

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

**AN ORDINANCE**

**AUTHORIZING AMENDMENTS TO ARTICLE 4, PROCEDURES, OF CHAPTER 35, THE UNIFIED DEVELOPMENT CODE (UDC), OF THE CITY CODE OF SAN ANTONIO, RELATING TO PENALTIES FOR DEMOLITION WITHOUT A PERMIT AND PROTECTION OF PROPERTIES DETERMINED TO BE ELIGIBLE FOR HISTORIC DESIGNATION; AND AMENDING APPENDIX 'A', "DEFINITIONS", OF THE UDC.**

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**WHEREAS**, on November 1, 2016, Councilman Roberto Trevino (CD1) submitted a Council Consideration Request (CCR) to establish reasonable penalties for demolition without an approved permit of a designated historic structure, whether individually landmarked or within a Historic District, or a non-accessory structure in a Neighborhood Conservation District; and

**WHEREAS**, although demolition of historic structures constitutes an irreplaceable loss to the quality and character of the City of San Antonio, and state law offers heightened protection to designated historic properties but does not recognize Neighborhood Conservation Districts as a zoning classification warranting heightened protection beyond that available for illegal demolition more generally; and

**WHEREAS**, the San Antonio Unified Development Code ("UDC") outlines a demolition review process for all properties within city limits which permits the Office of Historic Preservation ("OHP") to determine the eligibility of a property for historic designation; and

**WHEREAS**, once such a determination is made, OHP forwards the recommendation to City Council and requests that City Council direct OHP to initiate a rezoning of said property as historic; and

**WHEREAS**, in order to protect such properties during the pendency of such designation process, requests for permits to alter a property that the Historic and Design Review Commission ("HDRC") has recommended for designation are required to comply with the same rules and procedures as a designated property; and

**WHEREAS**, such regulation still leaves undesignated structures vulnerable to demolition before the formal recommendation has been issued and rezoning process has begun; and

**WHEREAS**, the penalties home-rule municipalities may impose for ordinance violations such as illegal demolition are limited by statute and may not adequately serve their intended deterrent function; and

**WHEREAS**, the Texas Local Government Code does permit certain penalties for illegal demolition of designated historic properties the City has not previously adopted; and

**WHEREAS**, extending the rules and procedures in the UDC applicable to designated properties to those determined eligible for designation, and adopting all penalties for illegal demolition permissible under state law will further enhance the protection of such properties, safeguarding their potential ongoing contribution to the rich character of San Antonio;

**NOW THEREFORE,**

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

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

**SECTION 2.** 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 in Section 35-491, unless expressly amended by this ordinance.

**SECTION 3.** Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this ordinance, for any reason be held 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 and ordained without the portion held to be unconstitutional or invalid or ineffective.

**SECTION 4.** The City Clerk is directed to publish notice of this ordinance amending City Code, Chapter 35, Unified Development Code. Publication shall be in a newspaper in the City in accordance with Section 17 of the City Charter.

**SECTION 5.** 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 to the existing code.

**SECTION 6.** This Resolution shall be effective immediately upon passage by eight or more affirmative votes; otherwise, it shall be effective on the tenth day after passage

**PASSED AND APPROVED** this 5<sup>th</sup> day of October, 2017

**M   A   Y   O   R**

**Ron Nirenberg**

**ATTEST:**

**APPROVED AS TO FORM:**

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**Leticia M. Vacek, City Clerk**

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**on behalf of Andrew Segovia, City Attorney**

## ATTACHMENT 'A'

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Sec. 35-451. - Certificate of Appropriateness.

- (a) Applications proposing work or changes to the exterior of a landmark, in a historic district, ~~or~~ in a river improvement overlay district, viewshed protection or mission protection overlay district, or a property identified as an eligible resource or recommended for historic designation in accordance section 35-453(a) shall require review for appropriateness with the provisions of this article, and any adopted design guidelines. In addition, the demolition or relocation of any structure designated historic shall also require review for appropriateness in the same manner. Such applications may include, but are not limited to:

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Sec. 35-453. - Permits Affecting ~~Property~~ Properties Identified as Eligible Resources or Recommended by the Historic Design and Review Commission for Historic Designation.

(a) **Applicability.**

- (1) When an application is made on a building, object, site or structure that has been determined by the Historic Preservation Officer to be an eligible resource for historic designation in accordance with this section, and when written notice informing the property owner of such a determination has been provided, then the provisions of this division shall apply to the property until the lesser of 180 days of the notification or action by city council on the recommendation for designation.
- (2) When an application is made on a building, object, site or structure recommended by the commission for designation as a historic landmark or of a building, object, site, structure or unimproved land located within an area recommended by the commission for designation as a historic district, ~~the applicant shall follow procedures outlined in this subdivision until the final disposition of the recommendation by city council. then~~ the provisions of this division shall apply to the property until action by city council on the recommendation for designation.

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Sec. 35-455. - Demolition Permit Applications.

(d) **Decision.**

- (2) **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. 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. If the building, object, site, or structure is found to have significance and is determined to an eligible resource for historic designation in accordance with this section, the Historic Preservation Officer shall notify the owner of the property in writing of such determination in accordance with this division. 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. - 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 shall be required to restore the building, object, site, or structure to its appearance or setting prior to the violation. In lieu of the reconstruction of a demolished or partially-demolished resource, if the structural, physical, or visual integrity of the structure or property is adversely affected to the extent that it is not feasible to restore the structural, physical, or visual integrity substantially to its former level, such person

shall be liable for damages equal to the cost of constructing, using as many of the original materials as possible, a new structure or property that is a reasonable facsimile of the historic structure or property and the cost of attorney's, architect's, and appraiser's fees and other costs related to the enforcement of this section. If it is feasible to restore the structural, physical, or visual integrity of the structure or property substantially to its former level, the damages are equal to the cost of the restoration, using as many of the original materials as possible, and the cost of attorney's, architect's, and appraiser's fees and other costs related to the enforcement of this section, in accordance with Texas Local Government Code Section 315.006. Any action to enforce this provision shall be brought by the City of San Antonio. This civil remedy shall be in addition to, and not in lieu of, any criminal prosecution and penalty.

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#### APPENDIX A - DEFINITIONS AND RULES OF INTERPRETATION

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Eligible resource. A building, object, site, or structure which has been determined by the Historic Preservation Officer to meet the Designation Criteria for Historic Districts and Landmarks set forth in Article VI of this chapter.