



Legislation Details (With Text)

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**Title:** Discuss Land Development Code (LDC) Amendments to Heritage Preservation Ordinance.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. 1 - Draft Ordinance, 2. 2 - MN SHPO Sample Ordinance, 3. 3 - 2001 LDC, 4. 4 - Peer Cities Research, 5. 5 - Hyperlink to 5.3.22 Staff Report, 6. 6 - Hyperlink to 5.3.22 CC Meeting, 7. 7 - Hyperlink to 5.12.22 HPC Meeting

Date	Ver.	Action By	Action	Result
5/19/2022	1	Planning Commission	approve as amended	Pass

**Meeting Date:** May 19, 2022

**To:** Members of the Planning Commission

**From:** Reeve Needham, Assistant City Planner

Discuss Land Development Code (LDC) Amendments to Heritage Preservation Ordinance.

**Action Requested:**

The Planning Commission is asked to discuss proposed changes to the LDC surrounding historic preservation.

**Summary Report:**

Based on previous discussions, Council gave direction to further explore potential language amendments to the Land Development Code (LDC) regarding the need for a Certificate of Appropriateness (COA) on a public property within the Historic District. A Council work session was held on April 12, 2022 with some Heritage Preservation Commission members. At this meeting, Council gave direction to research how other cities handle COAs and to explore changing the HPC appeals process. Staff presented the information to the Heritage Preservation Commission (HPC) and Planning Commission (PC).

*Research of Peer Cities*

Staff reviewed 7 peer cities' after direction from Council. These cities included: Albert Lea, Carver, Chaska, Faribault, Hastings, Red Wing, and Stillwater. All 7 of the peer cities have the appeal of HPC decisions go to Council. 7 of the 7 cities responded that the City owns property within the Historic District and has received a COA before. Select language excerpts and links to the cities' codes can be found in the attachment.

City	Who to Appeal HPC decision to?	Does City own land in Historic District?	Has City received COA before?
Albert Lea	Council	Yes	Yes

<b>Carver</b>	Council	Yes	Yes
<b>Chaska</b>	Council	Yes	Yes
<b>Faribault</b>	Council	Yes	Yes
<b>Hastings</b>	Council	Yes	Yes
<b>Red Wing</b>	Council	Yes	Yes
<b>Stillwater</b>	Council	Yes	Yes

In addition to peer cities, staff reviewed the sample ordinance available from the Minnesota State Historic Preservation Office (SHPO). A link to this ordinance is attached to the staff report. In this ordinance, the appeals body of HPC decisions is Council.

*Heritage Preservation Commission Discussion*

On April 14, 2022, the Heritage Preservation Commission discussed this item. The HPC motioned to direct staff to craft ordinance language that: 1) requires a COA for public and private properties, 2) with some exemptions for emergency repairs, and 3) to change the appeal process from the Zoning Board of Appeals to the City Council for HPC decisions.

*Planning Commission Discussion*

On April 21, 2022, the Planning Commission discussed this item. The PC motioned to direct staff to craft ordinance language that: 1) does not exempt the City from the LDC generally, 2) requires a COA for public and private properties, 3) with some exemptions for emergency repairs (and that exterior changes of any kind require a COA), and to 4) keep the Zoning Board of Appeals (ZBA) as the appeals body for HPC decisions.

*City Council Discussion*

On May 3, 2022, the City Council discussed this item. The Council motioned to direct staff to craft ordinance language that 1) requires a COA for public properties, 2) with some exemptions for emergency repairs and demolition of unsafe buildings, and 3) to change the appeal process from the Zoning Board of Appeals to the City Council for HPC decisions. A link to watch the meeting is included as an attachment along with the staff report.

*Proposed Changes*

Based on the direction given by Council, staff have drafted some potential ordinance language. This is still in draft form and requires further review by the City Attorney and staff. Below is a summary of proposed changes. Additions are shown underlined and deletions are shown with ~~striketrough~~.

1. “**Applicability.** Unless otherwise exempted in Section 7.8.3, Exemptions, or unless otherwise provided in this section, in the H-O district no zoning certificate or building permit for construction, exterior alteration or rehabilitation, moving, or demolition of a building or structure, on a city-owned and privately-owned heritage preservation site shall be issued until the project has been submitted to, and received approval of a certificate of appropriateness from either the heritage preservation commission or city planner subject to the review procedures below. The city planner or city planner’s designee shall classify proposed work as described below into one of the following two categories, which shall determine the applicable review procedure as provided in clause (C) of this Section:

(1) Major Work:

- (i) New construction including the expansion or enlargement of an existing building or site.
- (ii) Demolition in whole or in part.

- (iii) Moving of historic buildings, structures, or objects.
- (iv) Remodeling, exterior alteration or rehabilitation that will change the exterior appearance including painting, signage, awnings.

(2) Minor Work (minor alterations in keeping with the integrity of the site and do not impact the overall architecture character):

- (i) Replacement of windows with same form including pane arrangement, materials and finish.
  - (ii) Siding similar to the existing materials, finish and form.
  - (iii) Ordinary and routine maintenance.
  - (iv) Replacement of roofing materials.
  - (v) Maintenance or reconstruction where any exterior surface materials are to be replaced with historically appropriate identical materials and where such replacement materials will be installed to the original historical configuration.”
- Staff comments: This requires a COA for all heritage preservation sites, not just for the H-O district. This appears to have been changed at some point, with the attached LDC language from 2001 reflecting this. Additionally, this proposes two levels of review: a traditional COA review by the HPC for major work, and administrative review by staff for minor work. This codifies the informal practice of not requiring a COA for “like-for-like” changes, while still requiring review by staff to ensure changes are appropriate.

2. “Exemptions. A certificate of appropriateness shall not be required for the following activities:

(1) Building permits for work (electrical, interior structural, etc.) on the interior of the structure shall be exempt from the provisions of this section provided that the work for which the building permit is requested will not alter the external appearance or the gross floor area of the structure.

(2) This section does not apply to structures required to be demolished in accordance with Minnesota Statutes, Chapter 463, related to hazardous or substandard buildings.

(3) In emergency situations where immediate repair is needed to protect the safety of a building or structure and its inhabitants, the City Administrator and City Building Official may approve the repair without prior heritage preservation commission action. In the case of an emergency repair permit issued pursuant to this section, the City Administrator or Building Official shall notify the heritage preservation commission of the same and specify the facts or conditions necessitating the emergency repairs.

(4) Any physical improvements within and adjacent to public rights-of-way including but not limited to: curb and gutter, street, or utility reconstruction; routine maintenance, repair, or emergency work such as street patching; street overlays; driveway installations; boulevard tree planting; accessibility ramp improvements; utility repairs; or sidewalk repair or sidewalk replacement.”

- Staff comments: These are exemptions from needing a COA. The second provision would allow for the demolition of unsafe and hazardous buildings. The third provision would allow for emergency repairs. The fourth provision clarifies that physical improvements within the right-of-way do not require a COA.

3. “Approval Procedure. For major work as defined in clause (A) of this Section, Certificates of appropriateness shall be subject to the Type 3 review procedure as established in Section 8.4.6, Type 3 Review Procedure (Heritage Preservation Commission Decision), except that the heritage preservation commission shall be responsible for review instead of the planning commission. For minor work as defined in clause (A) of this Section, certificate of appropriateness shall be subject to the Type 1 review

procedure as established in Section 8.4.4, Type 1 Review Procedure. The city planner is authorized to determine the applicable review procedure for an application as defined in clause (A) of this Section

- Staff comments: This allows for staff review of minor alterations.

4. “Approval Criteria. The heritage preservation commission or the city planner, based upon the applicable review procedure for an application, shall consider the following in evaluating an application for a certificate of appropriateness for a zoning certificate and/or building permit. Criterion (1) below must be met and criteria (2) through (5) shall be considered:

- (1) That it fully complies with all applicable requirements of this LDC;
- (2) That the proposed action is in harmony with the intent of the H-O district;
- (3) That the proposed action would complement other structures within the H-O district;
- (4) That the proposed action is consistent with the Downtown Preservation Design Guidelines; and
- (5) In the case of removal or demolition, that the structure could not be rehabilitated and used for a conforming purpose with reasonable efforts or whether the structure is without substantial historic or architectural significance.”

- Staff comments: This affirms the criteria for staff review of minor alterations.

5. “Appeals.

(1) Appeals of the heritage preservation commission's decision may be made to the ~~zoning board of appeals~~ city council in accordance with this LDC and state law. Any party aggrieved by a decision of the heritage preservation commission may appeal such decision by filing a written notice of appeal with the city clerk no later than ten (10) days after the decision of the heritage preservation commission. If not so filed, the right of appeal shall be deemed waived and the decision of the heritage preservation commission shall be final. Following receipt of the appeal, the city clerk shall schedule a time for the appeal to be heard by the city council, which appeal hearing shall be scheduled within forty-five (45) days of the date of receipt of the notice of appeal by the city clerk. Following hearing the appeal, the city council may in its discretion either affirm, modify and amend, or overrule the heritage preservation commission’s decision.

(2) An appeal of the city staff’s decision on a certificate of appropriateness (minor work) following the Type 1 Review Procedure shall be made to the heritage preservation commission and reviewed in accordance with a Section 8.4.6, Type 3 Review Procedure. Any party aggrieved by city staff’s decision on a certificate of appropriateness (minor work) under the Type 1 Review Procedure may appeal such decision by filing a written notice of appeal with the city clerk no later than ten (10) days after the decision of city staff for subsequent consideration by the heritage preservation commission. Subsequent appeals of the decision of the heritage preservation commission shall be made in accordance with clause (E)(1) of this Section”

- Staff comments: This changes the appeals body of HPC decisions from the Zoning Board of Appeals to the City Council. The appeal of staff decisions would go to the HPC.

6. “City Council Review and Decision. Notwithstanding the foregoing, any denial of a certificate of appropriateness by the heritage preservation commission of a city government project located upon or within city-owned property shall be reviewed by the city council within forty-five (45) days of the heritage preservation commission’s decision, and the city council, following hearing the appeal, may in its discretion either affirm, modify and amend, or overrule the heritage preservation commission’s decision.”

- This provides clarity for the appeal of a public project to City Council.

Additionally, any reference to the “State Historical Society” will be changed to the “State Historic Preservation Office.”

*Staff Recommendation:*

At this time, staff recommends the above proposed changes.

*Heritage Preservation Commission Discussion*

On May 12, 2022, the Heritage Preservation Commission discussed this item. A link to watch the May 12, 2022 meeting is included as an attachment. The HPC gave the following recommendations, comments, and questions:

- Some concern over major streetscape work and how that might impact the historic district
- Some questions on how to handle solar installations and how this might fall under major or minor work; to look into how other cities handle solar installations
- Amending the description for minor work to be “Minor Work (minor alterations in keeping with the integrity of the site and do not impact the overall architectural character and visual character)”
- Amending the siding description under minor work to be “Replacing siding with the same similar to the existing materials, finish and form”
- Clarifying what might be considered “ordinary and routine maintenance”
- Clarifying under Exemptions (2) if both the City Administrator and City Building Official need to approve the emergency repair or if only one needs to approve; and consider if the City Planner should be involved in approving the emergency repair; and adding a time limit to when repairs may be completed (Albert Lea has deadline of 120 days)
- Revising Exemptions (4) to be a complete sentence to be parallel with the other exemptions
- Consider revising the approval criteria for COAs, especially in relation to other cities (reference Red Wing as an example)
- Adding the requirement of a findings of fact for an appeal decision
- Consider requiring a two-thirds vote by Council for an appeal decision
- Clarifying the violation and enforcement process (with reference to the 2001 LDC)
- Adding in a delisting process for local heritage preservation sites (reference Albert Lea as an example)
- Other proposed language recommended by staff was also recommended by the HPC

**Alternative Options:**

The PC could provide different recommendations for LDC amendment options.

**Financial Impacts:**

There are associated costs with text amendments.

**Tentative Timeline:**

- ✓ 4/12/22 Initial Council Discussion
- ✓ 4/14/22 Heritage Preservation Commission Review of Options and Discussion
- ✓ 4/21/22 Planning Commission Review of Options and Discussion
- ✓ 5/3/22 Council Discussion of Options
- ✓ 5/12/22 Heritage Preservation Commission Review of Proposed LDC Amendment
- ✓ 5/19/22 Planning Commission Review of Proposed LDC Amendment
- 6/15/22 Heritage Preservation Commission Review of Proposed LDC Amendment
- 7/21/22 Public Hearing of Amendment at Planning Commission

8/1/22	City Council: First Reading of Ordinance Amendment
8/16/22	City Council: Second Reading of Ordinance Amendment
8/24/22	Newspaper Publication
9/23/22	Ordinance Takes Effect