

Ordinance Number 2004-07

AN ORDINANCE OF THE CITY OF CLEVELAND, TENNESSEE AMENDING TITLE 14 OF THE CLEVELAND MUNICIPAL CODE, ZONING AND LAND USE CONTROL, SO AS TO SET FORTH THE PURPOSES OF HISTORIC PRESERVATION, TO ESTABLISH THE CLEVELAND HISTORIC PRESERVATION COMMISSION INCLUDING ITS COMPOSITION AND TERMS OF SERVICE, TO SET FORTH THE POWERS OF THE CLEVELAND HISTORIC PRESERVATION COMMISSION, TO ESTABLISH THE RULES OF ORDER FOR THE CLEVELAND HISTORIC PRESERVATION COMMISSION, TO PROVIDE FOR THE DESIGNATION OF LANDMARKS, LANDMARK SITES, AND HISTORIC DISTRICTS, TO PROVIDE FOR CERTIFICATES OF APPROPRIATENESS FOR CONSTRUCTION AND DEMOLITION ACTIVITIES AFFECTING HISTORIC RESOURCES, TO ESTABLISH CRITERIA FOR THE ISSUANCE OF CERTIFICATES OF APPROPRIATENESS, TO ESTABLISH PROCEDURES FOR THE ISSUANCE OF CERTIFICATES OF APPROPRIATENESS INCLUDING A REVIEW PROCESS AND A FEE, TO PROVIDE EXCEPTIONS FOR ECONOMIC HARDSHIP, TO PROVIDE FOR APPEALS, TO ESTABLISH MINIMUM MAINTENANCE REQUIREMENTS, TO PROVIDE EXCEPTIONS FOR PUBLIC SAFETY, TO PROVIDE FOR ENFORCEMENT AND PENALTIES, TO PROVIDE FOR APPROPRIATIONS, TO PROVIDE FOR CONFLICTS OF INTEREST, AND TO PROVIDE FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE

WHEREAS the City of Cleveland, Tennessee contains two National Register Historic Districts, the Centenary Avenue District and the Ocoee Street District, and various other historic properties and other potential historic resources yet to be identified or designated as such; and

WHEREAS the identification, designation, study, and preservation of historic resources contributes to the wellbeing of the community culturally, economically, and otherwise; and

WHEREAS planning and preservation are necessary to ensure that the full benefits of Cleveland's historic resources are realized for current and future generations;

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Cleveland, Tennessee that Title 14 of the Cleveland Municipal Code, Zoning and Land Use Control, is hereby amended to include the following Chapter entitled Historic Preservation:

Section 1. STATEMENT OF PURPOSE

Historic preservation activities will promote and protect the health, safety, prosperity, education, and general welfare of the people living in and visiting the City of Cleveland, Tennessee, hereinafter referred to as "the City".

More specifically, this historic preservation ordinance is designed to achieve the following goals:

A. Protect, enhance and perpetuate resources which represent distinctive and significant elements of the City's historical, cultural, social, economic, political archaeological, and architectural identity;

B. Insure the harmonious, orderly, and efficient growth and development of the City;

C. Strengthen civic pride and cultural stability through neighborhood conservation;

D. Stabilize the economy of the City through the continued use, preservation, and revitalization of its resources;

E. Promote the use of resources for the education, pleasure, and welfare of the people of the City;

F. Provide a review process for the preservation and development of the City's resources.

Section 2. HISTORIC PRESERVATION COMMISSION: COMPOSITION AND TERMS

The City hereby establishes a historic zoning commission, the Cleveland Historic Preservation Commission, hereinafter referred to as "the Commission", pursuant to the authority granted in TCA 13-7-403. The Commission is to work to preserve, promote, and develop the city's historical resources and to advise the city on the designation of preservation districts, landmarks, and landmark sites and to perform such other functions as may be provided by law.

The commission shall consist of seven (7) members. The Commission's membership shall include a representative of a local patriotic or historical organization; an architect or engineer, if available; and a person who is a member of the Cleveland Municipal Planning Commission at the time of his/her appointment. The Commission's membership shall include members from the community in general but, if possible, it shall include professionals in primary or secondary historic preservation-related disciplines regardless of their place of residence. Efforts to include Commission members from primary historic preservation-related disciplines (architecture, history, architectural history, archaeology) and secondary historic preservation-related disciplines (urban planning, American studies, American civilization, cultural geography, cultural anthropology, interior design, law, and related fields) shall be documented. Concerning the composition of the Commission, diversity in terms of gender and

ethnicity is desirable. All Commission members shall have demonstrated knowledge of or interest, competence, or expertise in historic preservation.

All members of the Commission are appointed by the City Council and shall serve for designated terms and may be re-appointed. Initial appointments to the Commission shall be made so as to provide staggered terms for membership. Three of the initial appointments shall be for four years; two initial appointments shall be for three years; and two initial appointments shall be for two years. Subsequent appointments shall be for terms of four years. Appointments are to be confirmed by the majority vote of the City Council. Commission members may be removed at any time by the majority vote of City Council. Reasons for removal of a Commission member could include a pattern of poor attendance at meetings, refusal to follow applicable laws and ordinances in carrying out Commission business, failure to comply with conflict of interest provisions, unprofessional conduct at Commission meetings, etc. In the event of Commission vacancies due to death, resignation, involuntary removal, etc., the City Council shall appoint replacement members to serve the remainder of the unexpired term.

Section 3. POWERS OF THE COMMISSION

A. The Commission shall conduct or cause to be conducted a continuing study and survey of resources within the City; however, the Commission is not authorized to incur any financial obligation without the express authorization of the City Council.

B. The Commission shall recommend to the City the adoption of ordinances designating preservation districts, landmarks, and landmark sites where appropriate.

C. The Commission may recommend that the City recognize sub-districts within any preservation district, in order that the Commission may adopt specific guidelines for the regulation of properties within such a sub-district.

D. The Commission shall review applications proposing construction, alteration, demolition, or relocation of any resource within the preservation districts, landmarks, and landmarks sites.

E. The Commission shall grant or deny certificates of appropriateness, and may grant certificates of appropriateness contingent upon the acceptance by the applicant of specified conditions.

F. The Commission does not have jurisdiction over interior arrangements of buildings and structures, except where such change will affect the exterior of the building and structures.

G. Subject to the express approval of the City Council and subject to the requirements of the City, the Commission may apply for, receive, hold, and spend funds from private and public sources, in addition to any appropriations made by the city for the purpose of carrying out the provisions of this ordinance.

H. Within the limits of any appropriations or grant in a budget approved by the City Council and subject to the approval of the City Manager, the Commission is authorized to utilize such staff, technical experts or other persons as may be required for the performance of its duties and to request the equipment, supplies, and other materials necessary for its effective operation.

J. The Commission is authorized, solely in the performance of its official duties and only at reasonable times, to enter upon private land or water for the examination or survey thereof. No member or agent of the Commission shall enter any private dwelling or structure without the express consent of the owner of record or occupant thereof.

Section 4. RULES OF ORDER (BY-LAWS)

To fulfill the purposes of this ordinance and carry out the provisions contained therein:

A. The Commission annually shall elect from its membership a chairman and vice-chairman. It shall select a secretary from its membership or its staff. If neither the chairman nor the vice-chairman attends a particular meeting, the remaining members shall select an acting chairman from the members in attendance at such meeting.

B. This Section 4 of this ordinance shall constitute the rules of order (by-laws) of the Commission which shall govern the conduct of its business, subject to the approval of the City Council. Such rules of order (by-laws) shall be a matter of public record. The Commission may from time to time adopt such other rules of order (by-laws) as are necessary to its operation, subject to the approval of the City Council. A quorum for voting on any item of business shall be any four members who are not disqualified from voting due to a conflict of interest. Except as provided in this ordinance or in any subsequent amendment, questions arising concerning rules of order (by-laws) shall be settled by reference to *Robert's Rules of Order*.

C. The Commission shall develop design review guidelines for determining appropriateness as generally set forth in Section 7 of this ordinance. Such criteria shall insofar as possible be consistent with local, state, and federal guidelines and regulations including, but not limited to, building safety and fire codes and the Secretary of the Interior's Standards For Rehabilitation.

D. The Commission shall keep minutes and records of all meetings and proceedings including voting records, attendance, resolutions, findings, determinations, and decisions. All such material shall be a matter of public record. City staff designated by the City Manager shall keep the aforementioned minutes and records, shall provide descriptions of the issues before the Commission, shall provide notice of meetings, and other support services reasonably necessary to the operation of the Commission.

E. The Commission shall establish its own regular meeting time; however, the first meeting shall be held after the adoption of this ordinance and within thirty (30) days after the initial appointment of Commission members. Regular meetings shall be scheduled at least once every three (3) months. The chairman, vice-chairman, or any two (2) members may call a special meeting to consider an urgent matter.

Section 5. DESIGNATION OF LANDMARKS, LANDMARK SITES, AND HISTORIC DISTRICTS

By ordinance, the City may establish landmarks, landmark sites, and preservation districts within the area of its jurisdiction. Such landmarks, landmark sites, or preservation districts shall be designated following the criteria contained in this ordinance.

A. The Commission shall initiate a continuing and thorough investigation of the archaeological, architectural, cultural, and historic significance of the City's resources. The findings shall be collected in a cohesive format, made a matter of public record, and made available for public inspection. The Commission shall work toward providing complete documentation for previously designated preservation districts which would include:

1. A survey of all property within the boundary of the district, with photographs of each building.

2. A survey which would be in a format consistent with the statewide inventory format of the Historic Preservation Division of the (SHPO).

B. The Commission shall advise the City on the designation of preservation districts, landmarks, or landmark sites and submit or cause to be prepared ordinances to make such designation.

C. A resource or resources may be nominated for designation upon motion of three members of the Commission or by an organization interested in historic preservation or by an owner of the property being nominated. A nomination shall contain information as specified by the Commission. The Commission must reach a decision on whether to recommend a proposed nomination to the City Council within six months in the case of a preservation district and two months in

the case of either a landmark or landmark site. After six months for a district and two months for a landmark or landmark site if no action has been taken by the Commission the nomination proceeds to the Cleveland Municipal Planning Commission for their recommendation to the City Council.

D. The Commission shall hold a public hearing on the proposed preservation district, landmark, or landmark site. If the Commission votes to recommend to the City the designation of a proposed resource, it shall promptly forward to the Cleveland Municipal Planning Commission its recommendation, in writing, together with an accompanying file.

E. The Commission's recommendations to the City Council for designation of a preservation district shall be accompanied by:

- 1. A map of the preservation district that clearly delineates the boundaries**
- 2. A verbal boundary description and justification**
- 3. A written statement of significance for the proposed preservation district**

F. The City Council shall conduct a public hearing, after notice, to discuss the proposed designation and boundaries thereof. A notice of the hearing shall be published in the newspaper generally used by the City for such notices.

G. Within sixty (60) calendar days after the public hearing held in connection herewith, the City shall consider the adoption of the ordinance with such modifications as may be necessary.

H. Furthermore, the Commission shall notify, as soon as is reasonably possible, the appropriate state, county, and municipal agencies of the official designation of all landmarks, landmark sites and preservation districts. An updated list and map shall be maintained by such agencies and made available to the public.

Section 6. CERTIFICATES OF APPROPRIATENESS

No exterior feature of any resource which is a designated landmark or landmark site or which is within a designated preservation district, shall be altered, added to, relocated, or demolished until after an application for a certificate of appropriateness of such work has been approved by the Commission. Likewise, no construction which affects a resource shall be undertaken without a certificate of appropriateness.

A. The Commission shall serve as a review body with the power to approve and deny applications for certificates of appropriateness.

B. In approving and denying applications for certificates of appropriateness, the Commission shall accomplish the purposes of this ordinance.

C. A certificate of appropriateness shall not be required for work deemed by the Commission to be ordinary maintenance or repair of any resource.

D. All decisions of the commission shall be in writing and shall state the findings of the Commission, its recommendations, and the reasons therefore.

E. Expiration of a Certificate of Appropriateness: a certificate of appropriateness shall expire eighteen (18) months after its issuance EXCEPT THAT a certificate shall expire if work has not begun within six (6) months of its issuance. When a certificate has expired, an applicant may seek a new certificate.

F. Resubmitting of Applications: Twelve months after denial of an application for a certificate of appropriateness, the application may be resubmitted without change. A changed application may be resubmitted at any time.

Section 7. CRITERIA FOR ISSUANCE OF CERTIFICATES OF APPROPRIATENESS

The Commission shall use the Secretary of the Interior's Standards for Rehabilitation, as the basics for Design Guidelines created for each district or landmark and the following criteria in granting or denying certificates of appropriateness:

A. General Factors:

- 1. Architectural design of existing building, structure, or appurtenance and proposed alteration**
- 2. Historical significance of the resource**
- 3. Materials composing the resource**
- 4. Size of the resource**
- 5. The relationship of the above factors to, and their effect upon the immediate surroundings and, if within a preservation district, upon the district as a whole and its architectural and historical character and integrity**

B. New construction:

- 1. The following aspects of new construction shall be visually compatible with the buildings and environment with which the new construction is visually related, including but not limited to: the height, the gross volume, the proportion between width and height of the facade(s), the proportions and relationship**

between doors and windows, the rhythm of solids to voids created by openings in the facade, the materials, the textures, the patterns, the trims, and the design of the roof.

2. Existing rhythm created by existing building masses and spaces between them shall be preserved.

3. The landscape plan shall be compatible with the resource, and it shall be visually compatible with the environment with which it is visually related. Landscaping shall also not prove detrimental to the fabric of a resource, or adjacent public or private improvements like sidewalks and walls.

4. No specific architectural style shall be required.

C. Exterior alteration:

1. All exterior alterations to a building, structure, object, site, or landscape feature shall be compatible with the resource itself and other resources with which it is related, as is provided in Section 7, A and B, and the design, over time, of a building, structure, object, or landscape feature shall be considered in applying these standards.

2. Exterior alterations shall not adversely affect the architectural character or historic quality of a landmark and shall not destroy the significance of landmark sites.

D. In considering an application for the demolition of a landmark or a resource within a preservation district; the following shall be considered:

1. The Commission shall consider the individual architectural, cultural, and/or historical significance of the resource.

2. The Commission shall consider the importance or contribution of the resource to the architectural character of the district.

3. The Commission shall consider the importance or contribution of the resource to neighboring property values.

4. The Commission shall consider the difficulty or impossibility of reproducing such a resource because of its texture, design, material, or detail.

5. Following recommendation for approval of demolition, the applicant must seek approval of replacement plans, if any, as set forth in Section 7, B, prior to receiving a demolition permit and other permits. Replacement plans for this purpose shall include, but shall not be restricted to project concept, preliminary elevations and site plans, and completed working drawings for at least the

foundation plan which will enable the applicant to receive a permit for foundation construction.

6. Applicants that have received a recommendation for demolition shall be required to have a demolition permit as well as certificate of appropriateness for the new construction. Permits for demolition and construction shall not be issued simultaneously.

7. When the commission recommends approval of demolition of a resource, a permit shall not be issued until all plans for the site have received approval from all appropriate city boards, commissions, departments, and agencies.

Section 8. PROCEDURES FOR ISSUANCE OF CERTIFICATES OF APPROPRIATENESS, REVIEW PROCESS, AND FEES

Anyone desiring to take action requiring a certificate of appropriateness concerning a resource for which a permit, variance, or other authorization from the city building official is also required, shall make application therefore in the form and manner required by the applicable code section or ordinance. Anyone desiring to take any action requiring a certificate of appropriateness shall submit an application for such certificate of appropriateness with the city building official. Applications for certificates of appropriateness shall be accompanied by a fee of fifty (50) dollars payable to the City of Cleveland, Tennessee. After receipt of any such application, the city building official shall be assured that the application is proper and complete. No building permit shall be issued by the city building official which affects a resource without a certificate of appropriateness. In the event that a building permit need not be obtained for construction, alteration, demolition, or relocation of any resource, a certificate of appropriateness is still required before such work can be undertaken. Such application shall be reviewed in accordance with the following procedure:

A. When any such application is filed, the city building official shall immediately notify the Commission chairman, vice-chairman, or staff of the application having been filed.

B. The chairman or vice-chairman shall set the agenda for the regular meeting date or set a time and date, which shall be not later than thirty (30) days after the filing of the application for a hearing by the Commission, and the city building official shall be so informed.

C. The applicant shall, upon request, have the right to a preliminary hearing by the commission for the purpose of making any changes or adjustments which might be more consistent with the Commission's standards.

D. Not later than three (3) days before the date set for the said hearing, the city official designated by the City Manager shall provide written or verbal notice thereof to the applicant and to all members of the Commission.

E. Notice of the time and place of said hearing shall be given by publication in a newspaper having general circulation in the city at least three (3) days before such hearing and by posting such notice on the bulletin board in the lobby of city hall.

F. At such hearing, the applicant for a certificate of appropriateness shall have the right to present any relevant evidence in support of the application. Likewise, the City shall have the right to present any additional relevant evidence in support of the application.

G. The Commission shall have the right to conditional approval.

H. Either at the meeting or within not more than fifteen (15) days after the hearing on an application, the Commission shall act upon it, either approving, denying, on deferring action until the next meeting of the Commission, giving consideration to the factors set forth in Section 7 hereof. Evidence of approval of the application shall be by certificate of appropriateness issued by the commission and, whatever its decision, notice in writing shall be given to the applicant and the city building official.

I. The issuance of a certificate of appropriateness shall not relieve an applicant for a building permit, special use permit, variance, or other authorization from compliance with any other requirement or provision of the laws of the City concerning zoning, construction repair, or demolition.

Section 9. ECONOMIC HARDSHIP

No decision of the Commission shall cause undue economic hardship. If an applicant requests, a hearing on economic hardship shall be conducted after a certificate of appropriateness has been denied.

Section 10. APPEALS

The applicant who desires to appeal a decision by the Commission shall file an appeal with the circuit court (after the determination of the issue by the commission) in the manner provided by law.

Section 11. MINIMUM MAINTENANCE REQUIREMENTS

In order to insure the protective maintenance of resources, the exterior features of such properties shall be maintained to meet the requirements of the City's minimum housing code and the City's building code.

Section 12. PUBLIC SAFETY EXCLUSION

None of the provisions of this ordinance shall be construed to prevent any action of construction, alteration, or demolition necessary to correct or abate the unsafe or dangerous condition of any resource, or part thereof, where such condition has been declared unsafe or dangerous by the city building official or the fire department and where the proposed actions have been declared necessary by such authorities to correct the said condition provided, however, that only such work as is necessary to correct the unsafe or dangerous condition may be performed pursuant to this section. In the event any resource designated as a landmark or located within a preservation district shall be damaged by fire or other calamity to such an extent that it cannot be repaired and restored, it may be removed in conformity with normal permit procedures and applicable laws, provided that:

A. The city building official concurs with the property owner that the resource cannot be repaired and restored and so notifies the Commission in writing.

B. The Commission, if in doubt after receiving such notification from the City building official, shall be allowed time to seek outside professional expertise from the State Historic Preservation Office and/or an independent structural engineer before issuing a certificate of appropriateness for the demolition. The Commission may indicate in writing by letter to the city building official that it will require a time period of up to thirty days for this purpose, and, upon such notification to the city building official, this section shall be suspended until the expiration of such a delay period.

Section 13. ENFORCEMENT AND PENALTIES

The Historic Preservation commission shall be enforced by the city building official, who shall have the right to enter upon any premises necessary to carry out his duties in this enforcement. Any person violating any provision of this ordinance shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two (\$2.00) nor more than fifty dollars (\$50.00) for each offense. Each day such violation shall continue shall constitute a separate offense.

Section 14. APPROPRIATIONS

The City Council may make appropriations on behalf of the Commission as necessary for the expenses of the operation of the Commission and may make additional amounts available as necessary for the acquisition, restoration, preservation, operation, and management of historic properties.

Section 15. DISQUALIFICATION OF MEMBERS BY CONFLICT OF INTEREST

Because the City may possess relatively few residents with experience in the individual fields of history, architecture, architectural history, archaeology, urban planning, law, or real estate, and in order not to impair such residents from practicing their trade for hire, members of the Commission are allowed to contract their services to an applicant for a certificate of appropriateness, and, when doing so must expressly disqualify themselves from the Commission during all discussions and voting for that application. In such cases, the City shall, upon the request of the chairman of the Commission or the vice-chairman in his stead, appoint a substitute member who is qualified in the same field as the disqualified member and who will serve for that particular case only. If no qualified resident of the city is able to substitute for the disqualified member, the city may appoint, in this case only, a qualified substitute who is a resident. If any member of the Commission must be disqualified due to a conflict of interest on a regular and continuing basis, the chairman or the vice-chairman, in his stead, shall encourage the member to resign his Commission seat. Failing this resignation, and if the Commission member continues to enter into conflict of interest situations with the Commission the chairman or vice-chairman of the commission shall encourage the City to replace the member. Likewise, any member of the Commission who has an interest in the property in question or in property within three hundred feet of such a property, or who is employed with a firm that has been hired to aid the applicant in any matter whatsoever, or who has any proprietary, tenancy, or personal interest in a matter to be considered by the Commission shall be disqualified from participating in the consideration of any request for a certificate of appropriateness involving such a property. In such cases, a qualified substitute shall be appointed as provided above.

Section 16. CONFLICTS

All other ordinances of the City of Cleveland that are in conflict with this ordinance are hereby repealed to the extent that is necessary to eliminate the conflict.

Section 17. SEVERABILITY

The requirements and provisions of this ordinance are separable. If any article, section, paragraph, sentence, or portion thereof, be declared by any court of competent jurisdiction to be void, invalid, or inoperative, the decision of the court shall not affect the validity or applicability of the ordinance as a whole or of any part thereof other than the part held void, invalid, or otherwise inoperative.

Section 18. EFFECTIVE DATE

This ordinance shall become effective 30 days after its passage on second and final reading.

Approved as to form:

L. Harlen Painter, City Attorney

Tom Rowland, Mayor

Janice S. Casteel, City Clerk