



## Request for City Council Committee Action from the Department of Community Planning & Economic Development

Date: October 9, 2014

To: Council Member Lisa Bender, Chair of Zoning and Planning Committee

Referral to: Zoning and Planning Committee

**Subject:** Referral from the August 5, 2014 Heritage Preservation Commission Meeting

**Recommendation:** See staff report from the Heritage Preservation Commission

**Prepared by:** John Smoley, Ph.D., Senior City Planner (612-673-2830)

**Approved by:** Jason Wittenberg, Manager, CPED – Land Use, Design and Preservation

**Presenter in Committee:** John Smoley, Ph.D., Senior City Planner (612-673-2830)

### **Community Impact (use any categories that apply)**

Other: See staff report from the Heritage Preservation Commission

### **Background**

The attached report summarizes the actions taken at the Heritage Preservation Commission meeting held on August 5, 2014. The findings and recommendations are respectfully submitted for the consideration of your Committee.

### **Report of the Heritage Preservation Commission of the City of Minneapolis**

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#### **1. Proposed Conservation District Ordinance ([John Smoley](#))**

**This item was continued from the July 22 HPC meeting.**

An amendment to the Heritage Preservation Regulations to create the legal framework for identifying and protecting conservation districts.

**Action:** The Heritage Preservation Commission adopted staff findings and **adopted** the proposed amendment to Minneapolis Code of Ordinances (MCO) chapter 599, Heritage Preservation Regulations, as indicated in the attached ordinance, with the following amendments (with proposed additions underlined and proposed deletions stricken out):

**599.730 Initiation of conservation district plan.** Application for initiation of a conservation district plan shall be submitted on an application from approved by the planning director and shall be accompanied by evidence documenting the consent of owners who represent one-third (1/3) or more of all tax parcels, excluding streets and alleys, within the proposed

conservation district boundary. The commission shall review all complete applications. If the commission determines that the subject district appears to meet the criteria for establishment contained in section 599.720, the commission may direct the planning director to prepare or cause to be prepared design guidelines. Complete applications will be acted upon in the order that they are received, with no more than one application per city sector (north, east, downtown, south, and southwest) processed simultaneously.

**599.740 Design guidelines.** (a) In general. ~~After receipt of a complete conservation district plan application,~~ Conservation district design guidelines shall be drafted by the planning director with the active participation of property owners in the proposed district.

**Aye:** Bengtson, Harnett, Hunter Weir, Lackovic, Stade, Vork

**Nay:** Haecker, Faucher

**Absent:** L. Mack and R. Mack

**Motion passed**

**Supporting Material Attached**

- A. Proposed Amendment to Minneapolis Code of Ordinances (MCO) Chapter 599, Heritage Preservation Regulations
- B. Heritage Preservation Commission Staff Report
- C. Proposed Application Form Details
- D. Letter from the State Historic Preservation Office
- E. Public Comment

**AN ORDINANCE  
of the  
CITY OF  
MINNEAPOLIS**

**By Gordon**

**Amending Title 23, Chapter 599 of the Minneapolis Code of Ordinances relating to Heritage Preservation: Heritage Preservation Regulations.**

The City Council of the City of Minneapolis do ordain as follows:

Section 1. That Section 599.30 of the above-entitled ordinance be amended to read as follows:

**599.30. Purpose.** This chapter is adopted to promote the recognition, preservation, protection and reuse of landmarks, historic districts, conservation districts, and historic resources; to promote the economic growth and general welfare of the city; to further educational and cultural enrichment; to implement the policies of the comprehensive plan, and to provide for the administration of this title including the powers and duties of officials and bodies charged with such administration, the standards for required approvals and the procedures for its enforcement.

Section 2. That Section 599.50 of the above-entitled ordinance be amended to read as follows:

**599.50. Scope of regulations.** (a) *In general.* All landmarks, ~~and~~ historic districts, conservation districts, all nominated properties under interim protection and all historic resources shall be subject to all applicable requirements of this chapter.

(b) *Emergency exception.* Nothing in this chapter shall prevent the emergency alteration or other modification necessary to correct the unsafe or dangerous condition of any structure or other feature, where the building official certifies to the planning director that such condition has been declared unsafe or dangerous and the proposed measures have been determined necessary to correct the condition without delay. However, only such work that is necessary to correct the unsafe or dangerous condition may be performed. The extent of such work shall be determined in consultation with the planning director who may recommend to the building official that the salvage and preservation of specified building materials, architectural details, ornaments, fixtures and similar items be made a condition of such emergency alteration or modification. The planning director shall report to the commission not less than once per month all emergency alterations or other modifications certified to the planning director in the preceding month, the reasons for such emergency, and the nature and extent of the alteration or modification performed.

Section 3. That Section 599.90 of the above-entitled ordinance be amended to read as follows:

**599.90. Compliance with conditions of approval.** (a) *In general.* All approvals made pursuant to this chapter shall remain in effect as long as all of the conditions and guarantees of such approval are observed. Failure to comply with such conditions and guarantees shall constitute a violation of this chapter and may result in termination of the approval.

(b) *Compliance with other regulations.* All approvals made pursuant to this chapter shall be subject to all other applicable city, local, regional, state and federal regulations. If a portion of this ordinance conflicts with any other provision of the Minneapolis Code of Ordinances or with any other provision of law, the more restrictive provision shall apply.

Section 4. That Section 599.110 of the above-entitled ordinance be amended to read as follows:

**599.110. Definitions.** Unless otherwise expressly stated, or unless the context clearly indicates a different meaning, the words and phrases in the following list of definitions shall, for the purposes of this chapter, have the meanings indicated. All words and phrases not defined shall have their common meaning.

*Alteration.* Any construction, addition, demolition, relocation or material change affecting the exterior of a landmark, property in an historic district or nominated property under interim protection, or the designated or nominated interior of any building, that the planning director has determined is not a minor alteration. Examples may include, but are not limited to, the following:

- (1) Destruction of any structure, in whole or in part.
- (2) Addition to a structure or moving the location of a structure.
- (3) Addition of a structure.
- (4) Changes to or replacement of architectural details or visual characteristics such as doors, door frames and openings, windows, window frames and openings, siding, shutters, railings, walls, steps, porches, balconies, or other ornamentation.
- (5) Changes to surface materials, color and texture, including painting an unpainted masonry surface such as brick, concrete, stone or stucco, or sandblasting or other abrasive cleaning of a masonry surface.
- (6) Changes to or replacement of roofing materials.
- (7) Addition or removal of signs and awnings, or changes to or replacement of existing signs and awnings.
- (8) Changes to or replacement of landscaping or natural features that are inconsistent with the historic qualities of the property.
- (9) Disturbance of archaeological sites or areas.
- (10) Changes deemed to require a certificate of appropriateness by design guidelines.

*Block.* A tract of land bounded by streets, or by a combination of streets, railroad rights-of-way, shorelines, waterways or boundary lines of the corporate limits of the city.

*Block face.* The half block area of property facing a street. Corner properties shall be considered part of two block faces, one (1) for each of the two intersecting streets.

*Building official.* The individual designated by the director of the department of community planning and economic development to serve as the city's building official pursuant to Minnesota Statutes, Section 326B.133.

*Certificate of appropriateness.* A certificate issued by the planning director evidencing the review and authorization by the commission of plans for alteration of a landmark, property in an historic

district or nominated property under interim protection.

*Certificate of no change.* A certificate issued by the planning director evidencing the review and authorization by the planning director of plans for minor alteration of a landmark, property in an historic district or nominated property under interim protection.

*City council.* The City Council of the City of Minneapolis.

*Commission.* The ~~Heritage Preservation Commission~~ heritage preservation commission of the City of Minneapolis.

*Conservation certificate.* A certificate issued by the planning director evidencing the review and authorization by the planning director of plans for changes to a property in a conservation district.

*Conservation district.* All property within a defined area established to perpetuate and proliferate the visual character evident in its notable architecture, development pattern, scale, engineering, or landscape design.

*Conservation district plan.* A report prepared to document the visual character evident in a defined area, for the purposes of identifying whether its notable architecture, development pattern, scale, engineering, or landscape design warrant protection as a conservation district, and which includes design guidelines created to guide development in the district.

*Cultural resource.* An item, fixture, property, collection of properties, or place that is believed to have historical, cultural, architectural, archaeological or engineering integrity and significance.

*Demolition.* The act of moving or razing a building including the removal or enclosure of sixty (60) percent or more of the structure.

*Designation study.* A study and report prepared to document the historical, cultural, architectural, archaeological or engineering significance of a property.

*Design guidelines.* Specific design criteria adopted by the commission for landmarks, ~~and~~ historic districts, and conservation districts to be used in reviewing applications for certificates of appropriateness, ~~and~~ certificates of no change, and conservation certificates.

*Destruction.* The removal, damage or enclosure of architectural, mechanical or landscape features, including, but not limited to, the removal of the primary façade(s), character defining façade(s), or the removal of the roof of the structure for the purpose of raising the overall height of the building or roof, that may have an adverse effect on the historical integrity and significance of a property.

*Historic district.* All property within a defined area designated as an historic district by the city council because of the historical, cultural, architectural, archaeological or engineering significance of the district, or designated as an historic district by state law.

*Historic resource.* A property that is believed to have historical, cultural, architectural, archaeological or engineering significance and to meet at least one of the criteria for designation as a landmark or historic district ~~as provided in this chapter.~~

*Historic variance.* Departure from the literal requirements of the zoning regulations governing a

landmark or property in an historic district where strict adherence would cause undue hardship due to special conditions or circumstances unique to a site.

*Integrity.* The authenticity of a landmark, historic district, nominated property under interim protection or historic resource evidenced by its location, design, setting, materials, workmanship, feeling or association.

*Interim protection.* Protection from destruction or alteration given to a nominated property following the commission's decision to commence a designation study. Interim protection does not apply to conservation districts unless they have been nominated as historic districts or landmarks.

*Landmark.* Any property, or any interior of a building, designated as a landmark by the city council because of its historical, cultural, architectural, archaeological or engineering significance.

*Minor alteration.* An alteration that the planning director has determined does not affect the integrity of a landmark, historic district or nominated property under interim protection. Examples may include, but are not limited to, changes that the planning director has determined are not significant, and changes that reproduce the existing design and that are executed with the same type of materials and methods as existing if available, or with visually similar materials if the original materials are not available.

*Nominated property.* A property that has been nominated for designation as a landmark or historic district, pursuant to the requirements of this chapter.

*Notability.* The importance of a conservation district evidenced by embodiment of the distinctive characteristics of an architectural or engineering type or style, or method of construction; its exemplification of a landscape design or development pattern distinguished by innovation, rarity, uniqueness or quality of design or detail; or scale that creates a cohesive identifiable setting.

*Notable.* A level of importance lower than that required for designation as a landmark or historic district but which is still important to the community's heritage.

*Period of significance.* The span of time that properties attain the characteristics that qualify them for designation.

*Planning director.* The director of the representative department of community planning and economic development or their designee.

~~*Potential Historic District*~~ *historic district.* A collection of ~~property~~ properties that ~~is~~ are believed to have historical, cultural, architectural, archaeological or engineering significance and to meet at least one (1) of the criteria for designation as an historic district ~~as provided in this chapter.~~

*Property.* Any land, building, structure or object, surface or subsurface area, natural or landscape feature.

*Receiving site.* The zoning lot on which transferred floor area is to be developed, pursuant to the requirements of this chapter.

*Sending site.* The zoning lot containing a landmark or located within an historic district, and from which undeveloped floor area is to be transferred, pursuant to the requirements of this chapter.

*Significance.* The ~~authenticity~~ importance of a landmark, historic district, nominated property under interim protection or historic resource evidenced by association with significant events or with periods that exemplify broad patterns of cultural, political, economic or social history; association with the lives of significant persons or groups; because it contains or is associated with distinctive elements of city or neighborhood identity; embodiment of the distinctive characteristics of an architectural or engineering type or style, or method of construction; its exemplification of a landscape design or development pattern distinguished by innovation, rarity, uniqueness or quality of design or detail; exemplification as a work of master builders, engineers, designers, artists, craftsmen or architects; because it has yielded, or may be likely to yield, information important in prehistory or history.

*Structure.* Anything constructed or erected with a more or less fixed location on or in the ground or in or over a body of water. A structure shall include, but not be limited to, buildings, fences, walls, signs, canopies, decks, patios, antennae, piers, bridges, docks and any objects or things permanently attached to the structure.

*The Secretary of the Interior's Standards.* The most recent standards for the treatment of historic properties established by the National Park Service, United States Department of the Interior.

*Transfer of development rights.* The conveyance of undeveloped floor area from one zoning lot to another zoning lot, pursuant to the requirements of this chapter.

*Zoning administrator.* The individual designated by the director of the department of community planning and economic development to serve as the city's zoning administrator or their authorized representative.

Section 5. That Section 599.120 of the above-entitled ordinance be amended to read as follows:

**599.120. Heritage preservation commission.** (a) *Establishment.* The heritage preservation commission is established pursuant to the authority granted by Minnesota Statutes sections 138.71 through 138.75, Minnesota Historic District Act of 1971, and Minnesota Statutes section 471.193, Municipal Heritage Preservation. The commission shall perform its duties and exercise its powers as provided therein.

(b) *Jurisdiction and authority.* The commission shall have the following powers and duties in connection with the administration of this chapter:

- (1) To interpret and administer the provisions of this chapter.
- (2) To adopt and administer rules and regulations relating to the administration of this chapter.
- (3) To direct the commencement of designation studies, ~~as authorized by this chapter.~~
- (4) To hear and make recommendations to the city council on the proposed designation of landmarks and historic districts.
- (5) To hear and decide applications for certificate of appropriateness.
- (6) To hear and decide applications for demolition of historic resources.

- (7) To hear and decide appeals from decisions of the planning director, building official or other official, ~~as authorized by this chapter.~~
- (8) To hear and make recommendations to the city council on proposed historic variances.
- (9) To hear and make recommendations to the city council on proposed transfers of development rights.
- (10) To adopt design guidelines for landmarks, ~~and historic districts,~~ and conservation districts, and to revise design guidelines as necessary.
- ~~(11) To review and make recommendations to the city council on proposed amendments to the zoning code.~~
- ~~(12) 11) To make recommendations to the city council on proposed amendments to this chapter.~~
- ~~(13) 12) To inform and educate the citizens of Minneapolis concerning the historical, cultural, architectural, archaeological or engineering heritage of the city.~~
- (14) 13) To seek and identify incentives to encourage both public and private investments in preserving the city's landmarks, historic districts and historic resources.
- ~~(15) 14) To make recommendations to the city council that designated properties or historic resources be acquired by purchase, gift or by eminent domain.~~
- ~~(16) 15) To take such other actions as are reasonable and necessary for the administration and enforcement of this chapter.~~
- (16) To review and make recommendations to the city council on proposed conservation district establishment, amendment, and repeal.
- (17) To hear and decide applications for conservation certificate public hearing reviews.

(c) *Commission membership.* The commission shall consist of ten (10) members, each of whom shall reside in Minneapolis. Members shall be persons with demonstrated interest, knowledge, ability or expertise in historic preservation, neighborhood revitalization, archaeology, urban planning, history or architecture. One (1) shall be the representative of the mayor. If available, at least two (2) shall be registered architects, at least one (1) shall be a licensed real estate agent or appraiser, at least one (1) shall reside in or own a landmark or property in an historic district, and if available at least one (1) shall be a member of the Hennepin County ~~historical society~~ History Museum. All appointments, except the mayor's representative, shall be made by the city council and all appointments shall follow the open appointments process contained in section 14.180 of the Minneapolis Code of Ordinances, and as provided in the rules and procedures of the commission. Applicants for appointment to the commission shall be interviewed by a committee of the planning director and one (1) member of the commission who shall recommend applicants ~~to the zoning and planning committee~~ of the city council. Members shall serve for a term of three (3) years, and shall be appointed as the terms of the present members of the commission expire. No member shall serve more than three (3) full terms consecutively. Any member may reapply for appointment after missing one (1) full term.

(d) *Public hearings.* The commission shall schedule public hearings not less than once per month. Such public hearings shall be noticed and conducted pursuant to the provisions of section 599.170.

(e) *Rules and procedures.* The commission shall adopt policies and procedures for the conduct of its meetings, the processing of applications, appointments to the commission and any other purposes considered necessary for its proper functioning, and shall select or appoint officers as it deems necessary. Such policies and procedures shall be consistent with this chapter.

(f) *Compensation.* Members of the commission shall be paid at the rate of fifty dollars (\$50.00) for each public meeting attended with a limitation of four (4) meetings per month.

Section 6. That Section 599.130 of the above-entitled ordinance be amended to read as follows:

**599.130. Planning director.** The planning director shall assist the commission in discharging its duties and shall have the following powers and duties in connection with the administration of this chapter:

- (1) To serve as staff to the heritage preservation commission.
- (2) To receive, review and process all complete applications for approvals, ~~as provided in this chapter.~~
- (3) To perform the administrative review of certificates of no change.
- (4) To perform the administrative review of demolition permits.
- ~~(5) To receive, review and process all complete nomination applications, as provided in this chapter~~
- ~~(6 5)~~ To prepare or cause to be prepared designation studies, conservation district plans, and design guidelines.
- ~~(7 6)~~ To identify historic resources.
- ~~(8 7)~~ To establish and administer rules and regulations relating to the administration of this chapter, including application forms.
- ~~(9 8)~~ To review and make recommendations on proposed amendments to this chapter.
- ~~(10 9)~~ To maintain all records which are a part of the administration of this chapter.
- ~~(11 10)~~ To take such other actions as reasonable and necessary for the administration and enforcement of this chapter.
- (11) To receive, review and process all complete applications for conservation district plans.
- (12) To perform the administrative review of conservation certificates.

Section 7. That Section 599.150 of the above-entitled ordinance be amended to read as follows:

**599.150. City council.** The city council shall have the following powers and duties in connection with the administration of this chapter:

- (1) To initiate and adopt amendments to this chapter.
- (2) To hear and decide appeals from decisions of the heritage preservation commission,~~as authorized by this chapter.~~
- (3) To designate landmarks and historic districts,~~as authorized by this chapter.~~
- (4) To approve historic variances,~~as authorized by this chapter.~~
- (5) To approve the transfer of development rights,~~as authorized by this chapter.~~
- (6) To take such other actions not delegated to other bodies that may be desirable and necessary to implement the provisions of this chapter.
- (7) To establish, amend, or repeal conservation districts.

Section 8. That Section 599.160 of the above-entitled ordinance be amended to read as follows:

**599.160. Application procedures.** (a) *In general.* All applications shall be processed by the planning director, who shall make a preliminary investigation, in accordance with the procedures set forth in this chapter. Any person having a legal or equitable interest in a property may file an application on a form approved by the planning director,~~as provided in this chapter.~~

(b) *Determination of completeness of application.* The planning director shall review all applications and determine whether such applications are complete. Applications shall not be accepted as complete until the applicant has complied with all of the following:

- (1) Submittal of all required application forms relating to the application, including all additional applications, as required in sections 599.120
- (2) Submittal of all supporting information required by city ordinance, the planning director, the application forms, or by law, including a list of all owners of record of property located in whole or in part within three hundred fifty (350) feet of the boundaries of the subject property, as identified in the records of the Hennepin County Department of Property Taxation.
- (3) Submittal of all applicable fees.
- (4) Submittal of all applicable environmental reviews.
- (5) Submittal of progress towards approval of all required state and federal reviews and permits where applicable. The planning director may, for good cause require application to provide written statement from the state or federal authority in whose review the work or permits are under consideration.
- (6) For all preservation applications requiring a public hearing as set forth in this preservation ordinance, except appeals of decisions of the heritage preservation commission, a

pre-application meeting with city staff during which the appropriate application types, procedures, requirements and applicable preservation ordinance provisions are reviewed and explained.

(7) For all preservation applications requiring a public hearing as set forth in this preservation ordinance, except appeals of decisions of the heritage preservation commission, submittal of evidence that notification of the application has been mailed or delivered to the ward council office and the neighborhood group(s) for the area in which the property is located. The neighborhood group(s) to be notified are those organizations that appear on the list maintained by the planning director for this purpose. The notification shall include the following information: a description of the project; the preservation approvals that the applicant is aware are needed for the project; the address of the property for which a preservation application is sought; and the applicant's name, address, telephone number, and e-mail address, if available. Where the property for which preservation approval is sought is located on a public street that acts as a boundary between two (2) neighborhoods, the above information shall also be provided to the neighborhood group(s) representing the adjacent area(s).

(c) *Incomplete applications.* If after the application has been accepted, the planning director determines that an application is not complete, the planning director shall notify the applicant in writing within fifteen (15) business days of receipt, specifying any deficiencies of the application, including any additional information that must be supplied, and that no further action shall be taken by the city on the application until the deficiencies are corrected.

(1) *Remedy of deficiencies.* If the applicant fails to correct the specified deficiencies within thirty (30) calendar days of the notification of deficiency, the application shall be deemed withdrawn and will be returned to the applicant.

(2) *Extensions of time.* Upon written request by the applicant, the planning director may, for good cause shown and without any notice or hearing, grant extensions of any time limit imposed on an applicant by these application procedures.

(d) *Noncomplying properties.* No new application for the same property shall be accepted or deemed complete, if at the time of application such property is not in compliance with the requirements of this chapter or with the requirements of a previous approval granted pursuant to this chapter. Upon receipt of such an application, the planning director shall inspect the property and provide written notice to the applicant indicating the nature of the violation and the action necessary to correct it. This section shall not prevent an application to correct an existing condition that is not in compliance with the requirements of this chapter.

Section 9. That Section 599.175 of the above-entitled ordinance be amended to read as follows:

**599.175. Fees.** (a) *Established.* In recognition of the cost of services performed and work and materials furnished, persons who desire to avail themselves of the privileges granted them under the heritage preservation ordinance shall pay fees in the amount listed in Table 599-1, Fees.

Table 599-1 Fees

TABLE INSET:

Application Type	Fee(Dollars)
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Appeal of the ruling of the heritage preservation commission	\$350.00
Appeal of the ruling of the zoning administrator, planning director, or other official involved in the administration or the enforcement of this preservation ordinance	350.00
Certificate of no change	0.00
Certificate of appropriateness <u>Alteration</u>	
0--5,000 sf of lot area	250.00
5,001--9,999 sf of lot area	450.00
10,000--43,559 sf of lot area	750.00
43,560 sf of lot area or more	950.00
Certificate of appropriateness <u>n</u> New construction	
0--9,999 sf of lot area	450.00
10,000--43,559 sf of lot area	750.00
43,560 sf of lot area or more	950.00
<u>Conservation certificate – administrative review</u>	<u>0.00</u>
<u>Conservation certificate – public hearing review</u> <u>alteration</u>	
<u>0--5,000 sf of lot area</u>	<u>250.00</u>
<u>5,001--9,999 sf of lot area</u>	<u>450.00</u>
<u>10,000--43,559 sf of lot area</u>	<u>750.00</u>
<u>43,560 sf of lot area or more</u>	<u>950.00</u>
<u>Conservation certificate – public hearing review</u> <u>new construction</u>	
<u>0--5,000 sf of lot area</u>	<u>250.00</u>
<u>5,001--9,999 sf of lot area</u>	<u>450.00</u>
<u>10,000--43,559 sf of lot area</u>	<u>750.00</u>
<u>43,560 sf of lot area or more</u>	<u>950.00</u>
<u>Conservation district plan</u>	<u>350.00</u>
<u>Demolition of historic resource</u>	<u>350.00</u>
<u>Historic review letter</u>	<u>150.00</u>
<u>Historic variance</u>	<u>250.00</u>
<u>Transfer of development rights</u>	<u>350.00</u>

(b) *Postage and publication.* For applications requiring notice of a public hearing to affected property owners, the applicant shall pay the cost of first class postage based on the number of property owners to be notified. In addition, for applications requiring publication in a newspaper of general circulation, the applicant shall pay a fee of twenty-five dollars (\$25.00).

(c) *Continuance.* After notification of a public hearing has taken place, a request by the applicant to continue an application to a subsequent public hearing of the heritage preservation commission shall be charged a fee totaling one hundred fifty dollars (\$150.00) when such request is granted. The fee shall be paid prior to the subsequent public hearing.

(d) *Forms and payment of fees.* The zoning administrator shall provide applicants with forms, designating therein the amount of fees to be paid. All fees shall be payable to the city finance officer.

(e) *Refund of fees.*

(1) *Incomplete applications.* If an applicant fails to provide a complete application and the application is withdrawn by the applicant or is deemed withdrawn and returned pursuant to [section 599.160](#)(b), the city shall retain the first one hundred dollars (\$100.00) of the total fees paid for the project. Any sum paid over the amount to be retained shall be refunded.

(2) *Complete applications.* If an applicant withdraws a complete application before the scheduled public hearing, or in the case of an application for administrative review, before the application is decided by the planning director or zoning administrator, the city shall retain the first one hundred dollars (\$100.00) of the total fees paid for the project, or such proportion of the fee paid as determined by the costs to the city to process the application up to the time it was withdrawn compared to the costs to completely process the application, whichever is greater. Any sum paid over the amount to be retained shall be refunded. If the scheduled public hearing is held, or if the application is decided by the planning director or the zoning administrator, no fees shall be refunded, whether or not the application is withdrawn, approved or denied.

(3) *Exception.* The city shall refund the total amount of the fees paid for any application that was accepted by the planning director or zoning administrator in error.

Section 10. That Section 599.190 of the above-entitled ordinance be amended to read as follows:

**599.190. Appeals of decisions of the heritage preservation commission.** All decisions of the heritage preservation commission, except decisions to commence designation studies pursuant to a nomination of property, designations, and transfers of development rights, shall be final subject to appeal to the city council and the right of subsequent judicial review. Appeals may be initiated by any affected person by filing the appeal with the planning director on a form approved by the planning director and shall be accompanied by all required supporting information, as specified in section 599.160, and fees as specified in section 599.175. All appeals shall be filed within ten (10) calendar days of the date of decision by the commission. No action shall be taken by any person to alter the property in any manner until expiration of the ten (10) day appeal period and, if an appeal is filed pursuant to this section, until after a final decision has been made by the city council. Not less than ten (10) days before the public hearing to be held by ~~the zoning and planning committee~~ of the city council to consider the appeal, the planning director shall mail notice of the hearing to the property owner and the surrounding property owners who were sent notice of the public hearing before the commission. The failure to give mailed notice to individual property owners or defects in the notice shall not invalidate the proceedings, provided a bona fide attempt to comply with this section has been made.

Section 11. That Section 599.240 of the above-entitled ordinance be amended to read as follows:

**599.240. Interim protection.** (a) *Purpose.* Interim protection is established to protect a nominated property from destruction or inappropriate alteration during the designation process.

(b) *Effective date.* Interim protection shall be in effect from the date of the commission's decision to commence a designation study of a nominated property until the city council makes a decision

regarding the designation of the property, or for ~~twelve (12) months~~ one (1) year, whichever comes first. Interim protection may be extended for such additional periods as the commission may deem appropriate and necessary to protect the designation process, not exceeding a total ~~additional~~ period of eighteen (18) months. The commission shall hold a public hearing on a proposed extension of interim protection as provided in section 599.170.

(c) *Scope of restrictions.* During the interim protection period, no alteration or minor alteration of a nominated property shall be allowed except where authorized by a certificate of appropriateness or a certificate of no change, ~~as provided in this chapter.~~

Section 12. That Section 599.250 of the above-entitled ordinance be amended to read as follows:

**599.250. State historic preservation office review.** ~~The planning director shall submit all proposed designations to the state historic preservation officer for review and comment within sixty (60) days. The planning director shall submit all proposed designations to the state historic preservation officer for review and comment. The state historic preservation officer shall have sixty (60) days from said date of submittal to provide comments to the planning director.~~

Section 13. That Section 599.270 of the above-entitled ordinance be amended to read as follows:

**599.270. Designation hearing.** Following completion of the designation study the commission shall hold a public hearing to consider the proposed designation, as provided in section 599.170. ~~Any person having a legal or equitable interest in a nominated property shall be allowed reasonable opportunity to give testimony or present evidence concerning the proposed designation.~~

Section 14. That Section 599.280 of the above-entitled ordinance be amended to read as follows:

**599.280. Commission recommendation.** Following the public hearing, the commission shall make findings with respect to the proposed designation and shall submit the same together with its recommendation to ~~the zoning and planning committee~~ of the city council. In making its findings and recommendation, the commission shall consider the designation criteria contained in section 599.210, the information contained in the designation study, the state historic preservation officer's comments, the city planning commission's comments, the planning director's report and all testimony and evidence received at the public hearing relating to the designation.

Section 15. That Section 599.300 of the above-entitled ordinance be amended to read as follows:

**599.300. Design guidelines.** The commission shall adopt design guidelines for landmarks and historic districts. Prior to adoption, the planning director shall submit all proposed design guidelines to the state historic preservation officer for review and comment ~~within sixty (60) days.~~ The state historic preservation officer shall have sixty (60) days from said date of submittal to provide comments to the planning director.

Section 16. That Section 599.420 of the above-entitled ordinance be amended to read as follows:

**599.420. Required findings for certificate of no change.** (a) *In general.* Before approving a certificate of no change, and based upon the evidence presented in each application submitted, the planning director shall make findings based upon, but not limited to, the following:

- (1) The minor alteration is compatible with and continues to support the criteria of significance and period of significance for which the landmark or historic district was designated.
- (2) The minor alteration is compatible with and supports the interior and/or exterior designation in which the property was designated.
- (3) The minor alteration is compatible with and will ensure continued integrity of the landmark or historic district for which the district was designated.
- (4) The minor alteration will not materially impair the significance and integrity of the landmark, historic district or nominated property under interim protection as evidenced by the consistency of alterations with the applicable design guidelines adopted by the commission.
- (5) The minor alteration will not materially impair the significance and integrity of the landmark, historic district or nominated property under interim protection as evidenced by the consistency of alterations with the recommendations contained in The Secretary of the Interior's Standards for the Treatment of Historic Properties.
- (6) The certificate of ~~appropriateness~~ no change conforms to all applicable regulations of this preservation ordinance and is consistent with the applicable policies of the comprehensive plan.

(b) *Additional findings for alterations within historic districts.* Before approving a certificate of ~~appropriateness~~ no change that involves alterations to a property within an historic district, the commission shall make findings based upon, but not limited to, the following:

- (1) The minor alteration is compatible with and will ensure continued significance and integrity of all contributing properties in the historic district based on the period of significance for which the district was designated.
- (2) Granting the certificate of no change will be in keeping with the spirit and intent of the ordinance and will not negatively alter the essential character of the historic district.
- (3) The certificate of no change will not be injurious to the significance and integrity of other resources in the historic district and will not impede the normal and orderly preservation of surrounding resources as allowed by regulations in the preservation ordinance.

Section 17. That Section 599.460 of the above-entitled ordinance be amended to read as follows:

**599.460. Review of demolitions.** The planning director shall review all building permit applications that meet the definition ~~for~~ of demolition to determine whether the affected property is an historic resource. If the planning director determines that the property is not an historic resource, the building permit shall be approved. If the planning director determines that the property is an historic resource, the building permit shall not be issued without review and approval by the commission following a public hearing as provided in section 599.170.

Section 18. That Section 599.590 of the above-entitled ordinance be amended to read as follows:

**599.590. Hearing on application for transfer of development rights.** The commission shall hold a public hearing on each complete application for transfer of development rights as provided in section 599.170. Following the public hearing, the commission shall make findings with respect

to the proposed transfer of development rights and shall submit the same together with its recommendation to ~~the zoning and planning committee~~ of the city council.

Section 19. That Section 599.640 of the above-entitled ordinance be amended to read as follows:

**599.640. Purpose.** This article is established to ensure that landmarks, historic districts, conservation districts, and nominated properties under interim protection are properly maintained and protected against deterioration.

Section 20. That Section 599.650 of the above-entitled ordinance be amended to read as follows:

**599.650. Duty to maintain.** All landmarks, properties in historic districts, properties in conservation districts, nominated properties under interim protection and historic resources shall be kept in a state of maintenance and repair as required by Title 5 of the Minneapolis Code of Ordinances, Building Code, and Title 12 of the Minneapolis Code of Ordinances, Housing, and with all other applicable regulations.

Section 21. That Section 599.660 of the above-entitled ordinance be amended to read as follows:

**599.660. Prevention of deterioration.** No person with a legal or equitable interest in a landmark, property in an historic district, property in a conservation district, or nominated property under interim protection, whether occupied or not, shall permit the property to fall into a serious state of disrepair or to remain in a serious state of disrepair so as to materially impair the integrity of the property or historic district.

Section 22. That Section 599.690 of the above-entitled ordinance be amended to read as follows:

**599.690. Procedures upon discovery of violations.** (a) *In general.* The building official, in consultation with the planning director, shall provide a written notice to the property owner or to any person responsible for such violation, identifying the property in question, indicating the nature of the violation, and ordering the action necessary to correct it, including a reasonable time period to remedy the violation. Where the violation involves work being done contrary to the provisions of this chapter, the building official may order the work stopped. No further work shall be undertaken while a stop-work order is in effect.

(b) *Appeals to commission.* Where the violation involves a condition of approval granted pursuant to this chapter, or an unauthorized alteration or minor alteration of a landmark, property in an historic district, property in a conservation district, nominated property under interim protection or historic resource, or other provision of this chapter except a violation of Title 5 of the Minneapolis Code of Ordinances, Building Code, or Title 12 of the Minneapolis Code of Ordinances, Housing, the written notice shall advise that the building official's order may be appealed to the commission in accordance with the provisions of section 599.180.

Section 23. That the above-entitled ordinance be amended by adding thereto a new Article XIII to read as follows:

### ARTICLE XIII. CONSERVATION DISTRICTS

**599.710. Purpose.** This article is established to perpetuate and proliferate the visual character evident in an area's notable architecture, development pattern, scale, engineering, or landscape design by regulating changes to those attributes and adopting design guidelines for properties

within a defined area. As part of the city's comprehensive program of historic preservation, it is the intent of this ordinance to promote the use and conservation of notable properties for the education, inspiration, pleasure, and enrichment of the citizens of this city. Conservation districts are designed to not only maintain but also expand the roster of buildings, structures, sites, and objects that contribute to the visual character of the district. The value of existing and proposed buildings in conservation districts is measured by the extent to which they embody the conservation district's notable visual character.

**599.720. Establishment criteria.** (a) The following criteria shall be considered in determining whether properties are eligible to be in a conservation district:

(1) The district is contiguous and:

a. includes at least one complete block face with two or more principal buildings; or

b. is centered upon the intersection of two or more streets, with all corner lots included in the district.

(2) The majority of properties embody notable attributes common to the district, including the distinctive characteristics of an architectural or engineering type or style, or method of construction; a landscape design or development pattern distinguished by innovation, rarity, uniqueness or quality of design or detail; or scale that creates a cohesive identifiable setting.

**599.730. Initiation of conservation district plan.** Application for initiation of a conservation district plan shall be submitted on an application form approved by the planning director and shall be accompanied by evidence documenting the consent of owners who represent one-third (1/3) or more of all tax parcels, excluding streets and alleys, within the proposed conservation district boundary. The commission shall review all complete applications. If the commission determines that the subject district appears to meet the criteria for establishment contained in section 599.720, the commission may direct the planning director to prepare or cause to be prepared design guidelines. Complete applications will be acted upon in the order that they are received, with no more than one application per city sector (north, east, downtown, south, and southwest) processed simultaneously.

**599.740. Design guidelines.** (a) *In general.* Conservation district design guidelines shall be drafted by the planning director with the active participation of property owners in the proposed district. Design guidelines shall not be adopted or applied so as to prohibit uses allowed by the zoning code. Design guidelines regulating building bulk may be more restrictive than the zoning code when based upon the notable attributes, as identified in the conservation district's plan. Design guidelines shall be limited to regulating some or all exterior elements solely for the purpose of perpetuating and proliferating the district's notable attributes, as identified in the district's plan. Conservation district design guidelines shall clearly identify all changes requiring review for compliance with this ordinance. Design guidelines may establish that a public hearing is required for the construction of principal and accessory structures or the addition or removal of floor area to existing principal or accessory structures. All other changes shall be reviewed administratively unless those changes require a public hearing review pursuant to the Minneapolis Code of Ordinances.

(b) Owner consent. Prior to heritage preservation commission adoption, but not amendment, guidelines shall be submitted to the planning director, accompanied by evidence documenting the consent of owners who represent two-thirds (2/3) or more of all tax parcels, excluding streets and

alleys, within the proposed conservation district boundary. No owner consent is required for heritage preservation commission amendment of conservation district design guidelines. Evidence of two-thirds (2/3) consent shall be obtained within one (1) year of the date the planning director initiates work upon a conservation district plan application. The planning director, upon written request, may for good cause shown grant up to a six (6) month extension to this time limit.

**599.750. State historic preservation office review.** The planning director shall submit all proposed conservation district establishments, amendments, repeals, and design guidelines to the state historic preservation officer for review and comment. The state historic preservation officer shall have sixty (60) days from said date of submittal to provide comments to the planning director.

**599.760. City planning commission review.** The planning director shall submit all proposed conservation district establishments, amendments, repeals, and design guidelines to the city planning commission. City planning commission shall have thirty (30) days from said date of submittal to provide comments to the planning director. In its review, the city planning commission shall consider but not be limited to the following factors:

- (1) The district's eligibility for establishment, as evidenced by its consistency with the establishment criteria.
- (2) The relationship of the proposed conservation district to the city's comprehensive plan.
- (3) The effect of the proposed conservation district on the surrounding area.
- (4) The consistency of the proposed conservation district with applicable development plans or development objectives adopted by the city council.

**599.770. Heritage preservation commission review.** Following acceptance of a complete plan, the heritage preservation commission shall hold a public hearing to consider the proposed conservation district establishment, amendment, or repeal as provided in section 599.170.

**599.780. Commission recommendation.** Following the public hearing, the heritage preservation commission shall make findings with respect to the proposed conservation district establishment, amendment, or repeal and shall submit the same together with its recommendation to the city council. In making its findings and recommendation, the commission shall consider the establishment criteria contained in section 599.720, the information contained in the plan, the state historic preservation officer's comments, the city planning commission's comments, the planning director's report, and all testimony and evidence received at the public hearing relating to the conservation district establishment, amendment, or repeal.

**599.790. City council decision.** The city council shall make the final decision on the establishment, amendment, or repeal of all conservation districts.

**599.800. Adoption.** The heritage preservation commission shall adopt conservation district design guidelines concurrent with the review of conservation district plans. Amendments to the design guidelines may be adopted independently, without consideration of a new plan, after the district is established.

**599.810. Initiation of conservation district amendment or repeal.** A conservation district amendment or repeal may be initiated by the submittal of evidence documenting the consent of

owners who represent two-thirds (2/3) or more of all tax parcels, excluding streets and alleys, within the conservation district boundary.

**599.820. Conservation certificates.** *(a) In general.* A conservation certificate allows the city to review proposed exterior changes subject to conservation district design guidelines.

*(b) Application for conservation certificate.* An application for a conservation certificate shall be filed on a form approved by the planning director and shall be accompanied by all required supporting information, as specified in section 599.160.

*(c) Public hearing review conservation certificates.* The commission shall hold a public hearing on each complete application for a public hearing review conservation certificate as provided in section 599.170. The commission may approve, approve with conditions, or deny an application for a conservation certificate.

*(d) Administrative review conservation certificates.* The planning director may approve, approve with conditions, or deny an application for an administrative review conservation certificate.

**599.830. Required findings for conservation certificates.** *(a) In general.* Before approving a conservation certificate, and based upon the evidence presented in each application submitted, the planning director or heritage preservation commission shall make findings based upon, but not limited to, the following, in addition to any other review requirements mandated by the Minneapolis Code of Ordinances:

(1) The change will not materially impair the visual character of the conservation district as evidenced by the consistency of the proposal with the applicable design guidelines adopted by the commission.

(2) Granting the conservation certificate will be in keeping with the spirit and intent of the ordinance.

(b) Demolition of any property. Before approving a conservation certificate that involves the demolition of any property in a conservation district, the planning director or heritage preservation commission shall consider the consistency of any proposed new construction onsite with the design guidelines for the conservation district adopted by the commission, in addition to any other review requirements mandated by the Minneapolis Code of Ordinances.



## CPED STAFF REPORT

Prepared for the Heritage Preservation Commission

HPC Agenda Item #3

July 22, 2014

### HERITAGE PRESERVATION APPLICATION SUMMARY

<i>Property Location:</i>	n/a
<i>Project Name:</i>	Proposed Conservation District Ordinance
<i>Prepared By:</i>	John Smoley, Ph.D., Senior Planner, 612-673-2830
<i>Applicant:</i>	n/a
<i>Project Contact:</i>	John Smoley, Ph.D.
<i>Ward:</i>	n/a
<i>Neighborhood:</i>	n/a
<i>Request:</i>	Review of an Amendment to Minneapolis Code of Ordinances (MCO) chapter 599, Heritage Preservation Regulations, to Permit the Creation of Conservation Districts

### SUMMARY

#### BACKGROUND

In 2012 Councilmember Gordon introduced an amendment to our municipal code to permit the creation of conservation districts in response to public requests to protect character-defining features in neighborhoods in a way that's more prescriptive than the Zoning Code but less prescriptive than historic district design guidelines.

#### PUBLIC COMMENTS

The ordinance is the product of 1 ½ years of staff work with a twenty-member technical advisory team which included Heritage Preservation Commission (HPC) Commissioner Linda Mack. Comments from members of the public have been solicited, primarily through two public meetings held on November 14, 2012, and January 28, 2014. Apart from these meetings and two previous briefings at HPC public meetings, staff also participated in a February 25, 2014, Neighborhood Community Engagement Commission meeting; a March 28, 2014, Center for Urban and Regional Affairs/University District Alliance forum, and a June 26, 2014, City Planning Commission Committee of the Whole meeting.

### ANALYSIS

A copy of the draft ordinance is attached, with proposed additions to the existing Heritage Preservation Regulations underlined, and deletions stricken out. The vast majority of the changes occur in the new conservation district article added to the end of the ordinance, but related changes, and code clean-up items, occur throughout the ordinance. A sheet bearing proposed application form details is also attached. The initial ordinance would only establish the framework for districts. It would not actually designate any districts. Such designations, as well as the development of conservation district design guidelines, would occur at a later date when districts are nominated.

The proposal ordinance fulfills the following Comprehensive Plan policy:

**Conservation Districts**

In addition to regular maintenance and adherence to the zoning code, other tools exist to preserve neighborhood character. A Conservation District is a zoning or preservation tool used to help communities protect certain characteristics in their neighborhood. They concentrate on protecting such things as architecture styles, densities of the area, heights of structures, and setback guidelines. The scope and size of conservation districts may vary; and the regulations of the district may affect design elements, structure size, building demolition, and land use. While Minneapolis currently does not have conservation districts, this tool can be effective for preserving neighborhood character.

**Policy 8.8: Preserve neighborhood character by preserving the quality of the built environment.**

8.8.1 Preserve and maintain the character and quality of residential neighborhoods with regulatory tools such as the zoning code and housing maintenance code.

8.8.2 In addition to local designation, develop other preservation tools, like conservation districts, to preserve the historic character of neighborhoods and landscapes.

In accordance with this policy, the proposed ordinance will create an alternative way to protect some of the cohesive characteristics found in a number of the city's neighborhoods, including some of Minneapolis' more than 55 potential historic districts and more than 500 potential historic landmarks.

The following is a summary of major ordinance provisions.

The majority of properties in conservation districts must embody notable attributes common to the district, including scale, architecture, landscape design, development patterns, and engineering (historical significance criterion #4 and 5, plus scale).

The ordinance is intended to facilitate grass-roots conservation efforts. Conservation district establishment can only be initiated by property owners in a proposed district. To apply for conservation district establishment, at least one-third or more of the property owners in a given area must agree.

Following the drafting of proposed design guidelines, two-thirds of property owners in a given district must consent to the proposed district before the HPC may consider recommending the City Council formally establish the district. Proposed development will not incur additional regulations until Council formally establishes the district (i.e., there is no interim protection).

Design guidelines are limited to regulating some or all exterior elements solely for the purpose of perpetuating and proliferating the district's notable attributes. With this focus on conserving visual character, rather than preserving historic building materials, the ordinance permits demolitions of properties that contribute to a district's character once the Planning Director or Heritage Preservation Commission verifies that proposed new construction onsite is consistent with the district's design guidelines. Design guidelines may not be written in a way to prohibit uses permitted by the Zoning Code, but they may regulate building bulk in a more restrictive way to conserve the district's notable attributes. For example, a conservation district notable for its one-story Ranch-style residences with generous setbacks could justifiably possess design guidelines requiring new residences be designed in the Ranch style, be limited to one story in height, and possess greater setbacks than the Zoning Code minimums. The guidelines could not be written in a way designed to prohibit a multi-family dwelling

from being constructed, but the dwelling's architectural style, setbacks, and height could be more restrictive than what would be allowed by the Zoning Code.

Districts may occur anywhere but must be contiguous and include at least one complete block face with two or more principal buildings; or be centered upon the intersection of two or more streets, with all corner lots included in the district.

The State Historic Preservation Office (SHPO) has expressed their support for the proposal (Attachment C). In response to concerns about inappropriate application of the proposed ordinance, staff has drafted additional ordinance language that requires the Heritage Preservation Commission conduct a review of all applications and direct the Planning Director to prepare design guidelines if they are warranted. The proposal mirrors the method the HPC uses to review Landmark and historic district nomination applications. In the interest of ensuring the HPC review the same ordinance text reviewed by the CPC CoW and SHPO, the proposed ordinance (Attachment A) does not incorporate this language (Attachment D.)

In addition to public comment and Technical Advisory Team input, these recommendations are the result of extensive studies of best practices in other communities, to include a 1991 report prepared by Carol Zellie of Landscape Research for the St. Paul Heritage Preservation Commission and a 2010 report published by the Center for Urban and Regional Affairs at the University of Minnesota. In addition to the many issues studied in these reports, staff researched best practices in a number of communities, to include Minnesota's three communities with architectural conservation district ordinances: Stillwater, Red Wing, and Hastings.

Particular scrutiny was given to distinguishing historic districts from conservation districts, in the interest of preventing the de-incentivization of historic districts. Staff generally found few objective distinctions between the two district types, in terms of identification, and the more streamlined review process generally associated with conservation districts appeared to create a strong preference for conservation district, rather than historic district, designation among property owners. For example, conservation districts appear to serve as disincentives to historic district designation in two of three Minnesota communities: Stillwater and Red Wing. Both have experienced resistance to "upgrading" conservation districts to historic districts. That has not been the case in Hastings. One key factor appears to be that demolitions in conservation districts are not reviewed in Hastings. Only with historic district designation are demolitions, along with new construction and alterations, scrutinized.

## RECOMMENDATIONS

### **Recommendation of the Department of Community Planning and Economic Development:**

The Department of Community Planning and Economic Development recommends that the Heritage Preservation Commission and City Council adopt staff findings and **adopt** the proposed amendment to Minneapolis Code of Ordinances (MCO) chapter 599, Heritage Preservation Regulations, as indicated in the attached ordinance.

## ATTACHMENTS

- A. Proposed Amendment to Minneapolis Code of Ordinances (MCO) Chapter 599, Heritage Preservation Regulations
- B. Proposed Application Form Details
- C. Letter from the State Historic Preservation Office
- D. An Amendment to the Current Proposal

## Details Proposed to Be Added to Conservation District Study Application Forms

An application for a conservation district study must include the following:

- (1) public hearing application requirements, as identified in section 599.160 Application procedures;
- (2) a plat map identifying the boundaries of the proposed conservation district;
- (3) a list of all owners of record of property within the boundaries of the proposed conservation district, as identified in the records of the Hennepin County, with evidence documenting the consent of owners who represent one third or more of all tax parcels, excluding streets and alleys, within the proposed conservation district boundary;
- (4) a written description of the proposed district's design characteristics and a property-by-property inventory, to include a photograph of each, that identifies how the majority of properties in the proposed district does or does not meet each of the conservation district establishment criteria identified in section 599.720;
- (5) the name, address, and phone number of a designated representative of the potential district, who has the power to withdraw the application at any time;
- (6) a statement addressing why a zoning amendment or historic district designation would not be as appropriate as the establishment of a conservation district; and
- (7) any additional information that the planning director determines to be necessary

## Details Proposed to Be Added to Conservation Certificate Application Forms

- (1) The application must include a copy of a letter delivered to the neighborhood group at least ten days prior to submittal of the application. The notification shall include the following information: a description of the project; the preservation approvals that the applicant is aware are needed for the project; the address of the property for which a preservation application is sought; and the applicant's name, address, telephone number, and e-mail address, if available. Where the property for which preservation approval is sought is located on a public street that acts as a boundary between two (2) neighborhoods, the above information shall also be provided to the neighborhood group(s) representing the adjacent area(s).

May 30, 2014

Mr. John Smoley  
CPED-Planning  
City of Minneapolis  
250 South 4<sup>th</sup> Street—Room 110  
Minneapolis MN 55415

RE: Proposed Conservation District Amendments to the City of Minneapolis' Heritage Preservation Regulations,  
MHS Referral No. 2014-1740

Dear Mr. Smoley,

Thank you for the opportunity to comment on the above referenced amendments. They have been reviewed pursuant to Minnesota Statutes §471.193, subd. 6., and Section 599.210 of the City of Minneapolis Code of Ordinances.

First, we commend you and the city for undertaking the work to prepare the conservation district amendments. In our opinion, conservation districts are a useful planning tool that, when applied correctly and judiciously, can protect street facades, streetscapes and more in neighborhoods that may lack traditional groupings of intact, architecturally or historically significant cultural resources.

In order to be successful, we believe it is important that a proposed conservation district engage neighborhood residents early in the process and respond to a grassroots movement at the local level. To that end, securing consent by at least one-third of property owners within a proposed conservation district should ensure that residents are involved and approve of the district proposal. We also support the requirement that design guidelines must be drafted with active participation by property owners in a proposed district. While it may be more difficult to guarantee consent by two-thirds of owners in support of design guidelines, such a requirement should provide even greater opportunities for civic engagement. Finally, it is helpful and more efficient that most proposed alterations would be reviewed administratively by staff rather than the full HPC, in order to save time and prevent delays.

If you have questions regarding our assessment of these amendments, please feel free to contact me at 651-259-3452 or [michael.koop@mnhs.org](mailto:michael.koop@mnhs.org).

Sincerely,



Michael Koop  
State Historic Preservation Office



MINNEAPOLIS AREA Association  
of REALTORS®

August 4, 2014

Minneapolis Heritage Preservation Commission  
250 South 4<sup>th</sup> Street, Room 300  
Minneapolis, MN 55415

Dear Chair Faucher and Members of the Commission,

Thank you for your consideration of the proposed amendment to the city's Heritage Preservation regulations, adding "Conservation Districts" (Proposed Ordinance). The Minneapolis Area Association of REALTORS® (MAAR) has been following this amendment process with great interest, as it will potentially impact the use and enjoyment of many properties throughout the city.

In other parts of the country, some REALTORS® Associations have supported the creation of conservation districts. It has been found that such regulatory tactics can be useful in preserving the specific characteristics that make a neighborhood unique *and* that meet a demonstrable set of criteria defining those characteristics as "notable," despite these programs' inherent limitations on property rights.

MAAR is also encouraged by the steps the city has taken to solidify the proposed process and definitions since this ordinance was initially drafted. For the Proposed Ordinance to be successful, it is imperative that it be crafted with a specific set of criteria for conservation against which all proposals and properties may be evaluated in a fair and measurable manner.

However, MAAR still has some concerns with the Proposed Ordinance, even in its revised form. We assert there are sections of the proposal which will require additional clarification in order for this ordinance to be legally defensible and to ensure it will not be held invalid under the "void for vagueness" doctrine.<sup>1</sup> Following are specific instances where we recommend modification of language in order to fully clarify the process and intent of this Proposed Ordinance.

#### **599.740a – Design Guidelines**

1. The creation of design guidelines (presumably after an application has been deemed meritorious) shall be conducted with the "active participation" of property owners in the proposed district.
  - a. MAAR recommends articulating what precisely is meant by "active participation" by property owners, and what percentage of property owners are required to participate in order to be acceptable. Is the participation of one owner sufficient, or could it be 100 percent of owners in the proposed district that are required to give input? Further, what level of participation shall be deemed "active"?
  - b. It should also be noted in this section that the design guidelines are intended to regulate exterior characteristics only.

### 599.740b – Design Guidelines

1. It is not clear as to whether the 2/3 owner consent is explicitly required for the adoption of a conservation district, or approval of the design guidelines.
  - a. MAAR recommends revising this subsection to a free-standing section **599.750 – Acceptance of Conservation District Status**, to specifically state the 2/3 property owner consent requirement is for the affirmative adoption of the conservation district (*and* the approval of design guidelines if desired, but not *OR* the approval of design guidelines. The section must include the adoption language in order to be clear). Further, it is not clear how the 2/3 consent is to be acceptably documented. Shall the property owners submit a signed form indicating their approval? Will the city provide a template document for owner affirmation?

### 599.760- City Planning Commission Review

1. Subd. 2: The Proposed Ordinance does not adequately define what is being approved by the Planning Commission. The words “relationship with” are ambiguous and may fail to articulate the city’s desire to keep conservation distinct proposals in concert with the comprehensive plan.
  - a. MAAR recommends that this statement be revised to read:  
*The proposed conservation district’s consistency with the city’s comprehensive plan.*
2. Subd.3: The Proposed Ordinance does not adequately define what is being approved by the Planning Commission. How will “the effect on the surrounding area” be evaluated?
  - a. MAAR recommends this section be revised to include specific impact evaluation criteria, allowing all parties to have a standard level of expectation.
3. Additional Subdivision: At no point does this section grant the Planning Commission any authority to review the created design guidelines for any proposed Conservation District.
  - a. MAAR recommends adding **599.760 (5) – Review of proposed design guidelines for consistency with establishment criteria and applicability.**

### 599.800 – Adoption

1. This section allows for the Heritage Preservation Commission to adopt amendments to established “design guidelines independently, without consideration of a new plan.” We can see no justification for this allowance, especially as the city requires “active owner participation” in order to legally adopt a conservation district in the first place. Allowing the HPC (and/or City Council) to initiate amendments without owner consent goes against the spirit of this Proposed Ordinance and is unfair to property owners. This unilateral authority may discourage property owners from seeking desired conservation status, knowing they will no longer have a say in their design guidelines once a district has been created.
  - a. MAAR recommends revising the design guideline amendment process to require owner engagement similar to that required for the initial establishment of a conservation district. The Proposed Ordinance is intended to be driven by property owners who wish to preserve their neighborhoods by voluntarily agreeing to a set of limits on their property rights – for the city to allow itself to make revisions to that agreement without the owners’ consent violates the very spirit of this proposal.

## 599.830 (1 & 2) – Required Findings for Conservation Certificates

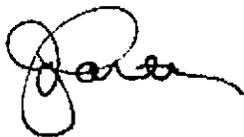
1. Subdivisions 1 & 2 allow for the planning director *or* the Heritage Preservation Commission to made finings for the approval of a conservation certificate, but the process for that determination is not clear. On what basis will the impact to the district be evaluated?
  - a. MAAR recommends these sections be revised to include clear and definite standards that can be consistently applied by city staff, boards and the council, as well as consistently understood by property owners. Failing that, this ordinance may indeed be “void for vagueness”.

### Summary

The City of Minneapolis is facing an unprecedented state of change. With rapid population influx and infill redevelopment, brought on by a increasing desire for urban lifestyles and conveniences, the city must balance the opinions of current residents with the demands of the growing residency. Successful cities grow and change; one of the defining characteristics of an urban environment is its inevitable physical evolution. Things will not always remain as they have always been. Nor should we desire them to. Change, rehabilitation and redevelopment are most often positive movements for cities and all their residents. However, certain pockets of the city may be deemed so notable in their unique character as to merit special consideration, and consequently preservation. When these unusual pockets do not meet the lofty requirements for full “historic preservation status,” indeed “conservation status” can be a useful tool for keeping those characteristics intact long-term. Make no mistake: these programs limit property rights and the use thereof; therefore it is of utmost importance that the city takes care to put the decision of whether and how to engage in such a conservation effort squarely in the hands of the impacted property owners. This is true both in a conservation district’s inception and future evolution. The city’s function is to provide strict and consistent standards for application and enforcement. By following those tenets, we believe the City of Minneapolis can develop a successful Conservation District proposal that will be to the benefit of all the city’s residents.

The Minneapolis Area Association of REALTORS® respectfully requests the Heritage Preservation Commission consider making the above amendments to the Proposed Ordinance so that it may be enacted in the best and most fair manner.

Thank you very much for your consideration.



Julia Parenteau  
Public Affairs Director  
Minneapolis Area Association of REALTORS®  
p. (952) 988-3124  
e. juliap@mplsrealtor.com

Cc: Dr. John Smoley, City Planner  
Doug Kress, Development Services Director  
Councilmember Cam Gordon, Ordinance Author

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<sup>1</sup> The “Void for Vagueness” doctrine is a constitutional doctrine rooted in the procedural due process clause of the Fourteenth Amendment to the US Constitution; as cited by the Supreme Court “an ordinance is unconstitutionally vague when men of common intelligence must necessarily guess at its meaning.”

Robert Roscoe / Design for Preservation

1401 East River Parkway, Minneapolis, Minnesota 55414 612.317.0989 [bobroscoe@me.com](mailto:bobroscoe@me.com)

July 22, 2014

Minneapolis Heritage Preservation Commission  
City Hall  
Minneapolis, MN

Re: Proposed Conservation District Ordinance

Dear HPC Commisioners:

I have reviewed information about the proposed conservation district ordinance, including the proposed ordinance draft. I previously headed a Prospect Park conservation district study that provided close scrutiny with expert insight by neighborhood residents, which then was sent to City review processes.

In the last year or so, I have been active in several neighborhood issues and gained an overall understanding that the proposed ordinance has important shortcomings, mainly based on very limited citizen involvement with the ordinance as presently written. At this time, I recommend HPC table further action until more neighborhood involvement gains opportunity to provide their recommendations.

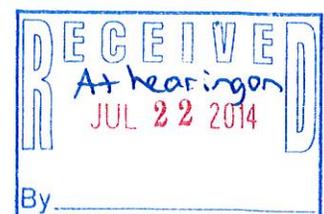
Everybody I know is anxious to see the ordinance enacted, but only with further input. The whole process is complicated, but needs the right effort by city lawmakers and the neighborhoods where we all live.

Sincerely,



Bob Roscoe  
1401 E River Pkwy  
Minneapolis, MN 55414

[bobroscoe@me.com](mailto:bobroscoe@me.com)



## Smoley, John

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**From:** Saralyn Romanishan <sararomanishan@yahoo.com>  
**Sent:** Friday, July 18, 2014 6:18 PM  
**To:** Smoley, John; Gordon, Cam A.  
**Subject:** Conservation District Ordinance

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Regarding the Conservation District Ordinance,

I request that you NOT approve of this watered down version of the Conservation District Ordinance.

This was an admirable concept in the beginning of the process but has become a ghost of the original plan. The original intent has been lost in a sea of change and modifications. The city has wasted the time of the paid staff and the HPC. The city has also wasted the blood, sweat, and tears of the unpaid volunteers that helped draft the plan and believed in the great possibilities this ordinance could bring. It is disappointing that the city has decided to make this ordinance useless to most of its citizens. I feel sorry for the residents of Prospect Park and the rest of us who had high hopes that the city would finally protect the neighborhoods.

Please forward this to the Heritage Preservation Commission.  
Thank you,

Saralyn Romanishan  
Lowry Hill East Resident  
2111 Aldrich Ave S  
Minneapolis, MN 55405



July 22, 2014

John Smoley, City Planner  
250 South 4<sup>th</sup> St, Rm 300  
Minneapolis, MN 55415

Dear John,

I am writing to inform you of an action taken by the Whittier Alliance Community Issues committee at their July 14, 2014 meeting and forwarded to the Whittier Alliance board for final action. Due to the Conservation District item being on the HPC agenda prior to the board meeting, the Whittier Executive Committee took action on the motion per the By-Laws.

**Motion:** The Executive Committee moves to support adopting the Conservation District amendment to the Heritage Preservation ordinance of the City of Minneapolis.

**Motion Carried**

Although we wish the ordinance was more similar to Conservation Ordinances around the country, this is a good start. Hopefully this amendment will prove to be a positive tool for neighborhoods wanting to retain a certain character or valued aesthetic qualities that make the neighborhood a "neighborhood."

Sincerely,

A handwritten signature in cursive script, appearing to read "Marian Biehn".

Marian Biehn  
Executive Director

Cc: Councilmember Lisa Bender  
Councilmember Cam Gordon