historic preservation district or on property designated as a historic landmark, or buildings or structures moved onto a property within a historic preservation district or onto property designated as a historic landmark will be subject to and in accordance with the Design Guidelines for the City of Montgomery.

Sec. 98-336. Nonconforming Structures.

Commercial, institutional, and residential structures existing within the Historic Preservation District, or on property designated as a Historic Landmark, prior to the effective date of this article shall not be required to be altered, repaired or modified to meet existing design criteria unless major facade or structural renovations are planned by the property owner. Major facade or structural renovations are defined as changes or renovations to 25% or more of any facade of the structure or improvements facing a street.

Sec. 98-337. Historic Preservation District/Landmark Building Permit Application Procedures.

(a) Prior to the commencement of any work requiring Planning and Zoning Commission approval in accordance with this article, the owner shall follow standard

procedures for a building permit application and provide the following information for review:

- (1) Name, address, telephone number of applicant and property owner, detailed description of proposed work;
- (2) Location and photograph of the property and adjacent properties;
- (3) A written narrative describing the design intent and historical precedence is required. Historical photographs may be submitted if available;
- (4) Elevation drawings of the proposed changes;
- (5) Description of materials and colors to be used; and
- (6) If the proposal includes signs or lettering, in addition to meeting all sign ordinances of the City, 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;

(b) Planning and Zoning Commission approval required by this article shall be in addition to and not in lieu of any other building permit requirements for the city.

(c) The Planning and Zoning Commission shall review the application at the first regularly scheduled meeting after the application is received, at which time an opportunity will be provided for the applicant to be heard. The Planning and Zoning Commission shall approve, approve with modifications, or deny the request. A denied application may be resubmitted to the Planning and Zoning Commission after required adjustments are made.

(d) All decisions of the Planning and Zoning Commission shall be in writing. The Commission's decision shall state its findings pertaining to the approval, denial, or modification of the application. A copy shall be sent to the applicant and a copy shall be filed with the City Secretary as part of the public record.

(e) An applicant dissatisfied with the action of the Planning and Zoning Commission relating to the issuance or denial of building permit approval, as a result of this article, shall have the right to appeal to the city council by submitting a request in writing to the City within (30) days after receipt of notification of such action.

Sec. 98-338. Criteria for Approval by the Planning and Zoning Commission.

Approval by the Planning and Zoning Commission shall be guided by the adopted Design Guidelines for the City of Montgomery. The Design Guidelines for the City of Montgomery shall be made available at the office of the City Secretary.

Sec. 98-339. Special Setback Provisions.

New commercial structures or improvements being built in the historic downtown commercial area (i.e. any building with front and/or rear facades facing Liberty, Caroline, Prairie, Maiden, McCown, John Butler, or College Streets, and which are located between State Highway 105 on the south and Clepper Street on the north) will be required to adhere to front (main entrance) setbacks that match immediately adjacent buildings or structures facing the same street. If new commercial structures or improvements are being constructed between existing buildings or structures whose setback lines do not match, the

new building or structure's front (main entrance) setback line must match the adjacent building or structure whose front (main entrance) setback line is closest to the street in which the adjacent structure or building faces.

Sec. 98-340. Approval Required for Demolition.

(a) A permit for the demolition of a Historic Landmark or property within a Historic Preservation District, including secondary buildings, must be reviewed and approved by the Planning and Zoning Commission and forwarded to city council for final approval. The Commission shall consult with the City on any application submitted, and shall consider and review any findings and recommendations of the City.

(b) A structure deemed as an unsafe building under the City's ordinances regarding same.

Sec. 98-341. Economic Hardship Application Procedure.

(a) After receiving written notification from the Planning and Zoning Commission of the denial of a permit request, an applicant may commence the hardship process. No building permit or demolition permit may be issued unless the Commission makes a finding that an economic hardship exists.

(b) When a claim of economic hardship is made due to the effect of this ordinance, the owner must prove that:

- (1) the property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;
- (2) the property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return; and
- (3) efforts to find a purchaser interested in acquiring the property and preserving it have failed.

(c) The applicant shall consult in good faith with the Planning and Zoning Commission, local preservation groups and interested parties in a diligent effort to seek an alternative that will result in preservation of the property. Such efforts must be shown to the Commission.

(d) The Planning and Zoning Commission shall hold a public hearing on the application within sixty (60) days from the date the application is received by the City Secretary. Following the hearing, the Commission has thirty (30) days in which to prepare a written response to the applicant. In the event that the Commission does not act within ninety (90) days of the receipt of the application, a permit may be granted.

(e) All decisions of the Planning and Zoning Commission shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the City Secretary's office for public inspection. The Commission's decision shall state the reasons for granting or denying the hardship application.

(f) If an applicant is dissatisfied with the action of the Planning and Zoning Commission, he/she shall have the right to appeal to the city council within thirty (30) days after receipt of notification of such action. The city council shall give notice, follow

publication procedure, hold hearings, and make its decision in the same manner as provided in the general zoning ordinance of the city.

Sec. 98-342. Enforcement.

All work performed pursuant to a building permit issued under this ordinance shall conform to any requirements included therein. It shall be the duty of the city building official (or other designated official) to inspect periodically any such work to assure compliance. In the event work is not being performed in accordance with the approved scope of work, or upon notification of such fact by the Planning and Zoning Commission and verification by the designated official, the 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 is in effect.

Sec. 98-343. Ordinary Maintenance.

Nothing in this ordinance shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of a landmark or property within a Historic Preservation District which does not involve a change in design or outward appearance.

Sec. 98-344. Demolition by Neglect.

No owner or person with an interest in real property designated as a landmark or included within a Historic Preservation District shall permit the property to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would, in the judgment of the Planning and Zoning Commission, produce a detrimental effect upon the character of the Historic Preservation District as a whole or the life and character of the property itself. Examples of such deterioration include:

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

Sec. 98-345. Penalties.

In addition to the penalties set out under this chapter, the following penalties, which are nonexclusive, and the exercise of one or more of which shall not preclude exercise of the others, shall be imposed on those persons or entities found to have violated this article:

- (1) *Restrictions on future development.* If a historic resource, either a landmark or one located within the boundaries of the Historic Preservation District, is demolished or relocated without proper approval, or in the event the plans are changed for the property from which the resource was removed without approval

of the changed plans by the Planning and Zoning Commission, then the following restrictions, in addition to any other penalties or remedies set forth in this article, shall be applicable to the site where the structure or property was formerly located:

- a. No building or other permits will be issued for construction on the site, with the exception of a permit to restore such structure or property after obtaining a permit, for a period of two (2) years after the date of such demolition or removal. The City may file a certificate evidencing a violation of this section in the Official Public Records of Real Property of Montgomery County, Texas.
- b. No permits shall be issued by the city for any curb cuts on the site for a period of two (2) years from and after the date of such demolition or removal.
- c. No parking lot for vehicles shall be operated whether for remuneration or not on the site for a period of two (2) years from and after the date of such demolition and removal.
- d. The owner of the site shall maintain the site in a clean and orderly state and shall properly maintain all existing trees and landscaping on the site. When these restrictions become applicable to a particular site, the city building official shall cause to be filed a verified notice thereof in the real property records of Montgomery County and such restrictions shall then be binding on future owners of the property.

(2) *Cumulative remedies.* The provisions of this section shall apply in addition to other enforcement procedures or penalties which are available at law or in equity, including, but not limited to, those available for adversely affecting historic structures or property under V.T.C.A., Local Government Code § 315.006 and V.T.C.A., Government Code § 442.016 as the same may be amended from time to time, injunctive remedies and the like.

(3) *Civil action.* As an additional remedy in addition to the penalties stated above, the city attorney for the City of Montgomery or his or her designee shall have the power to take all necessary civil action to enforce the provisions hereof and to request appropriate legal or equitable remedies or relief.

Secs. 98-346—98-360. Reserved.

ARTICLE VII. CORRIDOR ENHANCEMENT

Sec. 98-361. Purpose.

The city council hereby declares that as a matter of public policy that it is desirable and in the best interest of the public health, safety, morals and general welfare of the citizens of the city to provide for the enhancement of the overall visual image and perception of the city along its main entryways and corridors by requiring construction standards for exterior walls and facades on buildings along these corridors.