



City of San Antonio

Agenda Memorandum

File Number: 17-4248

Agenda Item Number: 6.

Agenda Date: 8/2/2017

In Control: Governance Committee

DEPARTMENT: Office of Historic Preservation

DEPARTMENT HEAD: Shanon Miller, Director

COUNCIL DISTRICTS IMPACTED: All

SUBJECT:

Potential amendments to the Unified Development Code relating to Burden of Proof Requirement for Demolition in the Unified Development Code.

SUMMARY:

District 1 Councilman Roberto Treviño has submitted a City Council Resolution to revise the language in UDC Section 35-614 as it relates to the Burden of Proof Requirement for Demolition of a Landmark cases reviewed by the Historic and Design Review Commission.

BACKGROUND INFORMATION:

The UDC outlines a demolition review process for historic landmarks and buildings within a historic district. These demolition requests require HDRC review, and UDC Section 35-614 outlines the criteria which must be met for the HDRC to recommend approval of demolition. This sections states that no demolition shall be approved unless the applicant provides sufficient evidence to support a finding of unreasonable economic hardship on the applicant. If an applicant fails to prove unreasonable economic hardship, the applicant may also provide to the historic and design review commission additional information regarding loss of significance. The UDC only authorizes this level of review for historic properties.

Claims for economic hardship are difficult to substantiate in accordance with this section. There are 14 criteria listed for all types of structures and properties and an additional 3 criteria for income-producing properties. The UDC allows for a 60-day period under which demolitions are reviewed at the committee level. The HDRC is authorized to request addition information via affidavit should the unique circumstances of a case require it.

The HDRC is also authorized to waive some of the criteria for cases involving a low-income homeowner.

Approximately 14 private demolitions have been approved by the HDRC in the past 5 years. For the majority of these approvals, the HDRC did not find that an economic hardship had been met, but rather that a loss of significance had occurred. This is appropriate when structure or property is no longer historically, culturally, architecturally or archeologically significant. When a property is designated, OHP staff prepares a Statement of Significance that will serve as the basis for future decision making for the property.

The current language states that “When a claim of unreasonable economic hardship is made, the owner must provide sufficient evidence to support a finding by the commission”. Councilman Treviño wishes to strengthen this language and eliminate ambiguity regarding the amount of evidence required to support a finding.

The current language was recommended by the City Attorney’s Office and approved as part of the 2015 UDC update cycle. Prior to 2015, both terms clear and convincing and preponderance were used throughout this section. The clarifying amendment that was made in 2015 sought to provide terminology that was more legally appropriately and defensible given the jurisdiction of the HDRC. Additionally, the clarifying amendment sought to improve accessibility to the layperson regarding the expectations for the review so that individuals could apply for demolition without seeking legal counsel.

ISSUE:

The term “sufficient evidence” was determined to be most appropriate it allowed the HDRC to review the submitted materials and make an informed decision based on the most compelling evidence, versus a simple majority of the evidence. However, additional amendments could be made to clarify how those materials are evaluated and submitted as evidence.

ALTERNATIVES:

As an alternative, no UDC amendments would be made and the current language would remain in place.

FISCAL IMPACT:

Costs associated with UDC amendments include legally-required notifications and publications. These costs are currently budgeted.

RECOMMENDATION:

Staff recommends working with the City Attorney’s Office and the City Council Arts, Culture, and Heritage Committee to explore options that better define burden of proof requirements for historic demolitions.