

ARTICLE III. - HISTORIC PRESERVATION

Sec. 23-54. - Statement of purpose.

- (a) The City of Fredericksburg, Texas (herein after called the "city") hereby recognizes it is known for its collection of German pioneer Sunday houses, Victorian inspired homes, and thriving historic Marktplatz (Market Square) and downtown area.
- (b) The city's unique qualities have proven to be increasingly attractive to residents, businesses, and tourists.
- (c) As a matter of public policy, the city desires to preserve those aspects of the city which have historical, cultural, or architectural merit. Such preservation activities will promote the health, safety, prosperity, education, and general welfare of the people living in and visiting Fredericksburg.
- (d) This historic preservation article is intended to achieve the following policy goals:
 - (1) Protect, enhance, and perpetuate historic landmarks which represent or reflect distinctive and important elements of the city's and state's architectural, landscape architectural, archeological, cultural, social, economic, ethnic and political history, and to develop appropriate setting for such places;
 - (2) Safeguard the city's historic and cultural heritage, as embodied and reflected in such historic landmarks by appropriate regulations;
 - (3) Stabilize and improve property values in such locations;
 - (4) Foster civic and cultural pride in the beauty and accomplishments of the past;
 - (5) Protect and enhance the city's attractions to tourists and visitors and provide incidental support and stimulus to business and industry;
 - (6) Strengthen the economy of the city;
 - (7) Promote the use of historic landmarks and historic landmark districts for the culture, prosperity, education, and general welfare of the people of the city and visitors to the city; and
 - (8) Provide a review process for the continued preservation and appropriate development of the city's historic resources.

(Code 1992, § 12.201; Ord. No. 13-015, § 12.201, 11-17-2003)

Sec. 23-55. - Definitions.

Appurtenance. A feature related to a parcel of land or to a building, structure, object, site, or a related group thereof. The term includes, but is not limited to, buildings, structures, objects, sites, landscaping features, walls, fences, light fixtures, steps, paving, sidewalks, shutters, awnings, and signs.

Certificate of appropriateness. A document evidencing the approval of the historic review board, signed and dated by the chairman of the historic review board, for the installation, construction, alteration, change, restoration, removal, or demolition of any exterior architectural feature resource or other significant appurtenance of any historic landmark or of any building or structure located within the historic district to be issued in cases further defined in this article, where approval for the same is required.

Certificate of review. A document signed and dated by the chairman of the historic review board evidencing that the proposed changes, improvements or construction to property located in the historic district or at or on a historic landmark have been reviewed by the board; to be issued in cases further defined in this article, where review is required.

Demolition. An act or process which destroys a site or structure in its entirety, or which destroys a part of a site or structure and permanently impairs its structural, historic or architectural integrity.

Design guidelines for the City of Fredericksburg. Written guidelines adopted by the city in 1997, as a reference and guide to provide information on appropriate methods for rehabilitation or restoration of historic resources.

Exterior architectural feature. The architectural style, design, general arrangement and components of all of the outer surfaces of a building or structure, as distinguished from the interior surfaces enclosed by such outer surfaces. Exterior architectural features shall include, by way of example but not by limitation, the kind, color, texture of the building material and the type and style of all windows, doors, lights, signs and other fixtures appurtenant to such building or structure.

Fredericksburg Historic Resource Survey. A comprehensive architectural survey of all properties within the city's historic district and adjoining areas, as updated in 2002; future amendments to the same shall be automatically included herein.

Historic district. An area of the city designated by the city council under subsection 23-57(a) of this article, as having definable geographic boundaries, a significant concentration, linkage, or continuity of sites, buildings, or structures united historically or aesthetically by plan, appearance, or physical development. The designation "historic district" recognizes that the component historic buildings, structures, accessory buildings, fences, or other appurtenances of the district are of basic and vital importance for the preservation of culture and neighborhoods and economic development and promotion of tourism.

Historic landmark. An individual property designated by the city council under subsection 23-57(b) of this article, as having outstanding historical and cultural significance in the nation, region, or community. The designation "historic landmark" recognizes that the historic place, or the building(s), structure(s), accessory building(s), fences, or other appurtenances at the place are of basic and vital importance for the preservation of culture and neighborhoods and economic development and promotion of tourism.

Ordinary repairs or maintenance. Work done to prevent deterioration of a resource or any part thereof by returning the resource as nearly as practical to its condition prior to such deterioration, decay, or damage and by using where possible, original material.

Preservation priority rating. Three-tier rating system used in the 2002 Fredericksburg Historic Resource Survey to evaluate all properties within, and adjoining to, the city's historic district. Ratings are based upon current determinations of architectural value and integrity and, if known, historical and cultural value, and may be altered from time to time as additional information is discovered or circumstances change. No rating shall be considered vested and the same may be established or changed at any time in accordance with subsection 23-57(c) below. Additionally, structures may have more than one rating (e.g., the main structure may be high but an addition may be medium or low):

- (1) *High rating.* The most significant properties identified in the 2002 Fredericksburg Historic Resource Survey. These properties are considered to be outstanding, unique, or good examples of architecture, engineering, or design. Some are unique to the Fredericksburg area and are indicative of German-Texan vernacular forms and/or building techniques. Others are noteworthy examples of 19th and early 20th century architectural types, styles, and forms, erected using local building materials and construction technologies. Properties designated with a high rating are to be the most protected from alteration and demolition.
- (2) *Medium rating.* Properties that may or may not be identified as architecturally significant on an individual basis, but are nonetheless valuable resources that add to the historic district's overall character, and may be so ranked due to their or its proximity or contribution to the cultural, historic, architectural, or archeological character of the historic district or surrounding properties. These properties may have been moderately altered or are typical examples of a common architectural style or form, but generally retain their historic integrity to a good or moderate degree. Properties designated with a medium rating shall be protected from demolition and where possible will be required or encouraged to maintain or improve architectural features.

- (3) *Low rating.* Properties that minimally enhance the district's ability to convey a sense of time and place. These properties may be typical examples of more recent, common local building forms, architectural styles, or plan types; be examples of distinctive building forms, architectural styles, or plan types that have been significantly altered; lack the necessary age to meet the usual 50 year threshold for possible National Register of Historic Places listing and do not appear to meet the National Register of Historic Places standard for exceptional significance for properties less than 50 years of age, but which nevertheless may have relative value within the historic district, meriting preservation. Properties or improvements with a low rating may be considered for relocation or demolition upon a determination by the historic review board that the same can be accomplished with little or no consequence to the historical, cultural, architectural, or archeological character of the district or property.

Resource. A landmark, landmark site, and all land or water within a preservation district, together with the appurtenances and improvements, if any. The term resource includes, but is not limited to, separate districts, buildings, structures, sites, objects, landscape features, and related groups thereof. In the event of a conflict between an address in the Fredericksburg Historic Resource Survey and its pictorial, the picture shall be used to identify the historic resource.

The Secretary of the Interior's Standards for Rehabilitation. A set of ten basic philosophical principles created by the U.S. Secretary of the Interior and administered by the National Park Service, to help preserve the distinctive character of a historic building and its site, while allowing for reasonable change to meet new needs. The Standards for Rehabilitation are codified at 36 CFR 67, as the same may be amended from time to time.

The Secretary of the Interior's Standards for the Treatment of Historic Properties with guidelines for preserving, rehabilitating, restoring, and reconstructing historic buildings. Basic philosophical principles (standards) and recommended actions and approaches (guidelines) developed by the U.S. Secretary of the Interior, for each of the four primary treatment options for historic properties: preservation, rehabilitation, restoration, and reconstruction. The Guidelines are meant to establish a model process to follow when planning for treatment, providing technical and design recommendations within a consistent philosophical context.

Unreasonable economic hardship. The inability of an owner to obtain a reasonable return or a reasonable beneficial use from a resource as required by the United States Supreme Court in *Penn Central Transportation Company vs. New York City*, 438 U.S. 104 (1978), and subsequent decisions.

(Code 1992, § 12.202; Ord. No. 13-015, § 12.202, 11-17-2003)

Sec. 23-56. - Historic review board.

- (a) *Creation of board.* There is hereby created a historic review board of the city, hereinafter called the "board," consisting of seven members and three alternates appointed by the city council.
- (b) *Term of appointment.* Each board member and alternate shall be appointed for a term of three years, except that of the members of the first board to be appointed, two shall be appointed to serve for two years, and two for one year. One alternate shall be appointed each year except for the year 2007, in which three alternates with staggered terms shall be appointed. The term shall expire on July 1 of the appropriate year. Any vacancy on the board shall be filled by the city council for the remainder of the nonexpired term. Any regular member of the board who fails to attend at least 75 percent of all regular meetings of the board within any 12-month period shall be removed from the board, unless such failure to attend was the result of illness or other acceptable excuse as determined by the city council.
- (c) *Qualifications.* Each board member and alternate shall either be a resident of the city or a resident of Gillespie County, Texas, who owns real property located within the city's historic district or which is designated as a historic landmark.
- (d) *Composition.* The board shall include at least one member from the Gillespie County Historical Society or Gillespie County Historical Commission. Not less than two board members shall reside in, or own,

a historical landmark or own property within the historic district. Not less than one board member shall have a license, degree, or professional experience in the field of architecture, architectural history, history, historic preservation or historic restoration. Alternates must have at least one of the previously stated attributes. All board members and alternates shall be persons who, in the opinion of the city council, have demonstrated interest in and knowledge of the historical preservation of the city.

- (e) *Chairman and vice chairman of the board.* The chairman and vice chairman of the board shall be elected annually by a majority of the members of the board, and shall serve a term of one year until their successors are elected.
- (f) *Secretary of the board.* The building official or his/her representative shall act as secretary of the board and shall attend and keep the minutes of all meetings.
- (g) *Ex officio members.* The following members or their representatives shall serve on the board as ex officio members: building official, city secretary, and city attorney. Ex officio members shall have no right to vote or count toward establishment of a quorum, but shall assist the board in its various functions.
- (h) *Functions of the board.* The board shall review all applications proposing alterations, changes, construction, demolition, or relocation within the historic district and historic landmarks. In addition:
 - (1) The board shall grant or deny certificates of appropriateness contingent upon specified conditions listed in sections 23-61 and 23-62. The board shall additionally serve in an advisory capacity in granting certificates of review regarding other conditions not spelled out in sections 23-61 and 23-62 as set forth in section 23-63 below.
 - (2) The board shall make recommendations to the city council regarding the designation or redesignation of resources as historic landmarks or districts, or amendment or removal of such designation(s), and shall determine the preservation priority rating of each property subject to this article.
 - (3) The board shall make an annual report to the city council on the state of historic preservation in the city and shall include in the report a summary of its activities for the past year and a proposed program for the next year.
 - (4) The board shall have the further responsibility of recommending to the city council, planning and zoning commission, and city departments the adoption of policies, the source of funds, and designation of historic districts and historic landmarks that may further the city's preservation effort.
- (i) *Meetings.* The board shall meet at least once a month at a regularly scheduled time. Special meetings may be called upon request of the chairman or vice chairman, or upon the written request of four members, or upon a notice from the building official that a matter requires the consideration of the board. All meetings shall have advance notice posted in accordance with the Texas Open Meetings Act and shall be conducted in full compliance therewith. Four members, which may include one or more alternates, shall constitute a quorum and action taken at a meeting shall require the affirmative vote of a majority of the members present and voting at such meeting. Alternates shall not participate in constituting a quorum or in voting if all regular members of the board are present, and then only so many of them as are necessary to constitute seven shall participate in any meeting or action of the board.
- (j) The board shall otherwise determine its own rules of procedure except as may be specifically set forth in this article.

(Code 1992, § 12.203; Ord. No. 13-015, § 12.203, 11-17-2003; Ord. No. 17-019, § 23-56(a)—
(d), (i), 8-6-2007)

Sec. 23-57. - Designation of historic districts, historic landmarks, and preservation priority rating.

- (a) *Historic districts.*

- (1) *Historic district zoning designation.* The city council may, from time to time, following recommendation either for or against such designation by the historic review board and planning and zoning commission, designate certain areas in the city as historic districts, and define, amend, or eliminate the boundaries of same. Such districts shall bear the word "historic overlay" in their zoning designation. Such designation and the requirements thereof shall be in addition to any other zoning district designation or requirement established in the city's zoning ordinance and in this article. All zoning maps shall reflect the historic district by the letters "HO" as a suffix to the use designated. Initially this area shall encompass the area shown on the map attached to the ordinance establishing this article, as amended. Changes to the same may be initiated by any person by request submitted to the historic review board which will forward its recommendation to the planning and zoning commission prior to the submittal to the city council. The historic review board shall consider the request at a meeting held in accordance with the procedures set forth in subsection 23-60(f) below. Upon forwarding of a recommendation to the planning and zoning commission, the designation process will follow the procedures provided for in section 5.200 of the city's zoning ordinance, pertaining to hearing and action by the planning and zoning commission and the city council. Applications for changes in the boundaries of the historic district shall be on forms and shall contain the information required thereon as determined by the city's director of developmental services, and shall be accompanied by the fee set forth in subsection 23-60(c). An application initiated by the historic review board or the city staff shall not require the payment of a fee.
 - (2) *Historic district criteria.* In making the designation of an area as a historic district, the city council shall affirmatively find that the area has one or more of the following characteristics:
 - a. Character, interest, or value as a part of the development, heritage, or cultural characteristics of the city;
 - b. Location as the site of a significant historical event;
 - c. Embodiment of distinctive characteristics of an architectural type or specimen;
 - d. Relationship to other distinctive buildings, sites, districts, or structures which are historically significant;
 - e. Unique location of singular physical characteristics representing an established and familiar visual feature of a neighborhood, community or the city;
 - f. Value as an aspect of community sentiment or public pride;
 - g. Identification with a person or persons who significantly contributed to the development or culture of the city, the state or the nation;
 - h. Value as protective of a historical resource.
- (b) *Historic landmarks.*
- (1) *Historic landmark designation.* The city council may, from time to time, designate individual properties in the city as historic landmarks. Each such place shall bear the words "historic landmark" (HL) in its zoning designation. Such designation shall indicate that such property is subject to the terms of this article, however, with regard to site plans, uses, setbacks and other development and/or building regulations, such property shall be governed by its zoning district. Initially, the historic landmarks shall consist of the properties shown on the list attached to this article. The designation of new historic landmarks or the removal of the designation may be initiated by any person by request submitted to the historic review board which will forward its recommendation to the city council. The historic review board shall consider the request at a meeting held in accordance with the procedures set forth in subsection 23-60(f) below. The city council shall consider the request at the next regular meeting of the city council following the meeting of the historic review board at which the request was heard.

Applications for designation of or changes to historic landmarks shall be on forms and shall contain the information required thereon as determined by the city's director of development

services, and shall be accompanied by the fee set forth in subsection 23-60(c) unless initiated by the historic review board or city staff.

- (2) *Historic landmark criteria.* In making the designation of a place as a historic landmark, the city council shall follow the criteria set forth in the historic district criteria subsection of this section as the same relate to an individual property or part thereof.
- (c) *Establishment of preservation priority rating.* At such time as a property is either incorporated into the historic district or designated as a historic landmark, such property shall be rated high, medium, or low. The board shall rate the same at its meeting considering the request or application and the board's rating shall become effective at such time as the city council either incorporates the property or designates it as a historic landmark. Appeals of the rating may occur only following incorporation into the historic district or following designation as a historic landmark, and shall follow the procedure set forth below. The burden of proof shall be upon the applicant seeking to change the rating.

(Code 1992, § 12.204; Ord. No. 13-015, § 12.204, 11-17-2003)

Sec. 23-58. - Review required by historic review board.

- (a) No person or entity shall install, construct, reconstruct, alter, change, restore, remove, or demolish any structure or exterior architectural feature or other significant appurtenance of any historic landmark or of any building or structure located within the historic district unless and until such person or entity has completed review of his/her/its proposed changes by the historic review board, herein referred to as the "board," in accordance with the further provisions hereof.
- (b) Such review shall consist of the granting or denial of a certificate of appropriateness with regard to the subjects set forth in sections 23-61 and 23-62 below, as applicable, or a certificate of review with regard to all other types of alterations as set forth in section 23-63 below. With regard to the subject matters thereof, obtaining a certificate of appropriateness is mandatory and compliance with its requirements is mandatory; the obtaining of a certificate of review is mandatory, however noncompliance with its recommendations will not result in enforcement of any penalties

(Code 1992, § 12.205; Ord. No. 13-015, § 12.205, 11-17-2003)

Sec. 23-59. - Certificates of appropriateness and review.

No exterior feature of any resource shall be altered, relocated, or demolished, nor shall any new structure be constructed in the historic district until after an application for a certificate of appropriateness and/or review of such work has been issued by the board. Additionally, a building permit may not be granted for a property in the historic district unless the board issues the relevant certificate. A certificate of occupancy will not be granted until compliance with all certificate of appropriateness requirements are verified by the city building inspector. Therefore:

- (1) The board shall have the power to approve and deny applications for certificates of appropriateness and to issue certificates of review.
- (2) In reviewing, approving and denying applications for certificates, the board shall seek to accomplish the purposes of this article.
- (3) No certificate shall be required for work deemed, under the provisions of this chapter, to be ordinary maintenance or repair of any resource by the board.
- (4) All decisions of the board shall be in writing and shall state the findings of the board, its recommendations or requirements. The same may appear in the written minutes of the board's meetings.
- (5) A certificate shall expire 12 months after its issuance.

- (6) A certificate of appropriateness shall not be resubmitted for review sooner than 12 months following its initial review unless it is submitted with a material change (as determined by the chairman of the board) with an additional fee.
- (7) Certificates of appropriateness shall be issued for distinct and separate phases of an ongoing project

(Code 1992, § 12.206; Ord. No. 13-015, § 12.206, 11-17-2003)

Sec. 23-60. - Certificates; application and procedure.

- (a) *Application.* The applicant shall submit to the building official a certificate application which includes data and information in writing which thoroughly describes the project as determined by the building official, including but not limited to the following:
 - (1) Name of applicant and property owner.
 - (2) Mailing address of applicant and permanent address of property owner.
 - (3) Location of property to be altered, repaired, or constructed.
 - (4) A detailed description of the nature of the proposed external alteration or repair to be completed.
 - (5) A description of how the proposed change will be in character with the architectural or historical aspect of the structure or site.
 - (6) Any circumstances or conditions concerning the property or financial hardship which may affect compliance with the article.
 - (7) The intended and desired starting date and completion date of the alterations to be made.
 - (8) Any drawings or photographs which would explain the proposed alteration.
 - (9) Color chips of the colors which will be used on the structure.
 - (10) Certification of receipt of a copy of this article and acknowledgment of its terms.
- (b) *Completeness.* The applicant shall submit all required data and information to the building official, not less than 14 days prior to the next scheduled public meeting of the board. The application shall not be accepted and processed until it is deemed complete by the building official, including sufficient description to adequately and completely convey the full effect of the work to be done.
- (c) *Fee.* An administration fee will be assessed to the applicant reflecting the cost to the city for processing the application. (See appendix A to this Code.) The application will not be deemed complete, nor will it be processed until such fee is paid in full. Projects requiring both a certificate of appropriateness and a certificate of review for which the applications are submitted simultaneously shall require the payment of only one fee.
- (d) *Insignificant alteration.* If the building official determines that the application involves ordinary repair or maintenance, alteration, change, restoration, color, or removal of any exterior architectural feature of a building or structure which does not involve significant changes in the architectural or historic value, style, general design or appearance, he/she may, within seven days, approve the application and forward a copy of the approved application to the chairman of the board, or to the vice chairman of the board if the chairman is not available. The chairman or vice chairman of the board shall, within three business days, either approve the building official's decision or call for a meeting of the board to consider the application. If the chairman or vice chairman of the board does not take any action within three business days, it shall be deemed that such person has approved the building official's decision to grant the certificate of appropriateness or certificate of review, as applicable. The *Design Guidelines for the City of Fredericksburg*, *The Secretary of the Interior's Standards for Rehabilitation* and *The Secretary of the Interior's Guidelines for Rehabilitating Historic Buildings* will be used when assessing the application. These documents will be made available to the public in the office of the city secretary and/or building official of the city, on the city's website, and/or at the local public library.

- (e) *Significant alteration.* If the building official determines that the application involves an alteration, change, restoration, removal or demolition of an external architectural feature of a building or structure which involves a significant change in the architectural or historic value, style, general design, or appearance or for any other reason does not desire to act under subsection (d) above; he/she shall refer the application to the board and call for a meeting of the board to consider the Certificate. The *Design Guidelines for the City of Fredericksburg*, *The Secretary of the Interior's Standards for Rehabilitation* and *The Secretary of the Interior's Guidelines for Rehabilitating Historic Buildings* will be used when assessing the application. These documents will be made available to the public in the office of the city secretary and/or building official of the city or on the city's website.
- (f) *Time for approval.* The board shall hold a meeting to consider the application within 40 days after the receipt of a completed application. The applicant shall be given written notice of the time and place of the meeting by regular mail to the address on the application and/or to property owners as the same appear on the records of the Gillespie County appraisal district. Notice of the meeting and subject matter shall be posted in accordance with the Texas Open Meetings Act. The board may hold any additional meetings within 60 days following submission of a completed application as may be necessary to carry out its responsibilities under this article. The applicant or his/her agent, or representative, shall attend at least one meeting of the board during which his/her application is considered, otherwise the board shall not take action, and the application will be deemed to be incomplete. The board shall make its determination and report the same to the building official within 60 days after receipt of a completed application unless the board and the applicant mutually agree to extend the period of review. If action is not taken within 60 days after receipt of a completed application, (except as to demolition cases as set out below) it shall be deemed that the board recommends approval of the application and it shall issue the requisite certificate.

The board shall forward its report and recommendation to the building official. Upon receipt of the report of the board, the building official shall within three days issue the certificate to the applicant.

- (g) *Special time period for demolition.* Anything in this article to the contrary notwithstanding, the board shall make its determination within 120 days after receipt of a completed application for a permit to demolish a historic landmark or building within the historic district, or to move a historic landmark, or to move a building into or out of a historic district.

(Code 1992, § 12.207; Ord. No. 13-015, § 12.207, 11-17-2003)

Sec. 23-61. - Criteria for approval of a certificate of appropriateness.

- (a) In determining the recommendation and action on an application for a certificate of appropriateness, the building official and historic review board shall review and decide the appropriateness of the proposed alterations of the following with regard to:
 - (1) *Removal, addition or modification of architectural detail.* The distinguishing historic qualities or character of a building, structure, or site and its environment shall not be destroyed. Removal or modification of any historic material or distinctive architectural features may be accomplished upon issue of a certificate of appropriateness; however, this should be avoided when possible. Architectural features include, but are not limited to, exterior wall materials, windows, railings, decorative woodwork, masonry, or stone elements.
 - (2) *Paint color and application.* Traditionally, the base colors of Fredericksburg's buildings have been soft muted shades of greens, blues, whites, and tans. In order to continue the historic integrity of the buildings in the district, these colors continue to be acceptable today, and do not require review or issuance of a certificate. The building official shall determine whether or not the proposed color is within the approved list of colors. Base colors such as vibrant or "hot" shades, deep dark shades, and black shades are not acceptable. If one wishes to use these colors, a certificate of appropriateness must be granted in advance of paint application. The painting of existing historic buildings composed of materials such as unpainted stone or unpainted masonry is prohibited.

- (3) *Scale of new construction in historic districts.* The board will review all new construction plans within historic districts in order to ensure visual compatibility with the surrounding buildings and environment in relation to height, gross volume, proportion, and setback.
- (b) The decision of the building official and chairman in the case of insignificant alterations, or the decision of the board in the case of significant alterations, with regard to the items described in this section and section 23-62 are mandatory and must be met in order to receive a certificate of occupancy upon completion of construction (in the case of commercial properties). In the event the requirements of the board are not met, the building permit shall be revoked. Notice of Revocation shall be delivered or mailed to the applicant by the building official or his or her designee to the address provided on the application. The *Design Guidelines for the City of Fredericksburg*, *The Secretary of the Interior's Standards for Rehabilitation* and *The Secretary of the Interior's Guidelines for Rehabilitating Historic Buildings* will be used to guide the decision.

(Code 1992, § 12.208; Ord. No. 13-015, § 12.208, 11-17-2003; Ord. No. 20-001, § 23-61(a)(1)—(3), (b), 3-22-2010)

Sec. 23-62. - Demolition/removal criteria.

- (a) In addition to the criteria specified in section 23-61, the board shall use the following additional criteria when reviewing and determining the recommendation and action on an application for a certificate of appropriateness with regard to demolition or removal of a historic landmark or a resource within a historic district:
 - (1) The demolition or removal of a historic resource with a rating of "high" in the *Fredericksburg Historic Resource Survey* is strictly prohibited.
 - (2) The demolition of a historic resource with a rating of "medium" is prohibited.
 - (3) The removal of a resource with a rating of "medium" or the demolition or removal of a resource with a rating of "low," or of a historic resource not rated in the *Fredericksburg Historic Resource Survey*, may occur only when the board issues a certificate of appropriateness for that express purpose. Refer to section 23-55 and the *Fredericksburg Historic Resource Survey* for a more detailed definition of the preservation priority rating system.
- (b) Any category of resource may be moved within the same tract of land upon which it is located, or to a tract so close as to be considered essentially the same location, if permitted by the board which must issue a certificate of appropriateness for such purpose, and the board may place reasonable conditions and safeguards for the resource when issuing its Certificate.
- (c) The *Design Guidelines for the City of Fredericksburg*, *The Secretary's Standards for Rehabilitation* and *The Secretary's Guidelines for Rehabilitating Historic Buildings* will be used to guide the board in decisions regarding issuance of a certificate of appropriateness for demolition or removal of a historic landmark or within the historic district.
- (d) In the case of a demolition application, the board shall affirmatively find that:
 - (1) Reasonable measures could not be, taken to adaptively reuse, rehabilitate, or restore the building or structure at its existing site;
 - (2) Reasonable measures have been taken to relocate the resource to a new site first within the same property, secondly within the historic district (if applicable), or thirdly to an area that will be enhanced by the resource or where the goals of this article will be furthered and that the same cannot reasonably be done;
 - (3) The condition of the building or structure is such that it has been so altered or deteriorated that it has lost its value for promoting the goals of this article, and is no longer significant, and in such event that the condition is not due to demolition by neglect or action of the owner or another related person or entity;

- (4) The estimated cost of restoration or repair is so excessive as to create an unreasonable economic hardship (as defined above) for the owner, and in such event that the condition is not due to demolition by neglect; and
 - (5) Plans for proposed new construction or other reuse of the property, and their effects on the historical, cultural, social, or architectural identity of the surrounding area will be positive and promote the goals of this article.
- (e) In the case of a removal application, the board shall affirmatively find that:
- (1) Reasonable measures could not be taken to adaptively reuse, rehabilitate, or restore the building or structure at its existing site;
 - (2) The resource is no longer significant to the area in which it is situated;
 - (3) Reasonable measures have been taken to relocate the resource within the same property, and that the same cannot reasonably be done;
 - (4) Reasonable measures have been taken to relocate the resource within the historic district (if applicable), or that it will be relocated to an area that will be enhanced by the resource and where the goals of this article will be furthered; and
 - (5) Leaving the resource at its current location creates an unreasonable economic hardship (as defined above) for the owner, and in such event that the condition is not due to demolition by neglect.
- (f) In making the determination to permit demolition or removal of an historic resource, the board may place reasonable conditions on the same even if such conditions are not related to the mandatory requirements of this article, and to ensure compliance with the plans approved by the board. The same may include, but is not limited to, the requirement that all conditions be fulfilled prior to issuance of a building permit for the original resource's location

(Code 1992, § 12.209; Ord. No. 13-015, § 12.209, 11-17-2003)

Sec. 23-63. - Advisory function of the board.

- (a) In addition to granting certificates of appropriateness as described in sections 23-61 and 23-62, the board shall review all applications and provide recommendations on additional issues. In determining the advice to be given for a certificate of review, the building official and the historic review board shall review and consider the following matters:
- (1) The effect of the proposed change on the general historic, cultural, and architectural nature of the historic district or landmark.
 - (2) The appropriateness of exterior architectural features which can be seen from a public street, alley, or walkway.
 - (3) The general design, arrangement, texture, color, and material of the building, or structure, and the relation of such factors to similar features of buildings, or structures, in the district. This consideration shall not be the aesthetic appeal of the structure to the board nor the proposed remodeling, but rather its conformity to the general character of the particular historic area involved.
 - (4) Conformance of signage to the general historic, cultural, and architectural character of the historic district or landmark.
 - (5) The effects of the proposed change to the value of the historic district or landmark as an area of unique interest and character.
 - (6) The general and specific *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*, as issued by the secretary of the interior.

- (7) The importance of finding a way to meet the current needs of the property owner and the importance of approving plans that will be economically reasonable for the property owner to carry out.
- (b) The board shall conduct this review within the same time periods as for a certificate of appropriateness. Recommendations of the board with regard to any issues not set forth in sections 23-61 or 23-62 are not binding upon the applicant.

(Ord. No. 13-015, § 12.210, 11-17-2003)

Sec. 23-64. - Prevention of demolition by neglect.

- (a) *Duty to maintain.* All historic landmarks and all significant buildings, objects, sites, and structures located in the historic district, shall be preserved against decay, deterioration, and kept free from certain structural defects by the owner thereof or such person, persons, or entities who may have custody or control thereof. Such owners, or other persons shall repair such building, object, site, or structure if it has any of the following defects:
 - (1) Deteriorated or inadequate foundations;
 - (2) Defective or deteriorated flooring or floor supports of insufficient size to carry imposed loads with safety;
 - (3) Members of walls or other vertical supports that split lean, list, or buckle due to defective material, workmanship, or deterioration;
 - (4) Members of walls or other vertical supports that are insufficient to carry imposed loads with safety;
 - (5) Members of ceilings, roofs, and their support system, or other horizontal members which sag, split, or buckle due to defective material, workmanship, or deterioration;
 - (6) Members of ceiling and roof supports or other horizontal members that are insufficient to carry imposed loads with safety;
 - (7) Fireplaces or chimneys which list, bulge, or settle due to defective material, workmanship, or deterioration;
 - (8) Deterioration or defects in paints, coating systems, or flashing resulting in destructive moisture penetration or rot;
 - (9) Any fault, defect, or condition in the building which renders the same structurally unsafe or not properly watertight.
- (1) *Determination of neglect.* If the board upon recommendation or presentation by the building official of the city or its designee makes a determination that a resource is being demolished or deteriorated by neglect, it shall direct the city building official to notify the owner or owners of the resource of this preliminary determination, stating the reasons therefore, and shall give the owner of record 30 days from the date of such notice to correct the defects or present to the board a plan for remediation if the defect cannot be remedied within such 30 days period.
- (2) *Subsequent determination.* If, within 30 days after such initial determination, the board shall again determine that the resource is being demolished or deteriorated by neglect, it may direct the city building official to file a complaint for a violation of a zoning ordinance of the city, against the owner or owners if the necessary repairs are not completed within 90 days of the second determination by the board that the subject building or structure is being demolished or deteriorated by neglect.
- (3) *City stabilization.* Additionally, the historic review board may direct the city building official to accomplish the repairs necessary to stabilize and protect the resource. The city shall then pay therefor, and charge the expenses incurred in doing such work or having such work done or improvements made to the record owner of such resource. If such work is done or improvements

made at the expense of the city, then such expenses shall be assessed as a lien on the real estate, lot or lots upon which such expense was incurred except as prohibited by law. The city, and the city's authorized assistants, employees, contracting agents, or other representatives, are hereby expressly authorized to enter upon private property at all reasonable hours for the purpose of completing repairs necessary for the stabilization and repair of a resource. Any court having jurisdiction over such cases including the municipal court of the city shall have authority to issue all orders necessary to enforce this article. Neither the city nor its employees, agents or contractors shall be answerable in damages or otherwise for damage to property due to the enforcement of this article.

- (4) *Lien establishment.* The city manager or other person authorized to act on behalf of the city shall file a statement of such expenses incurred by filing the amount of such expenses, the date on which said work was done or improvements made, with the county clerk of Gillespie County, Texas. The city shall have a privileged lien on such lot, lots or real estate upon which said work was done or improvements made to secure the expenditures so made. Said lien amount shall bear interest per annum from the date said statement was filed at the greater of the maximum rate published by the state board of control, or the rate of 10 percent. For any such expenditures, and interest, as aforesaid, suit may be instituted and recovery and foreclosure of said lien may be had in the name of the city. The statement of expenses so made, as aforesaid, shall be a prima facie proof of the amount expended for such work or improvements.

(Ord. No. 13-015, § 12.211, 11-17-2003)

Sec. 23-65. - Penalties.

- (a) *Violation of article.* A person, firm, corporation or other entity commits an offense if he/she/it violates this article. Each day the offense continues constitutes a separate offense. The following penalties, which are nonexclusive, and the exercise of one or more of which shall not preclude exercise of the others, shall be imposed on those persons or entities found to have violated this article:
 - (1) The same penalties as set forth in the zoning ordinance of the city for all violations of requirements set forth in the said zoning ordinance; or
 - (2) The penalties set forth in section 1-6 of this Code of Ordinances of the city for non-zoning violations.
- (b) *Restrictions on future development.* If a historic resource, either a landmark or one located within the boundaries of the historic district is demolished or relocated without a certificate of appropriateness, or in the event the plans are changed for the property from which the resource was removed without approval of the changed plans by the historic review board, then the following restrictions, in addition to any other penalties or remedies set forth in this article, shall be applicable to the site where the structure or property was formerly located:
 - (1) No building or other permits will be issued for construction on the site, with the exception of a permit to restore such structure or property after obtaining a certificate of appropriateness, for a period of five years after the date of such demolition or removal.
 - (2) No permits shall be issued by the city for any curb cuts on the site for a period of five years from and after the date of such demolition or removal.
 - (3) No parking lot for vehicles shall be operated whether for remuneration or not on the site for a period of five years from and after the date of such demolition and removal.
 - (4) The owner of the site shall maintain the site in a clean and orderly state and shall properly maintain all existing trees and landscaping on the site. When these restrictions become applicable to a particular site, the building official shall cause to be filed a verified notice thereof in the real property records of Gillespie County and such restrictions shall then be binding on future owners of the property.

- (c) *Cumulative remedies.* The provisions of this section shall apply in addition to other enforcement procedures or penalties which are available at law or in equity, including, but not limited to, those available for adversely affecting historic structures or property under V.T.C.A., Local Government Code § 315.006 and V.T.C.A., Government Code § 442.016 as the same may be amended from time to time, injunctive remedies and the like.
- (d) *Civil action.* As an additional remedy in addition to the penalties stated above, the city attorney for the City of Fredericksburg or his or her designee shall have the power to take all necessary civil action to enforce the provisions hereof and to request appropriate legal or equitable remedies or relief.

(Ord. No. 13-015, § 12.212, 11-17-2003)

Sec. 23-66. - Appeal.

- (a) An applicant may appeal a decision of the board to the city council under the following conditions:
 - (1) That the decision of the board, to be appealed, was made under its mandatory functions. See sections 23-61 and 23-62.
 - (2) That a written notice of appeal by the applicant be received by the city secretary within ten days following the decision to be appealed.
 - (3) That the grounds for appeal are based upon unreasonable economic hardship as defined herein or upon other legal precedent or established law or is challenging or requesting a change to a rating or landmark designation.
 - (4) In the event the preservation priority rating is appealed, such appeal shall be de novo hearing concerning the matter in question.
 - (5) The city council shall schedule a hearing on such appeal within 30 days after the receipt of the notice of appeal, or as soon thereafter as is reasonably practicable. Notice of such hearing shall be published by the city secretary in the city's official newspaper not less than the 10th day before the date of the hearing. At the hearing, the owner and all interested parties, including local preservation groups, will have the opportunity to be heard. The city council shall uphold, reverse or modify the decision of the historic review board within 30 days of the appeal hearing unless a continuance is agreed to by the owner. The city council shall consider the same criteria and standard of review considered by the historic review board when considering an appeal regarding the preservation priority rating.
- (b) Only one appeal shall be allowed.
- (c) Prior to an appeal to judicial authorities or institution of suit, and as a mandatory prerequisite thereof, the applicant must file a written notice of appeal with the city secretary within ten days following the adverse city council decision or board decision, as applicable, stating specifically grounds for such appeal.

(Ord. No. 13-015, § 12.213, 11-17-2003)

Secs. 23-67—23-90. - Reserved.