

THIS IS A PROPOSED DRAFT AND WILL BE REPLACED BY THE FINAL, SIGNED ORDINANCE OR RESOLUTION ADOPTED BY THE CITY COUNCIL.

AN ORDINANCE

**AMENDING CITY CODE OF SAN ANTONIO, TEXAS,
CHAPTER 35, UNIFIED DEVELOPMENT CODE SECTIONS
35-451, 35-455, AND 35-614, RELATED TO THE
DEMOLITION OF A HISTORIC STRUCTURE AND THE
APPEAL PROCESS AND PROVIDING FOR PUBLICATION.**

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WHEREAS, City Code of San Antonio, Texas, Chapter 35, Unified Development Code (“UDC”) outlines a demolition review process for historic landmarks and buildings within a historic district and requires the Historic Design and Review Commission (“HDRC”) to review such demolition requests; and

WHEREAS, UDC Section 35-614 outlines the criteria which must be met and states that no demolition shall be approved unless the applicant provides sufficient evidence to support a finding of unreasonable economic hardship on the applicant and if the applicant fails to prove unreasonable economic hardship, the applicant may also provide to HDRC additional information regarding loss of significance; and

WHEREAS, claims for economic hardship are difficult to substantiate in accordance with this section of the UDC as there are 14 criteria listed for all types of structures and 3 criteria for income-producing properties; and

WHEREAS, the City Council adopted the revised Code on May 3, 2001 and as part of the 2015 UDC update cycle, made numerous clarification to the process regarding the demolition of a Historic Structure in order to improve accessibility; and

WHEREAS, on August 2, 2017, further recommendations were made by the Governance Committee and by the Arts, Culture and Heritage Committee on October 17, 2017, to clarify the UDC language related to the demolition of Historic Structures, including its appeals process;
NOW THEREFORE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Chapter 35 of City Code San Antonio, Texas, the Unified Development Code, is hereby amended by adding language that is underlined (added) and deleting language that is stricken (~~deleted~~) to the existing text as set forth in this Ordinance.

SECTION 2. Chapter 35 of City Code San Antonio, Texas, is hereby amended as follows:

Chapter 35, Article IV, Section 35.451 (d) (3) is amended as follows:

- (3) **Appeal.** An applicant for a certificate may appeal the decision of the city manager or designee to the board of adjustment within thirty (30) days after receipt of notification of the city manager's action. The applicant shall be advised by the city manager or designee of the time and place of the hearing at which the appeal will be considered and shall have the right to attend and be heard as to the reasons for filing the appeal. In determining whether or not to grant the appeal, the board of adjustment shall consider the same factors as the commission, the report of the commission, and the report of the commission, ~~and any other matters presented at the hearing on the appeal.~~ If the board of adjustment approves the application, it shall direct the city manager or designee to issue a certificate for the work covered. If the board of adjustment disapproves the application, it shall direct the city manager or designee not to issue such certificate. Such disapproval may indicate what changes in the plans and specifications would meet the conditions. Upon receipt of the written disapproval of the board of adjustment, the city manager or designee shall immediately advise the applicant and the commission in writing.

Chapter 35, Article IV, Section 35.455 (d) (1) is amended as follows:

- (1) **Historic Landmarks.** Whenever an application for a certificate regarding the demolition of a landmark is submitted to the historic and design review commission, the historic and design review commission shall not hold a public hearing on the application for sixty (60) days from the date the application is received by the office of historic preservation. This time period is intended to permit the city historic preservation officer to discuss the proposed demolition informally with the property owner, other city officials, registered neighborhood associations, and local preservation organizations, to see if an alternative to demolition can be found before a formal consideration of the application by the historic and design review commission. At least one meeting with the registered neighborhood association shall occur within this period if the proposed demolition is located within a historic district. The historic preservation officer shall prepare, as a part of the submission, a report to the historic and design review commission analyzing alternatives to demolition, and request from other city departments or agencies information necessary for the preparation of this report.

If within this sixty-day period any one (1) of the following three (3) events shall occur, the historic and design review commission may defer hearing the application for six (6) months and it shall be considered to have been withdrawn by the applicant during such six-month period:

- The owner shall enter into a binding contract for the sale of the property,
- Approved arrangements shall be made for the structure to be moved to an approved new location, or
- The City of San Antonio shall determine to condemn the property and take it by the power of eminent domain for rehabilitation or reuse by the city or other disposition with appropriate preservation restrictions in order to promote the historic preservation purposes of this chapter to maintain the structure and protect it from demolition.

If within the sixty-day period none of the three (3) events summarized above shall have occurred, the historic and design review commission shall schedule a hearing on the demolition application at its next regularly scheduled meeting following the expiration of the sixty-day period, shall request all knowledgeable parties to comment at the hearing on the proposed demolition, and shall make its written recommendation within thirty (30) days after hearing the request for demolition. The historic and design review commission shall also request the city engineer or a third-party consultant to prepare a report on the state of repair and structural stability of the structure for which an application to demolish has been filed. This report shall be presented to the city HPO prior to the date of the historic and design review commission's hearing on the demolition permit application, and shall become part of the administrative record on the application.

Chapter 35, Article VI, Section 35.614 (b) (2) is amended as follows:

- (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, terms and conditions of the lender, development agreements entered into by the owner, etc.); nor shall it consider a claim of unreasonable economic hardship by a prospective or pending buyer of the property. When a claim of unreasonable economic hardship is made, the owner must provide sufficient evidence to support a finding by the commission 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 owned the property for a minimum of two (2) years and 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.
 - D. Construction cost estimates for rehabilitation, restoration, or repair, which shall be broken out by design discipline and construction trade, and shall provide approximate quantities and prices for labor and materials. OHP shall review such estimates for completeness and accuracy, and shall retain outside consultants as needed to provide

expert analysis to the HDRC. Additional reports or analyses shall be provided prior to the date of the historic and design review commission's hearing on the demolition permit application and shall become part of the administrative record on the application.

SECTION 3. All other provisions of Chapter 35 of the City Code of San Antonio, Texas shall remain in full force and effect, including the penalties for violations as made and provided for thereof, unless expressly amended by this ordinance.

SECTION 4. Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause or Word of this ordinance, for any reason be held to be illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective, and valid as if it had been enacted or ordained without the portion held to be unconstitutional or invalid or ineffective.

Chapter 35 of City Code San Antonio, Texas, is hereby amended as follows:

SECTION 5. The City Clerk is hereby directed to publish notice of this ordinance amending City Code, Chapter 35, Unified Development Code Article IV, Section 35.451 (d) (3), Article IV, Section 35.455 (d) (1), and Article VI, Section 35.614 (b) (2). Publication shall be in a newspaper in accordance with Section 17 of the City Charter.

SECTION 6. The publishers of the City Code of San Antonio, Texas, are authorized to amend said Code to reflect the changes adopted herein and to correct typographical errors and to index, format, and number paragraphs to conform with the existing code.

SECTION 7. This Ordinance shall be effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this ____ day _____.

M A Y O R
Ron Nirenberg

ATTEST:

APPROVED AS TO FORM:

Leticia M. Vacek, City Clerk

Andrew Segovia, City Attorney