

HISTORIC AND DESIGN REVIEW COMMISSION

October 21, 2015

Agenda Item No: 14

HDRC CASE NO: 2015-423
APPLICANT: Office of Historic Preservation
TYPE OF WORK: Briefing and action on proposed UDC Amendments as part of the 2015 Update Program

REQUEST:

The Office of Historic Preservation is proposing UDC Amendments as part of the 2015 Update Program to provide clarifications and editing amendments in Articles IV, VI, and VIII which related to historic preservation and HDRC procedure. The proposed amendments have been recommended by the Planning Commission Technical Advisory Committee and have been made publicly available since May 2015.

RECOMMENDATION:

Staff recommends approval.

Sec. 35-614. – Demolition.

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(a) **Applicability.** The provisions of this section apply to any application for demolition of a historic landmark (including those previously designated as historic exceptional or historic significant) or a historic district.

(1) **Historic Landmark.** No certificate shall be issued for demolition of a historic landmark unless the applicant provides sufficient evidence to support a finding by the commission of ~~demonstrates clear and convincing evidence supporting an~~ unreasonable economic hardship on the applicant. In the case of a historic landmark, if an applicant fails to prove unreasonable economic hardship, the applicant may provide to the historic and design review commission additional information regarding loss of significance as provided in subsection (c)~~(3)~~ in order to receive a historic and design review commission recommendation for a certificate for demolition.

(2) **Entire Historic District.** If the applicant wishes to demolish an entire designated historic district, the applicant must provide sufficient evidence to support a finding by the commission ~~he has to provide clear and convincing evidence~~ of economic hardship on the applicant if the application for a certificate is to be approved.

(3) **Property Located in Historic District and Contributing to District Although Not Designated a Landmark.** No certificate shall be issued for property located in a historic district and contributing to the district although not designated a landmark unless the applicant provides sufficient evidence to support a finding by the commission ~~of demonstrates clear and convincing evidence supporting an~~ unreasonable economic hardship on the applicant if the application for a certificate is disapproved. When an applicant fails to prove unreasonable economic hardship in such cases, the applicant may provide additional information regarding loss of significance as provided in subsection (c)~~(3)~~ in order to receive a certificate for demolition of the property.

(b) Unreasonable Economic Hardship.

(1) **Generally.** The historic and design review commission shall be guided in its decision by balancing the historic, architectural, cultural and/or archaeological value of the particular landmark or eligible landmark against the special merit of the proposed replacement project. The historic and design review commission shall not consider or be persuaded to find unreasonable economic hardship based on the presentation of circumstances or items that are not unique to the property in question (i.e. the current economic climate).

(2) **Burden of Proof.** The historic and design review commission shall not consider or be persuaded to find unreasonable economic hardship based on the presentation of circumstances or items that are not unique to the property in question (i.e. the current economic climate). When a claim of unreasonable economic hardship is made, the owner must provide sufficient evidence to support a finding by the commission ~~prove by a preponderance of the evidence~~ that:

A. The owner cannot make reasonable beneficial use of or realize a reasonable rate of return on a structure or site, regardless of whether that return represents the most profitable return possible, unless the highly significant endangered, historic and cultural landmark, historic and cultural landmarks district or demolition delay designation, as applicable, is removed or the proposed demolition or relocation is allowed;

B. The structure and property cannot be reasonably adapted for any other feasible use, whether by the current owner or by a purchaser, which would result in a reasonable rate of return; and

C. The owner has failed to find a purchaser or tenant for the property during the previous two (2) years, despite having made substantial ongoing efforts during that period to do so. The evidence of unreasonable economic hardship introduced by the owner may, where applicable, include proof that the owner's affirmative obligations to maintain the structure or property make it impossible for the owner to realize a reasonable rate of return on the structure or property.

(3) **Criteria.** The public benefits obtained from retaining the cultural resource must be analyzed and duly considered by the historic and design review commission.

As evidence that an unreasonable economic hardship exists, the owner may submit the following information to the historic and design review commission by affidavit:

A. For all structures and property:

- i. The past and current use of the structures and property;
- ii. The name and legal status (e.g., partnership, corporation) of the owners;
- iii. The original purchase price of the structures and property;
- iv. The assessed value of the structures and property according to the two (2) most recent tax assessments;
- v. The amount of real estate taxes on the structures and property for the previous two (2) years;
- vi. The date of purchase or other acquisition of the structures and property;

- vii. Principal balance and interest rate on current mortgage and the annual debt service on the structures and property, if any, for the previous two (2) years;
- viii. All appraisals obtained by the owner or applicant within the previous two (2) years in connection with the owner's purchase, financing or ownership of the structures and property;
- ix. Any listing of the structures and property for sale or rent, price asked and offers received;
- x. Any consideration given by the owner to profitable adaptive uses for the structures and property;
- xi. Any replacement construction plans for proposed improvements on the site;
- xii. Financial proof of the owner's ability to complete any replacement project on the site, which may include but not be limited to a performance bond, a letter of credit, an irrevocable a trust for completion of improvements, or a letter of commitment from a financial institution; and
- xiii. The current fair market value of the structure and property as determined by a qualified appraiser.
- xiv. Any property tax exemptions claimed in the past five (5) years.

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(c) Loss of Significance. When an applicant fails to prove unreasonable economic hardship the applicant may provide to the historic and design review commission additional information which may show a loss of significance in regards to the subject of the application in order to receive historic and design review commission recommendation of approval of the demolition.

If, based on the evidence presented, the historic and design review commission finds that the structure or property is no longer historically, culturally, architecturally or archeologically significant it may make a recommendation for approval of the demolition. In making this determination, the historic and design review commission must find that the owner has provided sufficient evidence to support a finding by the commission ~~established by a preponderance of the evidence~~ that the structure or property has undergone significant and irreversible changes which have caused it to lose the historic, cultural, architectural or archeological significance, qualities or features which qualified the structure or property for such designation. Additionally, the historic and design review commission must find that such changes were not caused either directly or indirectly by the owner, and were not due to intentional or negligent destruction or a lack of maintenance rising to the level of a demolition by neglect.

The historic and design review commission shall not consider or be persuaded to find loss of significance based on the presentation of circumstances or items that are not unique to the property in question (i.e. the current economic climate).

For property located within a historic district, the historic and design review commission shall be guided in its decision by balancing the contribution of the property to the character of the historic district with the special merit of the proposed replacement project.

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Sec. 35-679. Other Requirements and Regulations.

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- (d) **Monuments, Markers, Memorials, and Acknowledgements.** Monuments, markers or memorial plaques are not permitted on the riverside of property abutting the river, or within the publicly owned right-of-way without the express written consent of the [historic preservation officer](#) ~~historic and design review commission~~. The following standards shall apply:

(1) ~~A.~~ Texas historical markers are permitted, but must be mounted to walls or structures. Pole mounted THC markers are not permitted in "RIO-3."

(2) ~~B.~~ Monuments and memorial plaques must commemorate an event or person significant to the Riverwalk or the history of the Riverwalk. To assure that the significance of an event or person has withstood the test of time, memorial plaques may commemorate an event ten (10) years or older a person ten (10) years or more posthumously.

(3) ~~C.~~ Memorial gifts, such as benches, fountains or art etc. may from time to time be accepted as gifts by the city, plaques acknowledging the gift, shall be bronze and no larger the ten inches by four inches (10" x 4"). Memorial plaques for a gift of a tree or other plantings are not permitted.

(4) ~~D.~~ Placement of monuments, memorials and markers will be under the jurisdiction of the director of parks and recreation, rather than the director of planning, after consultation with the [historic preservation officer](#) ~~historic and design review commission~~.

(5) ~~E.~~ Plaques recognizing donors for significant improvements or plaques acknowledging the naming of significant improvements such as, but not limited to, pocket parks, footbridges, fountains, grottos, gardens, gazebos, boat landings, overlooks and other significant features may be placed along the San Antonio River. The plaques may be no larger than four (4) square feet and must be made of either cast bronze, cast aluminum (or other suitable metal), carved stone, or tile. Language utilized (in recognition of an individual, corporation or foundation) on a plaque must contain language substantially similar to "sponsored by, underwritten by, a gift from."

(e) Vending in the Riverwalk Area.

- (1) **Definitions.** The following definitions apply to this subsection 35-679(e) in addition to those definitions contained in Appendix "A":

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Vend shall have the meaning provided in [Appendix A](#). ~~means offering goods, merchandise, or services in exchange for compensation; accepting compensation in exchange for goods, merchandise, or services; or distribution or display of merchandise or commercial advertising matter.~~

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Sec. 35-803. – Historic and Design Review Commission.

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(c) **Composition and Qualifications.** In appointing members of the commission, the city council shall make appointments that are sensitive to the preservation and development goals of the city and will enable the city to retain compliance as a certified local government under the rules incorporating the provisions of the U.S. Historic Preservation Act of 1966, as amended, and Title 13, Texas Historic Commission, chapter 15, ~~specifically 13 TAC 15.6(f)(3)(C)~~, so that all members shall have a demonstrated "interest, competence, or knowledge in historic preservation."

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(j) **Quorum.**

(1) A quorum of the commission shall require six (6) members present. The affirmative votes of a majority of the members present is required for action, except in the case of an application for demolition which shall require a two-thirds (2/3) majority of the members present for a recommendation of approval.

(2) Except when considering an application for demolition or a question of procedure or qualification, when a motion to approve, deny, or approve with conditions fails to pass with the requisite number of five votes, such outcome shall be deemed to be the approval of a motion to reconsider the question, and an automatic continuance to the next regularly scheduled meeting of the commission. If the commission has continued an item at two (2) consecutive meetings, such action, at the option of the applicant, shall be deemed to be a negative recommendation.

(3) Subpart (2) shall apply only when an application has been heard and the chair calls for motions, and so long as no subsequent motions on the application are made.

(k) **Conflicts of Interest.** No member of the commission shall vote or participate as a member in any matter that materially affects the property, income, or business interest of that member or in which the member holds a substantial interest. Such member shall refrain from all discussions of the matter with other commissioners, not be present when the matter is considered, not vote on the matter, and file all required written recusal documents prior to consideration of the item. ~~give notice of abstention from voting prior to the taking of a vote.~~

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Sec. 35-338. "RIO" River Improvement Overlay Districts.

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(f) Administration. River improvement overlay districts shall be governed in accordance with division 5 of article IV of this chapter, except that proposed changes to the boundary of a "RIO" shall be first submitted to the HDRC for review and recommendation before going to the Zoning Commission.

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Sec. 35-451. Certificate of Appropriateness.

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(d) Decision.

(1) **Commission Review.** The commission shall make its written final recommendation to either approve, deny, or approve with stipulations the application within sixty (60) days after the historic preservation officer's receipt of the completed application. Applications forwarded to the commission shall include all required materials and documents from the applicant. If the commission does not make its final recommendation within a sixty-day period, the application shall be deemed recommended by the commission for approval and the city manager or her designee shall either approve, deny or approve with conditions the application within five (5) days of the applicant's demand. The sixty-day time period may be extended up to three additional times, with each time not exceeding thirty (30) days, with the concurrence of the applicant if additional time is required for the preparation of information or for research required by the commission. In cases involving demolition applications, the Historic Preservation Officer may extend this timeline consistent with Section 35-455(d).

(2) **City Manager Review.** Upon receipt of the recommendation by the commission, or on their own initiative, the city manager or designee may implement such recommendation by notifying the applicant within ten (10) business days from receipt of such recommendation that the application has been approved, conditionally approved, or disapproved. The city manager designee for this purpose shall be the historic preservation officer, unless the city manager chooses to designate otherwise. The city manager or designee shall also submit a copy of the decision to the commission for its information, to the department of planning and development services for issuance of permits, and to other departments, as applicable. The city manager or designee shall assure the decision is based on the criteria established by the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation, and was considered by the commission in the determination as to issuance or denial of any certificate.

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Sec. 35-455. Demolition Permit Applications.

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(d) Decision.

(1) **Other Demolition Permits.** If the property is not a historic landmark, contributing property, or an intrusion in the district, the historic preservation officer shall determine whether or not the building, object, site, or structure may have historic, cultural, architectural, or archaeological significance within thirty (30) days after receipt of the completed application. ~~and shall notify the director of planning and development services in writing.~~ In making this determination, the historic preservation officer shall apply the appropriate definitions in Appendix A of this chapter, as well as any applicable standards or guidelines adopted by the city council. If the building, object, site, or structure is determined to have no cultural, historical, architectural, or archaeological significance, a demolition permit may be issued immediately, provided such application otherwise complies with the provisions of the demolition ordinance and all city code requirements. The historic preservation officer shall retain a written statement summarizing the reasons for their determination for such period as required under applicable record retention laws as followed by the city clerk's office. If the building, object, site, or structure is determined by the historic preservation officer to have historic, cultural, architectural, or archaeological significance, the historic preservation officer shall make such information available to the historic and design review commission for review and recommendation as to significance. If the historic and design review commission concurs in the significance, the historic and design review commission shall recommend that the building, object, site, or structure be designated as a historic landmark. Following such determination, the applicant may request a demolition permit by following the procedures for historic landmarks or properties within a historic district as prescribed in this section.

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Sec. 35-491. Civil Enforcement.

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(c) Penalties.

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(3) Civil Penalties Regarding Article VI, Historic Preservation. The civil penalties for violation of any section or other part of article VI of this chapter is as follows:

A. Any person who constructs, reconstructs, alters, restores, renovates, relocates, stabilizes, repairs or demolishes any building, object, site, or structure in violation of any section or other part of article ~~VI~~ ~~VIH~~ shall be required to restore the building, object, site, or structure to its appearance or setting prior to the violation.

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(d) Remedies.

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(4) Repayment Obligation. Whenever the city, under subsection (a), shall expend funds to correct a violation of this code, the city shall be entitled to repayment by the violator, and may take any appropriate action, including filing a lien against the property, to secure such repayment.

Sec. 35-605. Designation Process for Historic Districts.

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(c) ~~(e)~~ **Historic District Guidelines.**

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Sec. 35-614. Demolition.

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(d) Documentation and Strategy

(1) Applicants that have received a recommendation for a certificate shall document buildings, objects, sites or structures which are intended to be demolished with 35mm slides or prints, preferably in black and white, and supply a set of slides or prints ~~to the historic preservation officer~~ or provide a set of digital photographs in RGB Color to the historic preservation officer. Digital photographs must have a minimum dimension of 3000 x 2000 pixels and resolution of 300 dpi.

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Sec. 35-619. Non-Contributing Structures.

Requests for determination of whether an object, building, structure or sign are contributing or non-contributing to a historic landmark or historic district shall be made on an application obtained from the historic preservation officer through the office of historic preservation. The historic preservation officer shall review the application for completeness and shall make a determination whether the subject of the application is contributing or non-contributing within thirty (30) days of deeming the application complete. The historic preservation officer shall retain, for such period as required under applicable record retention law, a written statement summarizing the reasons for the determination. The historic preservation officer may, at his or her discretion, present the application ~~form~~ to the historic and design review commission for their recommendation.

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Sec. 35-634. - Cemeteries.

- [\(a\)](#) All applicants for permits, excluding burial permits, affecting cemeteries shall be referred to the city historic preservation officer for the purpose of determining whether or not the cemetery is historically, culturally, architecturally, or archaeologically exceptional or significant. If the cemetery is determined by the city historic preservation officer to be exceptional or significant, any proposed change, excluding burials, must be presented to the historic and design review commission for approval of planned work. If a court of competent jurisdiction has granted permission for cancellation or destruction of such cemetery, any plans for new construction must be approved thereafter by the historic and design review commission before construction commences. The historic and design review commission shall be governed in its recommendations by regulations set forth in Texas state law for cemeteries excluding burial permits.
- [\(b\)](#) Public and private development projects must comply with the Texas Health and Safety Code regarding the archaeological procedures for the impact to, or removal of, interred human remains (Texas Health and Safety Code, Title 13, Part 2, Chapter 22).

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Sec. 35-672. Neighborhood Wide Design Standards.

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(a) **Pedestrian Circulation.** Pedestrian access shall be provided among properties to integrate neighborhoods.

(1) Provide sidewalks that link with existing sidewalks on adjoining properties. If no sidewalk currently exists on an adjoining property, the applicant will have discretion in the placement of the sidewalk provided the following criteria are met:

- A. Provide a sidewalk connection from one (1) side of the applicant's property to the other, parallel to the [river bank or](#) public right-of way. ~~on the street sides of the property in all river improvement overlay districts~~
- B. Provide a connection from the street level sidewalk to the Riverwalk at cross streets and bridges and other designated access points. This requirement may be waived if there is already a public connection from the street level to the Riverwalk.
- C. In order to preserve the rural character of "RIO-6," the HPO, in coordination with the development services department, may waive the requirement of sidewalks.
 - In "RIO-3," the width of the pathway along the river shall match those widths established in the historic Hugman drawings. If there are no sidewalks in the Hugman drawings, the path will not exceed eight (8) feet in width.

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Sec. 35-673. - Site Design Standards.

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(p) **New Elevator and building access.** In order to prevent queuing and inhibition of pedestrian flow on the Riverwalk pathway, a landing that is at minimum 6 feet in depth shall be provided between an elevator or building access point or doorway and the Riverwalk pathway. The width of the landing shall further comply with ADA (Americans with Disabilities Act) and/or TAS (Texas Accessibility Standards) requirements.

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Sec. 35-678. Signs and Billboards in the RIO.

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(k) **Prohibited Signs.** The following signs are prohibited:

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(8) ~~Pole Signs;~~ Pole-mounted cabinet signs and pylon signs;

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Sec. 35-A101. Definitions and Rules of Interpretation.

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(b) **Definitions.** Words with specific defined meanings are as follows:

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Substantial improvement. Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before "start of construction" of the improvement. This includes structures which have incurred "repetitive loss" or "substantial damage", regardless of the actual repair work performed. The term does not, however, include either: (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary conditions or (2) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure."

Substantial rehabilitation. Certified improvements to a historic building in which the cost of the project is equal to or greater than ~~fifty (50) percent~~ 30 percent of the appraised pre-rehabilitation improvement value of the property and which constitutes major work on enhancing existing mechanical or structural systems that preserve the historical integrity, while extending the life of the building.

Swale. A low lying or depressed stretch of land without a defined channel or tributaries.

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35-310.11. - "D" Downtown.

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(a) Location Criteria.

The "D" downtown district shall be permitted only in the Downtown Business District, as defined in Appendix A ~~encompasses the city's central business district~~, which is the area originally settled and the locus of economic activity in the region. This shall include the area described as follows: Start at the intersection of Salado and El Paso Streets; north on Salado to its intersection with Frio Street; thence northeast in a straight line to the intersection of IH-10 and Cadwallader; south on IH-10 to IH-35; northeast on IH-35 to a perpendicular point connecting with Cherry Street; south on Cherry Street to César E. Chávez Boulevard ~~Durango~~ Boulevard; west on César E. Chávez Boulevard ~~Durango~~ to the San Antonio River; south along the San Antonio River to Arsenal Street; west on Arsenal to El Paso Street; and then west on El Paso to Salado.

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Sec. 35-452. Certificate of Appropriateness for Administrative Approval.

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(d) **Decision.** Applications for ordinary repair and maintenance may be approved by the [City Manager or their designee](#) ~~director of planning and development services upon recommendation from the historic preservation officer~~. The decision may be appealed in the same manner as set forth in section 35-481.

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Sec. 35-672. Demolition of Historic Features in the ~~Riverwalk~~ River Improvement Overlay Districts.

Demolition of architectural features, artwork, furniture, and other items shown on the Robert Hugman plans as well as other historic Riverwalk construction dating back to Spanish Colonial times and including works by the WPA, the CCC and the National Youth Administration constitutes an irreplaceable loss to the quality, character, ambiance and atmosphere of the San Antonio Riverwalk in the river improvement overlay districts. Accordingly, these procedures provide criteria to prevent unnecessary damage to the unique character of the city's Riverwalk areas and character.

(a) **Applicability.** The provisions of this section apply to any application for demolition of important architectural features on or immediately adjacent to the river and or the Riverwalk in the river improvement overlay districts.

Items shown on the Robert Hugman Plans for the Riverwalk in "RIO-3."

~~No certificate shall be issued for demolition of any~~ Items shown on the Robert Hugman Plans for the Riverwalk in "RIO-3-" must be preserved ~~This prohibition against demolition of Hugman features includes but is including but~~ not limited to staircases, walkways, furniture, bridges, tile and other artwork, light fixtures, handrail ornaments, boat landings, fountains, waterways, water features, retaining walls and the overall landscaping plan for placement of planting beds. ~~This prohibition shall also apply to,~~ and the earlier, hand-built river retention walls found in "RIO-3" as identified in the city records and commonly known as the Tobin walls and the Stucco walls. ~~However, a~~ Appropriate penetrations of these historic retention walls will be permitted subject to commission approval.

Heritage Trees. Removal or damage to heritage trees such as large Cypress trees and other, old significant trees at top of bank or along the Riverwalk is prohibited in all river improvement overlay districts. Except where the tree is damaged due to disease, age or physical condition and must be removed for the safety reasons. Then with a recommendation from the city arborist, or the official urban forester, the historic and design review commission may grant approval for demolition.

Other Items of Historic or Archaeological Interest. No certificate shall be issued for demolition of such historic and archaeological features dating from Spanish Colonial times including but not limited to acequias, dams, aqueducts, old mills, trailways, and other river related features or similar items.

(b) **Unusual and Compelling Circumstances for Demolition of the Above.** The historic and design review commission may consider unusual and compelling circumstances in order to approve a certificate of appropriateness for the demolition or removal of the

items listed in section 35-680. It shall be guided in its decision by balancing the contribution of the object, site or structure to the character of the river improvement overlay districts with the special merit of the proposed replacement project.

The historic and design review commission, using criteria set forth in this article, shall determine whether unusual and compelling circumstances exist and shall be guided in its recommendation in such instances by the following additional considerations:

- A. The historic or architectural significance of the object, site, or structure;
 - B. The importance of the object, site, or structure to the integrity and character of the river improvement overlay district;
 - C. The difficulty or the impossibility of reproducing such an object, site, or structure because of its design, texture, material, detail, or unique location;
 - D. Whether the object, site, or structure is one (1) of the last remaining examples of its kind in the neighborhood, the city, county, region, state, or nation;
 - E. Whether reasonable measures can be taken to save the object, site, structure, or cluster from further deterioration, collapse, arson, vandalism or neglect.
- (c) **Penalties.** Penalties for demolition of architectural features, artwork, furniture and other items discussed in this section shall be the same as those listed in subsections 35-491(c)(3) and (c)(4).

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