

PRESERVATION ORDINANCE TEXT AMENDMENT SUMMARY

<i>Initiator:</i>	Council Member Warsame
<i>Introduction Date:</i>	November 20, 2015
<i>Prepared By:</i>	<u>Lisa Steiner</u> , Senior City Planner, (612) 673-3950
<i>Specific Site:</i>	N/A
<i>Ward:</i>	All
<i>Neighborhood:</i>	All
<i>Intent:</i>	To simplify the requirements for Certificate of Appropriateness applications.

APPLICABLE SECTION OF TITLE 23: HERITAGE PRESERVATION

- Chapter 599, Heritage Preservation Regulations

BACKGROUND

On November 20, 2015, Council Member Warsame introduced the subject matter of an ordinance amending the preservation ordinance to simplify the requirements for Certificate of Appropriateness applications. This was spurred by a 2015 *Business Made Simple Report* initiated by Mayor Hodges which recommended that the City simplify the list of requirements for issuing a Certificate of Appropriateness under the preservation ordinance.

The current Certificate of Appropriateness findings were adopted as part of a significant overhaul of the preservation ordinance in 2009. Prior to that, between 2001 and 2009, the required findings for a Certificate of Appropriateness were limited to the following paragraph in the preservation ordinance:

Before approving a certificate of appropriateness, the commission shall make findings that the alteration will not materially impair the integrity of the landmark, historic district or nominated property under interim protection and is consistent with the applicable design guidelines adopted by the commission, or if design guidelines have not been adopted, is consistent with the recommendations contained in The Secretary of the Interior's Standards for Rehabilitation, except as otherwise provided in this section.

When the existing Certificate of Appropriateness findings were adopted in 2009, the lengthier and significantly more detailed findings were intended to bolster the content to allow for a more thorough analysis of projects by both applicants and staff and to allow for better communication between all parties involved.

While the current findings helpfully reference several materials utilized by staff in preservation reviews, these referenced materials are scattered throughout the various required findings. Many of the findings are repetitive or are only slightly different from one another. In administering the ordinance, staff has found that the wording of the findings at times can appear overly complex for applicants new to the process. Staff believes simple opportunities exist to consolidate the existing findings and simplify the language while still thoughtfully and efficiently analyzing projects.

In reviewing the ordinance for this amendment, staff has also identified some other necessary amendments in order to retain consistency in code language, as well as a few redundancies and typos that are recommended to be amended at this time.

PURPOSE

What is the reason for the amendment?

The amendment was primarily initiated in response to a recommendation of the *Business Made Simple Report* completed in 2015 by the City Attorney's office and Mayor Hodges. That report identified key goals for improvements for small businesses. Regarding heritage preservation, this document stated:

City ordinances (Section 599.350) govern the factors for issuing a Certificate of Appropriateness to allow alteration of a property in a historic district, a nominated property or a designated landmark. This section contains at least 13 different factors, some of which are overlapping and/or could be made more clear. This section could be simplified, making it easier to understand and administer without compromising historic protections and review authority.

Staff has identified these same issues in administering the ordinance since the current findings were adopted in 2009.

Additionally, the Demolition of Historic Resource findings and Certificate of No Change findings are recommended to be amended for organizational and language consistency with the recommendations for Certificate of Appropriateness findings. Staff is also recommending a minor amendment of the Demolition of Historic Resource language to clarify that the burden of proof is on the applicant to present the items necessary for the Commission to approve the application if the property is found to be a historic resource.

The other accompanying housekeeping revisions are intended to clarify the ordinance and eliminate redundancies and inconsistencies. Currently, properties that have less than 5,000 square feet of lot area have a \$250 Certificate of Appropriateness application fee for alteration but a \$450 fee for new construction. Considering that the definition of "alteration" in the preservation ordinance includes new construction, staff finds that it would simplify the ordinance to eliminate the separate fee structures for alterations versus new construction. For properties over 5,000 square feet in lot area, the fees are already identical. Other recommended housekeeping amendments address typos or minor clarifications.

What problem is the amendment designed to solve?

The amendment is designed to simplify the required findings for a Certificate of Appropriateness application in order to improve the application process for both applicants and staff. Currently, there are 10 required findings for individual landmarks and 13 required findings for properties within historic districts. A few of the findings are duplicative and the language is overly complicated. This can lead to confusion, particularly with applicants who have not been through the preservation process before.

In 2013, the Minnesota Supreme Court ruled that these types of heritage preservation applications are subject to Minnesota State Statute 15.99, which requires municipalities to approve or deny written requests related to zoning within 60 days of receiving a complete application. In order to ensure consistency with this decision, some existing references to delays of decision have been recommended for amendment or deletion by the City Attorney's office.

As proposed by staff in the draft amendment text, the Heritage Preservation Commission would continue to be able to stay the release of a building, wrecking or demolition permit for up to 180 days

as a condition of approval for a Demolition of Historic Resource application. However, the reference to delaying a final decision that currently is noted in 599.350(b) has been removed. Considering that properties applying for a Certificate of Appropriateness must either already be designated or under interim protection, the delay of decision clause would be unnecessary. Regardless of this clause, the Heritage Preservation Commission has the power to continue an application if necessary, provided compliance with the 60-day law is ensured.

What public purpose will be served by the amendment?

With simpler findings, the intent of the application and the basis on which Heritage Preservation Commission approvals are made will be clearer to all parties involved. The staff review would remain the same, as projects would continue to be evaluated based on their consistency with the property's historic designation, adopted design guidelines, the *Secretary of the Interior's Standards for the Treatment of Historic Properties*, the preservation ordinance, comprehensive plan, and preservation policies in adopted small area plans.

The only documents that are currently referenced but would no longer be included within the required findings would be the Site Plan Review chapter of the zoning code. The majority of Certificates of Appropriateness applications do not require Site Plan Review, but those that do would need to complete a separate land use application process regardless, making the Heritage Preservation Commission finding unnecessary. For example, of 44 Certificates of Appropriateness applications in 2015, only 6 required Site Plan Review.

Additionally, staff is recommending a modification of the destruction finding to organize the existing paragraph into a multilevel list. This does not change the review but rather is intended to clarify the process by organizing the text in a different manner. Because these findings are identical to the Demolition of Historic Resource application findings, staff is recommending that those findings be amended into a multilevel list as well.

What problems might the amendment create?

Staff does not anticipate any problems that would be created by the proposed amendment.

TIMELINESS

Is the amendment timely?

The amendment is timely. In the last 5 years the Heritage Preservation Commission has reviewed an average of 38 Certificate of Appropriateness applications per year. In 2015, 44 Certificates of Appropriateness were reviewed by the Heritage Preservation Commission, the highest number since 2009.

Is the amendment consistent with practices in surrounding areas?

Staff reviewed a number of other preservation ordinances around the country. The results of that peer city research, summarized in a comparison table of the findings that are codified in city's preservation ordinances, can be found in the appendix. Nearly every city that was reviewed reference adopted design guidelines for preservation approvals and about half reference the *Secretary of Interior's Standards for the Treatment of Historic Properties*. None of the cities reviewed reference comprehensive plans or small area/neighborhood plans as basis for preservation reviews. While the language of preservation ordinances varies widely, the concepts of integrity, compatibility, and character are found in many of the

ordinances. Overall, the proposed amendment would be consistent with practices around the country related to preservation approvals.

Are there consequences in denying this amendment?

If this amendment were denied, the duplicative and extensive Certificate of Appropriateness findings would remain in place and other identified housekeeping revisions would remain unchanged.

COMPREHENSIVE PLAN

The amendment will implement the following applicable policies of *The Minneapolis Plan for Sustainable Growth*:

Heritage Preservation Policy 8.1: Preserve, maintain, and designate districts, landmarks, and historic resources which serve as reminders of the city's architecture, history, and culture.

- 8.1.1 Protect historic resources from modifications that are not sensitive to their historic significance.
- 8.1.2 Require new construction in historic districts to be compatible with the historic fabric.

Heritage Preservation Policy 8.11: Improve and adapt preservation regulations to recognize City goals, current preservation practices, and emerging historical contexts.

This amendment will improve and adapt the preservation regulations to streamline and simplify the review process, while still protecting historic resources from insensitive modifications and requiring compatible new construction. The amendment is consistent with the above policies of the comprehensive plan.

RECOMMENDATIONS

The Department of Community Planning and Economic Development recommends that the Heritage Preservation Commission and City Council adopt staff findings to amend Title 23 of the Minneapolis Code of Ordinances, as follows:

A. Text amendment to simplify the requirements for Certificate of Appropriateness applications.

Recommended motion: **Approve** the text amendment.

Chapter 599 related to Heritage Preservation: *Heritage Preservation Regulations*

ATTACHMENTS

- 1. Ordinance amending Chapter 599, Heritage Preservation.
- 2. Peer City Research Comparison Table

ORDINANCE
By Warsame

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 the definition of Planning director contained in Section 599.110 of the above-entitled ordinance be amended to read as follows:

Section 599.110. Definitions.

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

Section 2. That Section 599.115 of the above-entitled ordinance be amended to read as follows:

Section 599.115. Concurrent review. For the efficient administration of this preservation ordinance, whenever a project or proposal requires more than one (1) application for review by the planning director, heritage preservation commission, city planning commission and the board of adjustment, including but not limited to certificate of appropriateness, certificate ~~on~~ of no change, historic variance, and transfer development rights, all applications shall be processed concurrently. Land use reviews by the zoning administrator, city planning commission, and the board of adjustment shall not be regulated by this section.

Section 3. 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

Application Type	Fee (Dollars)
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 alteration	
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 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
Conservation certificate - administrative review	0.00
Conservation certificate - public hearing review alteration	
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
Conservation certificate – public hearing review new construction	
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
Conservation district plan	350.00
Demolition of historic resource	350.00
Historic review letter	150.00
Historic variance	250.00
Transfer of development rights	350.00

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

599.300. Design guidelines. The commission ~~shall~~ may 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. The state historic preservation officer shall have sixty (60) days from said date of submittal to provide comments to the planning director.

Section 5. That Section 599.350 of the above-entitled ordinance be amended to read as follows:

599.350. Required findings for certificate of appropriateness.

~~(a) *In general.* Before approving a certificate of appropriateness, and based upon the evidence presented in each application submitted, the commission shall make findings based upon, but not limited to, the following:~~

~~(1) The 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 alteration is compatible with and supports the interior and/or exterior designation in which the property was designated.~~

~~(3) The alteration is compatible with and will ensure continued integrity of the landmark or historic district for which the district was designated.~~

~~(4) The 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 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 conforms to all applicable regulations of this preservation ordinance and is consistent with the applicable policies of the comprehensive plan and applicable preservation policies in small area plans adopted by the city council.~~

~~(b) *Destruction of any property.* Before approving a certificate of appropriateness that involves the destruction, in whole or in part, of any landmark, property in an historic district or nominated property under interim protection, the commission shall make findings that the destruction is necessary to correct an unsafe or dangerous condition on the property, or that there are no reasonable alternatives~~

~~to the destruction. In determining whether reasonable alternatives exist, the commission shall consider, but not be limited to, the significance of the property, the integrity of the property and the economic value or usefulness of the existing structure, including its current use, costs of renovation and feasible alternative uses. The commission may delay a final decision for a reasonable period of time to allow parties interested in preserving the property a reasonable opportunity to act to protect it.~~

~~(c) Adequate consideration of related documents and regulations. Before approving a certificate of appropriateness, and based upon the evidence presented in each application submitted, the commission shall make findings that alterations are proposed in a manner that demonstrates that the applicant has made adequate consideration of the following documents and regulations:~~

~~(1) The description and statement of significance in the original nomination upon which designation of the landmark or historic district was based.~~

~~(2) Where applicable, Title 20 of the Minneapolis Code of Ordinances, Zoning Code, Chapter 530, Site Plan Review.~~

~~(3) The typology of treatments delineated in the Secretary of the Interior's Standards for the Treatment of Historic Properties and the associated guidelines for preserving, rehabilitating, reconstructing, and restoring historic buildings.~~

~~(d) Additional findings for alterations within historic districts. Before approving a certificate of appropriateness 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 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 appropriateness 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 appropriateness 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.~~

(a) The heritage preservation commission shall make each of the following findings before approving a certificate of appropriateness:

(1) The alteration is compatible with the designation of the landmark or historic district, including the period and criteria of significance.

(2) The alteration will ensure the continued integrity of the landmark or historic district.

(3) The alteration is consistent with the applicable design guidelines adopted by the commission.

(4) The alteration is consistent with the applicable recommendations contained in The Secretary of the Interior's Standards for the Treatment of Historic Properties.

(5) The alteration is consistent with the spirit and intent of the preservation ordinance, the applicable policies of the comprehensive plan, and the applicable preservation policies in small area plans adopted by the city council.

(b) In addition to the findings in subdivision (a) above, before approving a certificate of appropriateness that involves the destruction, in whole or in part, of any landmark, property in an historic district or nominated property under interim protection, the commission shall make the following findings:

(1) The destruction is necessary to correct an unsafe or dangerous condition on the property; or

(2) That there are no reasonable alternatives to the destruction. In determining whether reasonable alternatives exist, the commission shall consider, but not be limited to:

a. The significance of the property;

b. The integrity of the property; and

c. The economic value or usefulness of the existing structure, including its current use, costs of renovation and feasible alternative uses.

Section 6. 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 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 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.~~

The planning director shall make each of the following findings before approving a certificate of no change:

(1) The minor alteration is compatible with the designation of the landmark or historic district, including the period and criteria of significance.

(2) The minor alteration will ensure the continued integrity of the landmark or historic district.

(3) The minor alteration is consistent with the applicable design guidelines adopted by the commission.

(4) The minor alteration is consistent with the applicable recommendations contained in The Secretary of the Interior's Standards for the Treatment of Historic Properties.

(5) The minor alteration is consistent with the spirit and intent of the preservation ordinance, the applicable policies of the comprehensive plan, and the applicable preservation policies in small area plans adopted by the city council.

Section 7. That Section 599.480 of the above-entitled ordinance be amended to read as follows:

599.480. Commission decision. (a) *In general.* If the commission determines that the property is not an historic resource, the commission shall approve the demolition permit. If the commission determines that the property is an historic resource, the commission shall deny the demolition permit and direct the planning director to prepare or cause to be prepared a designation study of the property, as provided in section 599.230, or shall approve the demolition permit as provided in this section unless the applicant meets their burden of proof with regard to subdivision (b) below.

~~(b) Destruction of historic resource. Before approving the demolition of a property determined to be an historic resource, the commission shall make findings that the demolition is necessary to correct an unsafe or dangerous condition on the property, or that there are no reasonable alternatives to the demolition. In determining whether reasonable alternatives exist, the commission shall consider, but not be limited to, the significance of the property, the integrity of the property and the economic value or usefulness of the existing structure, including its current use, costs of renovation and feasible~~

~~alternative uses. The commission may delay a final decision for up to one hundred eighty (180) days to allow parties interested in preserving the historic resource a reasonable opportunity to act to protect it.~~

(b) *Destruction of historic resource.* Before approving the demolition of a property determined to be an historic resource, the commission shall make the following findings:

(1) The destruction is necessary to correct an unsafe or dangerous condition on the property; or

(2) That there are no reasonable alternatives to the destruction. In determining whether reasonable alternatives exist, the commission shall consider, but not be limited to:

a. The significance of the property;

b. The integrity of the property; and

c. The economic value or usefulness of the existing structure, including its current use, costs of renovation and feasible alternative uses.

(c) *Mitigation plan.* The commission may require a mitigation plan as a condition of any approval for demolition of an historic resource. Such plan may include the documentation of the property by measured drawings, photographic recording, historical research or other means appropriate to the significance of the property. Such plan also may include the salvage and preservation of specified building materials, architectural details, ornaments, fixtures and similar items for use in restoration elsewhere.

(d) *Demolition delay.* The commission may stay the release of the building, wrecking or demolition permit for up to one hundred eighty (180) days as a condition of approval for a demolition of an historic resource ~~if the resource has been found to contribute to a potential historic district to allow parties interested in preserving the historic resource a reasonable opportunity to act to protect it.~~ The release of the permit may be allowed for emergency exception as required in section 599.50(b).

CODIFIED FINDINGS FOR PRESERVATION APPROVALS – PEER CITY RESEARCH

CITY	Review Authority	Application Required	Documents Referenced			Concepts Incorporated		
			Secretary of Interior's Standards	Adopted Design Guidelines	Comprehensive Plan / Small Area Plan	Integrity	Compatibility	Character
AUSTIN	Historic Landmark Commission	Certificate of Appropriateness	x	x		x		
BUFFALO	Buffalo Preservation Board	Certificate of Appropriateness	x	x			x	x
DENVER	Landmark Preservation Commission	Certificate of Appropriateness	x	x				x
MILWAUKEE	Historic Preservation Commission	Certificate of Appropriateness*		x		x	x	
NEW ORLEANS	Historic District Landmarks Commission	Certificate of Appropriateness					x	x
NEW YORK CITY	Landmarks Preservation Commission	Certificate of Appropriateness		x		x	x	x
PORTLAND	Historic Landmarks Commission	Historic Resource Review		x		x	x	x
SAINT PAUL	Heritage Preservation Commission	Design Review	x	x				x
SAVANNAH	Historic District Board of Review	Certificate of Appropriateness	x	x			x	
SEATTLE	Landmarks Preservation Board	Certificate of Approval		x		x		x

* Milwaukee has no public hearing unless "an objection to issuance of the certificate is filed within 20 days"