



## Legislation Details (With Text)

**File #:** 101223 **Version:** 2

**Type:** Ordinance **Status:** Passed

**File created:** 1/19/2011 **In control:** ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE

**On agenda:** **Final action:** 12/18/2012

**Effective date:**

**Title:** A substitute ordinance relating to historic preservation regulations.

**Sponsors:** ALD. WITKOWSKI, ALD. BAUMAN

**Indexes:** HISTORIC PRESERVATION

**Attachments:** 1. Comparison of Interim/Temporary Designation Procedure, 2. Comparison of Certificate of Appropriateness Procedure, 3. Proposed Substitute A, 4. Letter from Commissioner Randy Bryant, 5. Sign-In Sheets from HPC meeting 12-11-12, 6. Sign-In Sheets from Special HPC 3-27-12, 7. Opposition Letter - Whitney Gould, 8. Seattle Municipal Code from Donna Schlieman, 9. Milwaukee Preservation Alliance Letter, 10. Email from Pamela Frautschi and Richard Ippolito, 11. Letter from Brian J Pionke, 12. Hearing Notice List, 13. Hearing Notice List 12-11-12 HPC Meeting, 14. Hearing Notice List 12-18-12, 15. Motion by Ald Murphy, 16. Statement from Bishop Steven Miller, 17. Notice Published on 1-9-13

Date	Ver.	Action By	Action	Result	Tally
1/19/2011	0	COMMON COUNCIL	ASSIGNED TO		
7/9/2012	1	CITY CLERK	DRAFT SUBMITTED		
9/12/2012	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
9/12/2012	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
9/13/2012	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
12/6/2012	1	HISTORIC PRESERVATION COMMISSION	HEARING NOTICES SENT		
12/6/2012	1	HISTORIC PRESERVATION COMMISSION	HEARING NOTICES SENT		
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12/12/2012	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
12/12/2012	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
12/18/2012	1	COMMON COUNCIL	PASSED	Pass	15:0
12/18/2012	2	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	RECOMMENDED FOR PASSAGE	Pass	5:0
12/18/2012	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	SUBSTITUTED	Pass	5:0
1/3/2013	1	MAYOR	SIGNED		
1/9/2013	1	CITY CLERK	PUBLISHED		

101223  
SUBSTITUTE 2

ALD. WITKOWSKI AND BAUMAN

A substitute ordinance relating to historic preservation regulations.

81-59.5	cr
218-8-1-0	am
320-21-3-b	rp
320-21-3-c	rn
320-21-3-d	rn
320-21-3-d	cr
320-21-3-e-7	rc
320-21-3-e-10	cr
320-21-8-f	rc
320-21-8-g	rc
320-21-8-h	am
320-21-8-i	am
320-21-9-a	rc
320-21-9-b-0	am
320-21-9-c	rc
320-21-9-d	rc
320-21-9-e	rc
320-21-9-f	am
320-21-9-g	am
320-21-9-h	rc
320-21-9-i	cr
320-21-9-j	cr
320-21-11	rc
320-21-13	rc
320-21-14	am
320-21-15-0	am
320-21-15-a	am
320-21-15-b	am
320-21-16	rc
320-21-17	cr
320-21-18	cr
320-21-19	cr
320-21-20	cr

This ordinance amends and creates certain code provisions relating to the historic preservation commission and its procedures. Specifically, the ordinance:

1. Establishes a \$25 fee to nominate a structure, site or district for historic designation.
2. Substantially revises one criterion for determining whether a particular district, site or structure has historic, architectural or cultural significance (the one relating to architectural innovation) and creates a new criterion to recognize a district, site or structure's association with pre-European settlement.
3. Requires a certificate of appropriateness for construction on a parcel that contains a historic

structure or is within a historic district and which is to be rendered vacant or partially vacant by reason of partial or complete demolition of a structure.

4. Requires that commission staff review applications for designation of historic status or for a certificate of appropriateness within 10 days to determine if the application is complete as to form.
5. After determination that an application is complete as to form, requires that the commission hold a public hearing to consider the application within 45 days (for a nomination or a certificate of appropriateness application relating to demolition) or that the commission render a decision at or within 30 days of its next regularly-scheduled meeting that is at least 10 days after the determination is made, without a public hearing (if the application relates to a certificate of appropriateness for alteration, reconstruction, rehabilitation or new construction). However, a public hearing shall be required if an objection to issuance of a non-demolition certificate is filed in writing with the city clerk.
6. Creates a procedure to appeal the commission's rejection of a historic designation nomination to the common council.
7. Eliminates a provision stating that if the common council does not take final action on a recommendation for historic designation within 2 years of the date of nomination of the structure, site or area, the nomination of the site, structure or area is terminated. Under this ordinance, the council will simply be required to take final action within 2 years of the date of the commission's recommendation on the designation.
8. Clarifies that there are separate and distinct standards for issuance of certificates of appropriateness to allow demolition versus certificates of appropriateness to allow exterior alteration, reconstruction, rehabilitation or new construction.
9. Provides that in the case of an application for a certificate of appropriateness for new construction that also involves an application for a zoning change to a planned development district, the commission's consideration of the certificate shall be coordinated with the city plan commission's consideration of the zoning change proposal.
10. Stipulates that if the commission does not take action on an application for a certificate of appropriateness to allow demolition within 75 days of the date that commission staff determined the application was complete as to form, the application shall be deemed deferred and subject to the existing deferral provisions.
11. Provides more details on the procedures relating to appealing a commission deferral action to the common council. The aggrieved applicant shall file a written appeal with the city clerk within 20 days of mailing of the notice of the commission's deferral action. The common council committee shall conduct a public hearing on the appeal at its next regularly-scheduled meeting.
12. Changes the name of "interim designation" to "temporary designation" and expands the temporary designation process to apply to sites and districts to be considered for historic designation, as well as structures.
13. Creates a policy and procedure for terminating the historic designation of a historic structure not located within a historic district that is damaged beyond repair by fire, explosion or natural

disaster.

14. Provides that if a person appeals the denial of a certificate of appropriateness or the conditional approval of a certificate, the appellant shall submit to the city clerk various types of information relating to the alleged economic hardship.

15. Directs the commission to establish a plaque program to identify and provide information on local historic structures, sites and districts.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 81-59.5 of the code is created to read:

**81-59.5. Historic Preservation Nomination Fee.** The fee for nomination for historic designation of a structure, site or district is \$25.  
(See s. 320-21-9-a-4.)

Part 2. Section 218-8-1-0 of the code is amended to read:

## **218-8. Historic Buildings.**

**1. STABILIZATION OF ABANDONED BUILDINGS.** Whenever a locally or nationally designated historic building, or a contributing building in a locally designated historic district, is found to be abandoned or otherwise condemnable under this chapter or s. 66.0413, Wis. Stats., >>or the building owner has failed to maintain the structure in accordance with the standards of s. 275-32,<< the commissioner may act to stabilize the structure. The cost of stabilization may not exceed 3 times the estimated cost of demolition, as determined by the commissioner. Stabilization may include, but shall not be limited to, the following:

Part 3 Section 320-21-3-b of the code is repealed.

Part 4. Section 320-21-3-c and d is renumbered 320-21-3-b and c.

Part 5. Section 320-21-3-d of the code is created to read:

## **320-21. Historic Preservation Commission.**

### **3. DEFINITIONS.**

d. "Demolition by neglect" means the failure of a building owner to maintain a historic structure or a structure or improvement on a historic site or within a historic district in accordance with the standards of s. 275-32.

Part 6. Section 320-21-3-e-7 of the code is repealed and recreated to read:

e-7. Its embodiment of innovation in architectural design or engineering, pre- or post-World War II, expressed in design, details, materials, craftsmanship, construction techniques or function of one or more buildings or structures.

Part 7. Section 320-21-3-e-10 of the code is created to read:

e-10. Its association with pre-European settlement.

Part 8 Section 320-21-8-f and g of the code is repealed and recreated to read:

## 8. FUNCTIONS, POWERS, AND DUTIES.

f. Issue certificates of appropriateness under sub. 11.

g. Issue mothballing certificates under sub. 15.

Part 9. Section 320-21-8-h and i of the code is amended to read:

h. ~~[[Work closely]]~~ >>Collaborate<< with the state of Wisconsin historic preservation officer ~~[[in attempting to include such]]~~ >>to promote the inclusion of<< properties designated as historic sites, structures or districts in the national register of historic places.

i. ~~[[Work for the continuing education of]]~~ >>Educate<< the citizens of Milwaukee about the historic heritage of this city and the historic sites, structures and districts designated under this section.

Part 10. Section 320-21-9-a of the code is repealed and recreated to read:

## 9. NOMINATION AND DESIGNATION OF HISTORIC SITES, STRUCTURES AND DISTRICTS.

a. Any resident of the city, the local common council member or the owner of the subject property may nominate a structure, site or geographic area for designation as a historic structure, historic site or historic district. A nomination shall be filed with the city clerk's office on forms made available for this purpose and shall be accompanied by the historic preservation nomination fee specified in ch. 81, except that no fee shall be required for a nomination filed by a common council member. The city clerk shall immediately forward the nomination to the staff of the commission. The commission staff shall review the nomination and shall, within 10 days of the filing of the application, determine whether the nomination is complete as to form. Once the commission staff determines that the nomination is complete as to form, the staff shall refer the nomination to the commission for further proceedings in accordance with this subsection. In addition, the commission staff shall notify, by first-class mail, the owner of record of each real estate parcel or structure that is the subject of the nomination to inform the owner of the nomination, the reasons for and effects of designation, that staff is available to discuss the nomination process and that the owner may submit a written statement indicating his or her position on the proposed designation.

Part 11. Section 320-21-9-b-0 of the code is amended to read:

b. The commission shall ~~[[schedule]]~~ >>hold<< a public hearing on ~~[[the question of the application for designation]]~~ >>a nomination within 45 days of the date on which commission staff deems the nomination complete as to form<<. Notice as to the time, place and purpose of the hearing shall be sent at least 25 days prior to the hearing to the following parties:

Part 12. Section 320-21-9-c to e of the code is repealed and recreated to read:

c. Upon conclusion of the public hearing and after consideration of the criteria for determining

historic, architectural and cultural significance provided in sub. 3-e, the commission shall decide whether to deny the request for historic designation or recommend historic designation of the nominated structure, site or district to the common council. The commission shall set forth written findings which constitute the basis for its decision. In the case of a recommendation for historic designation, the commission shall also recommend preservation guidelines for the site, structure or district. If the recommendation is to designate a district, the commission shall consider and report in its findings the impact of the designation on low- and moderate-income housing within the district.

d. The commission shall, by first-class mail, notify the owner of the subject property, the person who made the nomination and the local common council member of its decision. This notice shall include the findings which constitute the basis for the commission's decision and, in the case of a recommendation for historic designation, any preservation guidelines for the site, structure or district recommended by the commission. A denial of a request for designation may be appealed to the common council in accordance with par. j.

e. Upon receipt of a favorable recommendation from the commission, the commission's findings and the recommended preservation guidelines, the common council shall introduce a file to approve the designation and schedule that file for a public hearing, with notice to the parties identified in par. b, before the appropriate committee of the common council at the next regularly-scheduled committee meeting. The common council shall balance the public interest in the preservation of the structure, site or district that is the subject of the recommendation and the interest of the owner or owners in using the property for his, her or their purposes. If the common council adopts the commission's recommendation, the common council shall by reference approve the study report for the proposed historic site, structure or district prepared by the commission, including the recommended preservation guidelines for the site, structure or district, subject to any modifications made to the report by the common council.

Part 13. Section 320-21-9-f and g of the code is amended to read:

f. After the designation decision is final, the commission shall notify the owner of the subject property, >>the person who nominated the subject property for historic designation<< the affected council member, the commissioner of city development, the commissioner of public works, and the commissioner of neighborhood services. The city clerk shall file, in recordable form, notice of the designation with the Milwaukee county register of deeds and shall cause the designation to be recorded.

g. ~~[[In cases where]]~~ >>if<< the commission has ~~[[nominated]]~~ >>recommended<< a site, structure or area ~~[[for consideration]]~~ for historic designation, final action, in accordance with this subsection, shall be taken >>by the common council<< within 2 years of the date of ~~[[nomination]]~~ >>the commission's recommendation<< . ~~[[If final action is not taken, the nomination of the site, structure or area is terminated.]]~~

Part 14. Section 320-21-9-h of the code is repealed and recreated to read:

h. If a nomination for historic designation is denied by the commission and not appealed to the common council pursuant to par. j, or denied by the common council, the commission shall not consider a renomination of the same structure, site or geographic area unless one of the following conditions is met:

h-1. Two years have passed since the date the nomination was denied by the commission or the common council, whichever is later. In such cases, the renomination shall be considered a new nomination for the purposes of this section.

h-2. The commission is presented with substantial new evidence that could not reasonably have been presented at the previous hearing. In such cases, this evidence, including photographs, shall be accompanied by an appropriate application form. No hearing on a renomination based on new evidence shall be scheduled until after an affirmative vote of a majority of the members of the commission.

Part 15. Section 320-21-9-i and j of the code is created to read:

i. All renominations shall be subject to the same notice requirements as the original public hearings.

j. If, upon conclusion of its public hearing on a nomination for historic designation, the commission denies the request for historic designation, the applicant or local common council member may appeal the commission's decision to the common council by filing a written request with the city clerk within 20 days after the mailing of the notice of the commission's decision. The city clerk shall file the appeal with the common council. After a public hearing at the next regularly-scheduled meeting of the appropriate common council committee, the council may, by vote of 2/3 of its members, reverse the decision of the commission after weighing the findings of the commission, the criteria for determining historic, architectural or cultural significance provided in sub. 3-e, and the interest of the public in preserving the subject structure, site or district.

Part 16. Section 320-21-11 of the code is repealed and recreated to read:

**11. REGULATION OF ALTERATION, RECONSTRUCTION, REHABILITATION, CONSTRUCTION AND DEMOLITION.** a. Certificate Required. No person or entity shall alter, reconstruct or rehabilitate any part of the exterior of a historic structure, or structure or improvement on a historic site or within a historic district, construct any improvement on a historic site, on a parcel that contains a historic structure or on a parcel within a historic district, including a parcel which is to be rendered vacant or partially vacant by reason of partial or complete demolition of a structure within a historic site or district, or partially or wholly demolish any historic structure or structure or improvement on a historic site or within a historic district, or permit any of these activities to occur unless a certificate of appropriateness has been granted by the commission. The commissioner of city development or neighborhood services shall not issue a permit for any such work or demolition unless a certificate of appropriateness has been issued by the commission as provided in this subsection. In addition, any permit application or proposed or preliminary plans for exterior alteration, new construction or demolition within a historic district, on a historic site or involving a historic structure received by a city department or agency or a city-affiliated department or agency shall be forwarded to the staff of the commission by the receiving department or agency within 5 days of receipt of the permit application or plans.

b. Application. An application for a certificate of appropriateness, or to amend a certificate previously issued, shall be filed by the property owner with the city clerk's office on forms made available for this purpose. The city clerk shall immediately forward the application to the staff of the commission. The commission staff shall immediately provide notice of receipt of the application to the parties identified in sub. 9-b-2 and 3, review the application and, within 10 days of the filing of the application, determine whether the application is complete as to form and, if not complete, notify the applicant of

all steps necessary to make the application complete. Once the staff determines that the application is complete as to form, the staff shall refer the application to the commission for further proceedings in accordance with this subsection.

c. Commission Review. c-1. Certificate to Allow Alteration, Reconstruction, Rehabilitation or New Construction. The commission shall consider the application for the certificate of appropriateness at its next regularly-scheduled meeting that is at least 10 days after notification by staff that the application is complete as to form. Within 30 days of the conclusion of the meeting, the commission shall render a decision that grants, grants with conditions or denies action on the certificate of appropriateness. The staff of the commission shall notify the applicant of the commission's action by certified mail within 15 days of the commission's action. No public hearing shall be held in conjunction with the commission's consideration of an application for a certificate of appropriateness to allow alteration, reconstruction, rehabilitation or new construction unless an objection to issuance of the certificate is filed in writing with the city clerk within 20 days of the date on which the city clerk sent notice of receipt of an application under par. b, in which case a public hearing shall be conducted in accordance with the procedures of subd. 2.

c-2. Certificate to Allow Demolition. The commission shall hold a public hearing on an application for a certificate of appropriateness within 45 days after commission staff determines the application to be complete as to form. Notice of the hearing shall be as provided in par. d. At the public hearing, the commission shall accept written and oral testimony, including petitions and electronic communications, from the applicant, any agents or representatives of the applicant, common council members, city departments and any members of the public. The commission chair may set reasonable time limits for the presentation of oral testimony, except that the applicant shall be given a full and complete opportunity to present any facts and argument in favor of his or her application, including rebuttal testimony. Within 30 days of the conclusion of the public hearing, the commission shall render a decision that grants, grants with conditions, denies or, in the case of a certificate application relating to demolition and pursuant to par. f, defers action on, the certificate of appropriateness. If the commission grants or conditionally grants a certificate of appropriateness for demolition to allow for new construction, the commission may, in its decision, stipulate that no permit for demolition shall be issued by the commissioner of city development or the commissioner of neighborhood services until the commission determines that the applicant has provided the commission with evidence, satisfactory to the commission in consultation with the comptroller and the commissioner of city development, that all debt and equity financing necessary for the new construction project has been obtained and all related conditions have been satisfied. The staff of the commission shall notify the applicant of the commission's action by certified mail within 15 days of the commission's decision.

d. Notice of Hearing. Notice of hearing for any certificate of appropriateness shall be by certified letter addressed to the applicant at his or her residence or place of business, or if the applicant is a corporation, at the address provided in the application. There shall also be public notice given by the commission, as well as notice to the parties specified in sub. 9-b. The letter to the applicant may contain requirements for supplemental information, including but not limited to, any photographs, plans, floor plans, elevations and detail drawings of any structure or portion thereof to be subject to change. The commission may grant the applicant a request for a delay of hearing.

e. Appeal of Commission Decision. An applicant for a certificate of appropriateness may appeal the commission's decision to deny the certificate of appropriateness or grant it with conditions to the common council pursuant to par. L.



f. Deferral. f-1. The commission may defer a decision on an application for a certificate of appropriateness for demolition for up to 8 months from the date of application for the demolition permit. The commission shall, within 10 days of its decision to defer, provide the applicant with a written report setting forth the reason or reasons for deferral. During the period of deferral, the commission and the applicant shall seek a mutually-agreeable method of saving the subject structure or improvement. During this time, the owner shall take whatever steps are necessary to prevent further deterioration of the structure or improvement. By the end of the deferral period, the commission shall grant, grant with conditions or deny the certificate of appropriateness. If the commission fails to take action by the end of the deferral period, the certificate of appropriateness shall be deemed granted.

f-2. If the commission defers its decision, the applicant may appeal the deferral action to the common council by filing a written request for an appeal with the city clerk within 20 days after the mailing of the notice of the commission's decision to defer action. The appropriate common council committee shall conduct a public hearing on the appeal no later than its next regularly-scheduled meeting. Following the public hearing, the council shall, by resolution, sustain or reverse the commission's deferral action. If the council reverses the commission's deferral action, the commission shall grant, grant with conditions or deny the certificate of appropriateness at its next regularly-scheduled meeting.

g. Criteria; Certificates to Allow Alteration, Reconstruction, Rehabilitation or New Construction. In determining whether to grant, grant with conditions or deny a certificate of appropriateness to allow alteration, reconstruction, rehabilitation or new construction, the commission shall consider any applicable factors listed in sub. 12 and any of the following:

g-1. Whether the proposed work would destroy or adversely affect any exterior architectural feature of the improvement upon which the work is to be done or adversely affect the external appearance of other improvements on the site or within the district.

g-2. Whether, in the case of construction of a new improvement on a historic site or within a historic district, and with consideration of design review recommendations issued by the department of city development, the new improvement, other than an accessory structure, an addition thereto or reconstructed features thereof, is all of the following:

g-2-a. Architecture sensitive to the mass and proportions of existing structures on the site or within the district in which the subject property is located.

g-2-b. Appropriately-scaled architecture that is clearly differentiated from nearby historic structures, while taking subtle cues from them.

g-2-c. Not an attempt to re-create a historic structure.

g-3. Whether, in the case of any property located in a historic district, the proposed alteration, reconstruction, rehabilitation or new construction conforms to the objectives of the historic preservation plan for the district as duly adopted by the common council.

h. Criteria; Certificates to Allow Demolition. In determining whether to grant, grant with conditions, deny or defer action on a certificate of appropriateness to allow partial or complete demolition, the

commission shall consider any of the following:

h-1. Whether the structure is of such architectural or historic significance that its demolition would be detrimental to the public interest and contrary to the general welfare of the people of the city.

h-2. Whether the structure, although not itself an individually-designated historic structure, contributes to the distinctive architectural or historic character of the district as a whole and should be preserved for the benefit of the people of the city.

h-3. Whether demolition of the structure on a historic site or within a historic district would be contrary to the purpose and intent of this section and to the objectives of the historic preservation plan for the applicable district as duly adopted by the common council.

h-4. Whether the structure is of such old and unusual or uncommon design, texture or material that it could not be reproduced without great difficulty or expense.

h-5. Whether retention of the structure would promote the general welfare of the people of the city and the state by encouraging the study of American history, architecture and design, or by developing an understanding of American culture and heritage.

h-6. Whether the structure is in such a deteriorated condition that it is not structurally or economically feasible to preserve, restore or use it, provided that any hardship or difficulty claimed by the owner which is self-created or a result of demolition by neglect cannot qualify as a basis for the issuance of a certificate of appropriateness.

h-7. If the structure is located on a historic site or within a historic district, whether, and with consideration of design review recommendations issued by the department of city development, any new structure, other than an accessory structure, addition thereto or reconstructed features thereof, proposed to be constructed, or change in character proposed to be made, is all of the following:

h-7-a. Architecture sensitive to the mass and proportions of existing structures on the site or within the district in which the subject property is located.

h-7-b. Appropriately-scaled architecture that is clearly differentiated from nearby historic structures, while taking subtle cues from them.

h-7-c. Not an attempt to re-create a historic structure.

i. Additional Provisions; Certificate to Allow New Construction. In the case of an application for a certificate of appropriateness for new construction that also involves an application for a zoning change to a planned development district pursuant to s. 295-907-2, the commission shall confer with the commissioner of city development and shall coordinate the review of the application for a certificate of appropriateness for new construction with the review of the application for creation of the planned development district. This review and coordination may include holding a joint meeting of the historic preservation commission and the plan commission to consider both applications. To the extent practicable, the historic preservation commission and plan commission shall strive for concurrent consideration of the application for a certificate of appropriateness for new construction and the application for creation of the planned development district, and shall endeavor to provide a joint report to the common council. In the event that concurrent consideration cannot be achieved,

the historic preservation commission and plan commission do not agree on a joint report or the historic preservation commission fails to act within a reasonable time on the application for a certificate of appropriateness for new construction, the appropriate common council committee shall hold a hearing on both the application for a certificate of appropriateness for new construction and the application for creation of a planned development district. In that case, the common council's action with respect to the approval, denial or modification of the application for creation of a planned development district shall also constitute action on the application for a certificate of appropriateness for new construction.

j. Additional Provisions; No Action Taken By Commission. Notwithstanding anything to the contrary herein, if the commission does not grant, grant with conditions, deny or, in the case of a request to demolish a structure, defer action on a certificate of appropriateness within 75 days of the date that the staff of the commission determined that the application was complete as to form, the application for a certificate of appropriateness shall be deemed deferred and the procedures set forth in par. f-2 shall govern further proceedings.

k. Issuance of Certificate. Upon the granting or conditional granting of a certificate of appropriateness by the commission, the commission's staff shall issue a certificate of appropriateness to the applicant. In the case of conditional granting of a certificate, the certificate shall only be issued upon the applicant's acceptance of the conditions placed on issuance of the certificate by the commission.

L. Appeal. If, upon a hearing by the commission, the application for a certificate is denied or the certificate is granted conditionally and the applicant refuses to accept the conditions placed on the granting of the certificate, the applicant may appeal the denial or conditional granting of the certificate to the common council by filing a written request with the city clerk within 20 days after the mailing of the certified letter to the applicant of the commission's decision. The city clerk shall file the request to appeal with the common council. After a public hearing at the next regularly-scheduled meeting of the appropriate common council committee, the council may, by vote of 2/3 of its members, reverse or modify the decision of the commission if, after balancing the interest of the public in preserving the subject property and the interest of the owner in using it for his or her own purposes, the council finds that, owing to special conditions concerning to the specific piece of property, failure to grant the certificate of appropriateness will preclude any and all reasonable use of the property or will cause unreasonable economic hardship for the owner, provided that any self-created hardship or failure to maintain the property in good repair shall not be a basis for reversal or modification of the commission's decision. If claiming that denial of the certificate or the conditional approval of the certificate causes unreasonable economic hardship for the owner, the applicant shall provide clear and convincing evidence that any hardship is not self-created or the result of failure to maintain the property in good repair, that there is no reasonable use of the property, that there is no reasonable way to adapt the property for alternative use, and that there has been no reasonable offer to purchase the property despite at least 2 years of ongoing substantial effort to sell the property. To support a claim of unreasonable economic hardship relating to any property other than an owner-occupied one- or 2-unit residential property, the applicant shall provide the following information to the city clerk not less than 5 days prior to the public hearing:

L-1. Property purchase information, including the purchase price the owner paid for the property, the name and legal status of the owner, the date of purchase and the name of the party from whom the property was purchased, including a description of the relationship, if any, between the owner of the property and the person from whom the property was purchased.

L-2. Property value information, including the most recent assessed value of the land and improvements thereon and any appraisals in the owner's possession or control prepared within the previous 2 years in connection with any purchase, financing, ownership change or attempt to sell the property, and the current and past uses, for at least the last 5 years, of the property.

L-3. For an income-producing property, financial documentation for the property during the past 2 years, including tax returns showing annual gross income from the property, itemized operating and maintenance expenses for the property, real estate tax statements, proof of annual debt service, including mortgage balance and terms, annual cash flow and any federal income tax deductions or depreciation claimed for the property. For an owner-occupied residential property, income tax returns for the last 2 years.

L-4. All information within the owner's possession or control about attempts to sell the property, including all listings of the property for sale or rent, the price asked and any offers received.

L-5. All information within the owner's possession or control, such as plans, site assessments and other information, regarding any attempt to develop profitable, adaptive uses of the property.

L-6. Any other information that is relevant to the issue of whether denial of the certificate or the conditions placed on the certificate creates an unreasonable economic hardship for the owner, such as reports of licensed engineers or architects familiar with the property or cost estimates for work necessary to satisfy conditions on the certificate or the regulations contained herein, including any additional information requested by the common council or common council committee.

m. Location of Utility Meter. New installation of a natural gas meter or a utility meter on a historic structure, or on a structure on a historic site or within a historic district, shall not be permitted on a street-facing elevation of the structure.

n. Building Code Compliance. Insofar as it is applicable to a historic structure, historic site or structure within a historic district designated under this section, any provision of the building code shall apply, unless waived by the appropriate state or city officials as permitted by law. The commission may support or propose such waivers before the appropriate state or city appeals bodies.

Part 17. Section 320-21-13 of the code is repealed and recreated to read:

**13. TEMPORARY DESIGNATION.** a. Application. Any resident of the city seeking to nominate a structure, site or geographic area for designation as a historic structure, historic site or historic district may also seek temporary designation of that structure, site or geographic area pending a decision by the commission on the application for permanent designation. An application for temporary designation shall be filed with the city clerk's office, on forms made available for this purpose, either at the time of filing the application for permanent designation or at any time prior to the final decision by the commission on the application for permanent designation. The city clerk shall immediately forward the application for temporary designation to the staff of the commission for further proceedings in accordance with this subsection. In addition, the commission staff shall notify, by first-class mail, the owner of record of each real estate parcel and structure that is the subject of the nomination to inform the owner of the nomination and that staff is available to discuss the nomination process and the effects of temporary designation.

b. Notice of Hearing. The commission shall schedule a public hearing on the application for temporary designation within 20 days of the date the application for temporary designation was filed. Notice as to the time, place and purpose of the hearing shall be sent at least 7 days prior to the hearing to the following parties:

b-1. The applicant. This notice shall be by certified letter.

b-2. The owner of the subject property. This notice shall be by certified letter.

b-3. The common council member of the aldermanic district in which the proposed designation is located.

b-4. All persons or corporations who own property that is within 200 feet of the proposed designation. This notice shall be by first class mail.

c. Demolition Permits Withheld. Upon the filing of an application for temporary designation, neither the commissioner of city development nor the commissioner of neighborhood services shall issue a permit for the partial or complete demolition of any structure that is the subject of the application for temporary designation or any structure that is located upon a historic site or is in a geographic area that is the subject of an application for temporary designation until the conclusion of the hearing and the entry of the temporary designation decision provided for herein and the exhaustion of either the appeal to the common council described in par. g or the expiration of the time for filing an appeal. The issuance of a permit for demolition of the structure may be further delayed or otherwise affected by the decisions of the commission and the common council concerning temporary and permanent historic designation.

d. Review of Temporary Designation. Upon conclusion of the public hearing and after consideration of the criteria for determining "historic, architectural and cultural significance" provided in sub. 3-e, the commission shall grant temporary designation if the commission finds that there is a substantial likelihood that the commission will recommend historic designation of the nominated structure, site or district to the common council following full consideration of the application for permanent designation. The decision on temporary designation shall be made within 10 days of close of the public hearing. The commission shall set forth written findings which constitute the basis for its determination. Temporary designation shall be effective until the commission either recommends or denies permanent designation and the period for appeals of that decision to the common council has expired, but in no event more than 180 days from the day of the commission's decision granting temporary designation.

e. Notice of Findings. If the commission grants temporary designation, the commission shall, by first-class mail, notify the owner of the subject property, the person who made the nomination and the local common council member. The notice shall include written findings of the commission that form the basis for its determination.

f. Effects of Temporary Designation. During the period of temporary designation, no person or entity shall alter, reconstruct or rehabilitate any part of the exterior of the subject historic structure, historic site, or structure or improvement within a historic district, construct any improvement on a historic site, on a parcel that contains a historic structure or improvement, or on a parcel within a historic district, including a parcel which is to be rendered vacant or partially vacant by reason of partial or

complete demolition of a structure within a historic site or district, or partially or wholly demolish the subject historic structure, or structure or improvement on a historic site or within a historic district, or permit any of these activities to occur, unless a certificate of appropriateness has been granted by the commission under sub. 11. Neither the commissioner of city development nor the commissioner of neighborhood services shall grant any permits for any such activity unless a certificate of appropriateness therefor has been granted by the commission.

g. Appeal of Denial. g-1. If the commission denies an application for temporary designation, the applicant or any other interested party may, within 5 days of the commission's decision, file a duly-signed and acknowledged appeal petition with the city clerk for review of the commission's decision by the common council.

g-2. The city clerk shall immediately notify the commissioners of city development and neighborhood services of the appeal petition. Upon receiving notice of the filing of the appeal, neither the commissioner of city development nor the commissioner of neighborhood services shall issue any permits for any of the activities described in par. f for the subject property.

g-3. The common council shall review the commission's decision within 45 days after receipt by the city clerk of the appeal petition. The common council shall consider the application for temporary designation in light of the criteria for determining "historic, architectural and cultural significance" provided in sub. 3-e and shall grant temporary designation if it finds that there is a substantial likelihood the common council will grant historic designation of the nominated structure, site or district following full consideration of the application for permanent designation. The common council shall set forth written findings which constitute the basis for its determination. If the common council grants temporary designation, the subject structure, site or district shall be deemed designated as a historic structure, site or district on a temporary basis for a period not exceeding 180 days.

g-4. The city clerk shall immediately notify the commissioners of city development and neighborhood services of the common council's appeal decision. If the common council affirms the commission's decision, the commissioners may issue any permits duly applied for authorizing work on the subject property. If the common council reverses the commission's decision, the commissioners shall not issue permits for any of the activities described in par. f for the subject property for the duration of the temporary designation period.

Part 18. Section 320-21-14 of the code is amended to read:

**14. SUPERVISION OF CERTIFICATE.** The commissioner of neighborhood services ~~[[or the commissioner's appointed representative]]~~ shall periodically inspect any undertaking authorized by a certificate of appropriateness. If the commissioner detects any ~~[[violation of]]~~ >>deviation from<< the conditions or standards prescribed in the certificate, ~~[[or any uncertified change of any structure,]]~~ the commissioner shall report such violations to the commission and take appropriate action under ss. 200-11-3, 200-12-1 and 200-19.

Part 19. Section 320-21-15-0 of the code is amended to read:

**15. MOTHBALLING CERTIFICATE.** ~~[[To prevent demolition of structures which should be left standing because of their historic significance]]~~ >>To preserve historic structures and sites<<, the historic preservation commission may grant the mothballing certificate required by s. 200-11.5 to allow the commissioner of neighborhood services to stay enforcement of property maintenance and

condemnation code provisions against structures which have been designated local or national historic structures or which are part of local or national historic sites or districts.

Part 20. Section 320-21-15-a and b of the code is amended to read:

- a. Application. The owner of any structure with local or national historic designation may file an application for a mothballing certificate with the ~~[[historic preservation officer]]~~ >>city clerk<<, who shall immediately forward the application to the commission for recommendation and report >>at its next regularly-scheduled meeting that is at least 10 days after the application is determined by staff to be complete as to form<<. Application for a mothballing certificate may not be made for any structure which the commissioner of neighborhood services has determined poses an immediate threat to public health and safety.
- b. Hearing. The commission shall schedule a public hearing on ~~[[a]]~~ >>the<< request for a mothballing certificate ~~[[within 30 days of its receipt of the application for a certificate]]~~ >>at the meeting described in par. a<<. Notice of the time, place and purpose of the hearing shall be sent by regular mail to the applicant at the address stated on the application and to all owners of property within 200 feet of the property containing the structure to which the mothballing certificate would apply. The notice shall be given at least 10 days prior to the hearing. The notice to the applicant shall also specify that the applicant is required to furnish a rehabilitation plan to the commission on or before the date of the hearing. The notice may require that the plan include one or more of the following: floor plans, detail drawings, elevations, photographs, and information on sources of financing and contractors and materials to be used. The plan shall specify a timeline for completion of the project or its various phases.

Part 21. Section 320-21-16 of the code is repealed and recreated to read:

**16. EMERGENCY RAZING NOT PROHIBITED.** Nothing contained in this section shall prohibit the demolition of a structure for which a court order has been issued or for which the commissioner of neighborhood services has issued an emergency raze order under s. 218-4.5.

Part 22. Section 320-21-17 to 20 of the code is created to read:

- 17. TERMINATION OF DESIGNATION OF HISTORIC STRUCTURE.** a. Petition. Whenever a historic structure not located in a historic district is damaged beyond repair by fire, explosion or natural disaster, the owner of the structure, the local common council member or staff of the commission may file a petition with the city clerk requesting that the historic designation of the damaged structure be terminated. The city clerk shall immediately forward the petition to the commissioner of neighborhood services for a report, to the commission for a recommendation to the common council, and to the appropriate common council committee for review and recommendation to the full council. The committee and the council shall base their decisions on a report from the commissioner of neighborhood services that describes the extent of damage to the structure and includes a determination of the commissioner as to whether the structure is damaged beyond repair.
- b. Notification and Recording. If the common council grants a petition to terminate designation of a historic structure, the city clerk shall notify the owner of the subject property, the local common council member, and the commissioners of city development, neighborhood services and public works. The city clerk shall also file, in recordable form, notice of termination of the historic designation with the Milwaukee county register of deeds and cause the notice to be recorded.

**18. PLAQUES.** The commission shall establish a plaque program to identify and provide information on local historic structures, sites and districts.

**19. ENFORCEMENT.** Any violation of this section shall be subject to the enforcement provisions of ss. 200-11-3 and 200-12-1. The commissioner of neighborhood services shall be responsible for enforcement of this section.

**20. PENALTIES.** Any violation of this section shall be subject to the penalty provisions of s. 200-19.

APPROVED AS TO FORM

\_\_\_\_\_  
Legislative Reference Bureau

Date: \_\_\_\_\_

IT IS OUR OPINION THAT THE ORDINANCE  
IS LEGAL AND ENFORCEABLE

\_\_\_\_\_  
Office of the City Attorney

Date: \_\_\_\_\_

LRB138367-1  
Jeff Osterman  
12/11/2012

clerical correction -- 1/18/13 -- lp