

ORDINANCE NO. 1813

AN ORDINANCE OF THE CITY OF BRYAN, TEXAS, AMENDING CHAPTER 2, ADMINISTRATION, BY ADDING DIVISION 15, SUBSECTIONS 2-407 THROUGH 2-409 AND CHAPTER 130, ZONING, AMENDING SUBSECTIONS 130-3, 130-24 AND 130-33 AND REPEALING CHAPTER 54, HISTORIC PRESERVATION OF THE CITY OF BRYAN CODE OF ORDINANCES, PROVIDING FOR THE ALIGNMENT OF HISTORIC PRESERVATION CODES WITH MODERN HISTORIC PRESERVATION THEORIES AND PRACTICES; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR CODIFICATION; PROVIDING A PENALTY CLAUSE; FINDING AND DETERMINING THAT THE MEETINGS AT WHICH THIS ORDINANCE WAS PASSED WERE OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the citizens of Bryan voted “historic preservation” throughout the city as one of the Top 16 issues for the city to focus on in the 2006 Bryan Comprehensive Plan Update; and

WHEREAS, the purpose of these changes to the historic preservation regulations of the City of Bryan are to promote the educational, cultural, economic and general welfare of the public through the recognition, enhancement, and perpetuation of sites and districts of historical and cultural significance;

WHEREAS, these changes help to continue to safeguard the City's historic, aesthetic, and cultural heritage by preserving sites and districts of historic and cultural significance;

WHEREAS, historic preservation stabilizes and improves property values and fosters pride in the legacy of beauty and achievements of the past;

WHEREAS, the City of Bryan Historic Landmark Commission recommended approval of this ordinance at its December 10, 2008 regular meeting;

WHEREAS, the City of Bryan Planning and Zoning Commission recommended approval of this ordinance at its April 2, 2009 regular meeting;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS:

1.

That the City Council finds and determines the foregoing recitals to be true and correct and hereby makes them part of this Ordinance.

2.

That Chapter 2, Article III Commissions, Committees, Boards, Agencies, of the City of Bryan Code of Ordinances is hereby amended to add the following subsections:

Division 15. Historic Landmark Commission

Sec. 2-407. Established; Membership.

(a) There is hereby created a commission to be known as the Historic Landmark Commission to be composed of seven members to be appointed by the City Council for a term of three years with a maximum of one reappointment for a total of six continuous years. Appointments shall be by place. In the case of vacancies on the commission, the City Council shall appoint a replacement to serve the remainder of that term. The unexpired term shall not apply when calculating service for the maximum service of six years. The members of this commission shall be subject to all requirements and provisions applicable to all board or committee members as may be established by the City Council. The Historic Landmark Commission shall be composed of the following members:

- (1) A member of a local historic commission or historic preservation group;
- (2) A registered architect residing within the county;
- (3) A resident or property owner in the East Side Historic District;
- (4) A resident or property owner in the Downtown Historic District;
- (5) Three members at large.

(b) All members should be residents of the county, and reside within the city if possible. All members should have knowledge and experience in the architectural, cultural, social, economic, ethnic or political history of the city. No one business shall constitute a majority membership on the commission.

(c) Membership in historic preservation organizations is encouraged for all members of the Commission and does not disqualify members from serving in another capacity required by the composition of the Commission.

Sec. 2-408 Purpose.

(a) The Historic Landmark Commission shall thoroughly familiarize itself with buildings, structures, sites, districts, areas and lands within the City which may be eligible for designation as historic landmarks and shall:

- (1) Establish criteria to be used in determining whether certain buildings, structures, sites, districts, areas, lands and other objects should be designated as historic landmarks;
- (2) Review, consider and take action on Certificate of Appropriateness's.
- (3) Establish guidelines to be used in determination of whether to grant or deny certificates of appropriateness;
- (4) Formulate suggestions for private and public action which may involve various city departments in preservation of historic preservation overlay districts;
- (5) Suggest sources of funds for preservation and restoration activities and acquisitions, to include federal sources, state sources, private and foundation sources, as well as municipal sources;
- (6) Recommend to the proper agencies incentives designed to encourage historic preservation;
- (7) Establish policies and procedures of the Historic Landmark Commission; and
- (8) A preservation plan shall be kept on file, to be reviewed annually.

(b) The Historic Landmark Commission shall recommend to the city Planning and Zoning Commission ordinances designating certain buildings, structures, sites, districts, areas and lands in the city as historic landmarks. The Historic Landmark Commission shall hold a public hearing on all proposed ordinances and the owner of any land included in the proposed ordinance shall be given at least ten days' written notice of the public hearing.

Section 2-409. Appointment of Historic Preservation Officer.

The City Manager or a designee shall appoint a qualified city staff person to serve as Historic Preservation Officer. This officer shall serve as the liaison to the Historic Landmark Commission and shall advise the Commission on matters submitted to it and provide information on historic preservation to the public.

The officer is responsible for coordinating the city's preservation activities with those of state and federal agencies and with local, state, and national nonprofit preservation organizations.

3.

That Section 130-2: Definitions, of the City of Bryan Code of Ordinances is hereby amended by adding the following definitions:

Alteration shall mean a physical change in or to a building or site.

Building. See structure. Building also may be used to refer to a historically and functionally related unit, such as a courthouse and jail or a house and barn.

Historic Landmark Commission shall mean a board, comprised of a majority of citizens of Bryan, Texas, and appointed by the city council as an advisory body, authorized to carry out historic preservation duties and functions as delegated by the city council.

Historic landmark, resource, or property shall mean any building, structure, object, site, district, area or land of architectural, historical or cultural importance or value, which the city council determines shall be protected, enhanced and preserved in the interest of the culture, prosperity, education and general welfare of the people.

Historic preservation overlay district shall mean a district which possesses a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development.

Historic site shall mean the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historical, cultural, or archeological value regardless of the value of any existing structure.

Integrity shall mean the authenticity of a property's historic identity, evidenced by survival of physical characteristics that existed during the property's historic or prehistoric period.

Object shall mean a feature of a historic site that is used to distinguish from buildings and structures those constructions that are primarily artistic in nature or are relatively small in scale and simply constructed. Although it may be, by nature or design, movable, an object is associated with a specific setting or environment, such as statuary in a designed landscape.

Ordinary maintenance shall mean activities relating to a property that would be considered ordinary or common for maintaining the property, such as the replacement of a porch floor with identical or in-kind materials. It also may include other activities such as painting.

Preservation shall mean the act or process of applying measures to sustain the existing form, integrity, and material of a building or structure, and the existing form and vegetative cover of a site. It may include

initial stabilization work, where necessary, as well as ongoing maintenance of the historic building materials.

Rehabilitation shall mean the act or process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the property which are significant to its historical, architectural, and cultural values.

Restoration shall mean the act or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time by means of the removal of later work or by the replacement of missing earlier work.

4.

That the following subsections of Chapter 130 of the City of Bryan Code of Ordinances are hereby amended as follows:

Section 130-24. HP, Historic Preservation Overlay District is replaced with the following:

(a) General purpose and description.

The City Council of Bryan, Texas hereby declares that as a matter of public policy the preservation, protection, enhancement, and perpetuation of properties of historic and cultural importance and significance are necessary to promote the economic, cultural, educational, and general welfare of the public. It is recognized that the City of Bryan represents the unique confluence of time and place that shaped the identity of generations of citizens, collectively and individually, and produced significant historic, architectural, and cultural resources that constitute their heritage. This section is intended to:

- (1) preserve, protect and enhance the properties which represent distinctive elements of Bryan's historic, architectural, and cultural heritage;
- (2) foster civic pride in the accomplishments of the past;
- (3) preserve, protect and enhance Bryan's attractiveness to visitors and the support and stimulus to the economy thereby provided;
- (4) insure the harmonious, orderly, and efficient growth and development of the City;
- (5) promote economic prosperity and welfare of the community;
- (6) encourage stabilization, restoration, and improvements of such properties and their values.

(b) Criteria for Designation of Historic Preservation Overlay District

A historic preservation overlay district may be designated if it meets any of the following criteria:

- (1) Possesses significance in history, architecture, archeology, or culture.
- (2) Embodies the distinctive characteristics of a type, period, or method of construction.
- (3) Represents the work of a master designer, builder, or craftsman.
- (4) Represents an established and familiar visual feature of the City.
- (5) Meets the criteria established by the National Register of Historic Places.
- (6) Exemplification of the cultural, economic, social, ethnic or historical heritage of the city, state or nation;
- (7) Location as the site of a significant historical event; and
- (8) Identification with a person or persons who significantly contributed to the culture and development of the city, state or nation.

(c) Designation of Historic Preservation Overlay District

- (1) These provisions pertain to the designation of historic property/properties by creating the Historic Preservation Overlay District, a part of the comprehensive zoning ordinance of the City of Bryan.
- (2) Eligible applicants are:
 - a. Property owner or 60% of property owners in a proposed district consisting of more than one property (1 vote per property);
 - b. Historic Landmark Commission, Planning and Zoning Commission, or City Council.
 - c. Historic Preservation Officer
- (3) Applications to increase, decrease or establish boundaries of a historic preservation overlay district must include:
 - a. A legal description of the boundaries of the district;
 - b. A photograph or photographs of each contributing building, structure, site, area or land.
 - c. A description of all buildings, structure, site, area or land showing the condition, color, and architectural style of each and:
 - i. Date of construction, if known;
 - ii. Builder or architect, if known;
 - iii. Chain of uses and ownership;
 - iv. Building materials;
 - v. Construction technique;
 - vi. Summary of recognition of state or national government including reason designated, if applicable.
 - d. A statement of reasons for recommending designation or changes to the district, including a list of contributing buildings, structures, sites, areas or lands of importance and a description of the particular importance of each contributing building, structure, site, area or land.
 - e. Findings supporting establishment of or change to the district according to the criteria in this section and indicating the particular importance or value of the district;
 - f. Signature of applicant. Eligible applicants are: property owner [or 60% of owners (1 vote per property) in a proposed district of more than 1 property]; Historic Landmark Commission (as established in Chapter 2 of the Bryan Code of Ordinances); or Historic Preservation Officer.
- (4) The Historic Landmark Commission shall conduct a public hearing on the proposed historic preservation overlay district. At the Historic Landmark Commission's public hearing, owners, interested parties, and technical experts may present testimony or documentary evidence which will become part of a record regarding the historic, architectural, or cultural importance of the proposed historic preservation overlay district. The Historic Landmark Commission shall prepare a recommendation on the proposed change stating its findings, and evaluation within forty-five (45) days subsequent to the hearing on the proposed designation.
- (5) Upon recommendation of the Historic Landmark Commission, the proposed historic preservation overlay district shall be submitted to the Planning and Zoning Commission within forty-five (45) days from the date of the Historic Landmark Commission's recommendation. After a recommendation by the Historic Landmark Commission, all proposed historic preservation overlay districts shall follow procedures set forth in Section 130-42 of this ordinance of the City of Bryan.
- (6) Upon designation of a historic preservation overlay district, the City Council shall cause the designation to be recorded in the official zoning maps of the City of Bryan.

(d) Certificate of Appropriateness Affecting Historic Preservation Overlay Districts

Construction, reconstruction, alteration, restoration, rehabilitation, relocation, demolition, or any change visible from a public right-of-way of any historic property within a historic preservation overlay district shall not occur without prior approval of a Certificate of Appropriateness from the Historic Landmark Commission. The Building Official, Historic Preservation Officer, or his/her designee shall not issue a building permit without a Certificate of Appropriateness having been granted.

(e) Criteria for Approval of a Certificate of Appropriateness

In considering an application for a Certificate of Appropriateness, the Historic Landmark Commission shall be guided by any adopted design guidelines, and where applicable, the following from The Secretary of the Interior's Standards for Rehabilitation of Historic Buildings. Any adopted design guidelines and Secretary of the Interior's Standards shall be on file within the Development Services Department and made available to the public.

- (1) Every reasonable effort shall be made to adapt the property in a manner which requires minimal alteration of the building, structure, object, or site and its environment.
- (2) The distinguishing original qualities or character of a building, structure, object, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- (3) All buildings, structures, objects, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- (4) Changes which may have taken place in the course of time are evidence of the history and development of a building, structure, object, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- (5) Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure, object, or site shall be kept when possible.
- (6) Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should reflect the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historical, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- (7) The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage historic building materials shall not be undertaken.
- (8) Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- (9) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural, or cultural material, and such design is compatible with the size, scale, color, material, and character of the property, neighborhood, or environment.
- (10) Whenever possible, new additions or alterations to buildings, structures, objects, or sites shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the building, structure, object, or site would be unimpaired.
- (11) Any design guidelines adopted by the Historic Landmark Commission or City Council.

(f) Certificate of Appropriateness Application Procedure

- (1) Prior to the commencement of any work in the historic preservation overlay district requiring a Certificate of Appropriateness the owner shall file an application for such a certificate with the Historic Landmark Commission. The application shall contain:
 - a. Name, address, telephone number of applicant.
 - b. Detailed description of proposed work.
 - c. Location and photograph of the property, including historic photographs, if available.
 - d. Elevation drawings of the proposed changes, if applicable.
 - e. Samples of materials to be used.
 - f. If the proposal includes signs or lettering, a scale drawing showing the type of lettering to be used, all dimensions and colors, a description of materials to be used, method of illumination (if any), and a plan showing the sign's location on the property.
- (2) Building permits shall not be issued for such proposed work until a Certificate of Appropriateness has first been issued by the Historic Landmark Commission. The Certificate of Appropriateness required by this act shall be in addition to and not in lieu of any building permit that may be required by any other ordinance of the City of Bryan.
- (3) The Historic Landmark Commission shall review the application during a public meeting within forty-five (45) days from the date the application is received. The Historic Landmark Commission shall act upon the Certificate of Appropriateness within forty-five (45) days after the meeting. In the event the Historic Landmark Commission does not act within ninety (90) days of the receipt of the application, a Certificate of Appropriateness shall be deemed granted. The Historic Landmark Commission's decision is limited to approve, approve with modifications; suspension of action for a specified time or deny.
- (4) All decisions of the Historic Landmark Commission shall be in writing and shall state its findings pertaining to the application. A copy shall be sent to the applicant. Additional copies shall be filed as part of the public record on the subject property.
- (5) An applicant for a Certificate of Appropriateness may appeal the decision of the Historic Landmark Commission to the City Council within ten (10) days after such action.
- (6) Certificate of Appropriateness' are valid for a period of one (1) year. Any work not completed within a one year period shall require a new Certificate of Appropriateness to be issued by the Historic Landmark Commission.

(g) Economic Hardship Application Procedure

- (1) After receiving written notification from the Historic Landmark Commission of the denial of Certificate of Appropriateness, an applicant may commence the hardship process to obtain necessary building or demolition permits. No building permit or demolition permit shall be issued unless the Historic Landmark Commission makes a finding that hardship exists.

When a claim of economic hardship is made due to the effect of this ordinance, the owner must demonstrate to the Historic Landmark Commission that:

- a. the property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;
- b. the property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return; and
- c. efforts to find a purchaser interested in acquiring the property and preserving it have failed.

- (2) The applicant shall consult with the Historic Landmark Commission, local preservation groups and interested parties in a diligent effort to seek an alternative that will result in preservation of the property. Such efforts must be shown to the Historic Landmark Commission.
- (3) The Historic Landmark Commission shall hold a public hearing on the application within sixty (60) days from the date the application is received by the Building Official, Historic Preservation Officer, or his/her designee. Following the hearing, the Commission has thirty (30) days in which to prepare a written recommendation to the Building Official, Historic Preservation Officer, or his/her designee. In the event that the Historic Landmark Commission does not act within ninety (90) days of the receipt of the application, a permit may be granted.
- (4) All decisions of the Historic Landmark Commission shall be in writing. A copy shall be sent to the applicant by mail and a copy filed with the city for public inspection. The Historic Landmark Commission's decision shall state the reasons for granting or denying the hardship application.
- (5) Hardships shall not be granted if they are a result of the owner's actions.

(h) Ordinary Maintenance in a Historic Preservation Overlay District

Nothing in this ordinance shall be construed to prevent the ordinary maintenance, in-kind replacement, and repair of any exterior architectural feature of a property within a historic preservation overlay district which does not involve a change in design, material, or outward appearance. When the Building Official, Historic Preservation Officer, or his/her designee determines work has progressed beyond ordinary maintenance, the Commission shall review a request for a Certificate of Appropriateness.

(i) Demolition by Neglect

Owners or persons with an interest in real property included within a historic preservation overlay district shall not permit the property to fall into a serious state of disrepair so as to result in the deterioration of any exterior feature which would produce a detrimental effect upon the character of the historic preservation overlay district as a whole or the life and character of the property itself.

Examples of such deterioration may include, but shall not be limited to:

- (1) Deterioration of exterior walls or other vertical supports.
- (2) Deterioration of roof or other horizontal members.
- (3) Deterioration of exterior chimneys.
- (4) Deterioration or crumbling of exterior stucco or mortar.
- (5) Ineffective waterproofing of exterior walls, roof, or foundations, including broken windows or doors.
- (6) Deterioration of exterior architectural features.
- (7) Deterioration of any feature so as to create a hazardous condition which could lead to the claim that demolition is necessary for the public safety.

(j) Sign Regulations

Refer to Chapter 98: Signs of the Bryan Code of Ordinances.

Section 130-33 (g). Additional regulations for certain uses. is replaced with the following:

g) Additional regulations for certain uses. The following additional conditions and procedures shall apply to the uses listed below: manufactured housing land lease communities: The proposed use shall

comply with the standards set forth in the manufactured housing land lease communities, new developments ordinance, section 130-29.

Historic Preservation Overlay Districts: any conditional use permit concerning property within a Historic Preservation Overlay District shall receive a recommendation to the Planning and Zoning Commission from the Historic Landmark Commission during a public hearing, following the standards of a Certificate of Appropriateness procedure set forth in Section 130-24.

5.

That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed, including Chapter 54, Historic Preservation of the City of Bryan Code of Ordinances in its entirety, to the extent of such conflict.

6.

That the Code of the City of Bryan, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

7.

That if any section, paragraph, sentence, clause, phrase or word of this ordinance is declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall not be affected thereby and to this end the provisions of this ordinance are declared to be severable.

8.

That it is hereby found and determined that the meetings at which this ordinance was passed were open to the public, as required by Section 551.001 et seq., Texas Government Code, and that advance public notice of the time, place and purpose of said meetings was given.

9.

It is the intention of the City Council that this ordinance shall become a part of the Bryan City Code and it may be renumbered and codified therein accordingly

10.

That a person who violates any section of this ordinance is guilty of a misdemeanor and upon conviction is punishable in accordance with Section 1-14 of the City of Bryan Code.

11.

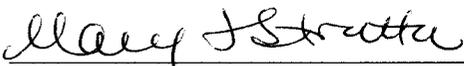
That the City Secretary is directed to publish this ordinance in a newspaper of general circulation in the City of Bryan in compliance with the provisions of the City Charter, which publication shall be sufficient if it contains the title of this ordinance, the penalty provided therein for violation thereof, and the effective date of the ordinance.

That this ordinance shall take effect from and after its final passage and publication as required by law. The effective date of this Ordinance will be June 13, 2009.

PRESENTED AND GIVEN first reading the 26th day of May, 2009, at a regular meeting of the City Council of the City of Bryan, Texas; and given second reading, PASSED AND APPROVED on the 9th day of June, 2009, by a vote of 7 ayes and 0 noes at a regular meeting of the City Council of the City of Bryan, Texas.

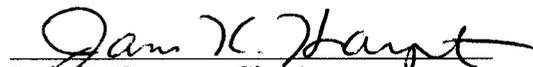
ATTEST:

CITY OF BRYAN


Mary Lynne Stratta, City Secretary


D. Mark Conlee, Mayor

APPROVED AS TO FORM:


Janis K. Hampton, City Attorney