

ORDINANCE NO. 2014-11

AN ORDINANCE TO ADD A NEW CHAPTER 27, HISTORIC PRESERVATION, TO THE CODE OF THE CITY OF ROCHESTER TO ALLOW FOR THE ESTABLISHMENT OF HISTORIC DISTRICTS AND TO ENACT A REVIEW AND PUBLIC HEARING PROCESS PERTAINING TO WORK DONE TO BUILDINGS OR STRUCTURES IN SUCH DISTRICTS.

THE CITY OF ROCHESTER ORDAINS:

CHAPTER 27
HISTORIC PRESERVATION

Sec. 27-1. Title.

This Chapter shall be known as the "Historic Preservation Ordinance" of the City of Rochester.

Sec. 27-2. Purpose.

Historic preservation is hereby declared to be a public purpose and the City may hereby regulate the construction, addition, alteration, repair, moving, excavation, and demolition of resources in historic districts within the City as provided in this Historic Preservation Ordinance. The purpose of this Historic Preservation Ordinance is to:

- (a) Safeguard the heritage of the City by preserving historic districts which reflect elements of the City's history, architecture, archaeology, engineering, or culture;
- (b) Stabilize and improve property values in the districts and the surrounding areas;
- (c) Foster civic beauty;
- (d) Strengthen the local economy;
- (e) Promote the use of historic districts for the education, pleasure and welfare of the citizens of the City and the State of Michigan; and
- (f) To educate people as to historical aspects of property and the surrounding area before such properties are demolished or disturbed by exterior construction or alterations.

Sec. 27-3. Definitions.

For the purpose of this Historic Preservation Ordinance, the following words and phrases shall have the meaning described in this section.

~~A~~ ~~literation~~ means work that changes the detail of a resource but does not change its basic size or shape.

~~Certificate of appropriateness~~ means the written approval of a permit application for work that is appropriate and does not adversely affect a resource.

~~Commission~~ means the Historic District Commission of the City of Rochester.

~~Demolition~~ means the razing or destruction, whether entirely or in part, of a resource and includes, but is not limited to, demolition by neglect.

~~Demolition by neglect~~ means neglect in maintaining, repairing, or securing a resource that results in deterioration of an exterior feature of the resource or the loss of structural integrity of the resource.

~~Denial~~ means the written rejection of a permit application for work that is inappropriate and that adversely affects a resource.

~~Department~~ means the department of history, arts and libraries.

~~Fire alarm system~~ means a system designed to detect and annunciate the presence of fire or by-products of fire. Fire alarm system includes smoke alarms.

~~Historic district~~ means an area, or group of areas not necessarily having contiguous boundaries, that contains 1 resource or a group of resources that are related by history, architecture, archaeology, engineering, or culture.

~~Historic preservation~~ means the identification, evaluation, establishment, and protection of resources significant in history, architecture, archaeology, engineering, or culture.

~~Historic resource~~ means a publicly or privately owned building, structure, site, object, feature or open space that is significant in the history, architecture, archaeology, engineering, or culture of the City of Rochester, State of Michigan, or the United States.

~~Notice to Proceed~~ means the written permission to issue a permit for work that is inappropriate and that adversely affects a resource, pursuant to a finding under Section 399.206 (6) of Public Act 169 of 1970, as amended.

~~Open space~~ means undeveloped land, a naturally landscaped area, or a formal or man-made landscaped area that provides a connective link or a buffer between other resources.

~~Ordinary maintenance~~ means keeping a resource unimpaired and in good condition through ongoing minor intervention, undertaken from time to time, in its exterior condition. Ordinary maintenance does not change the external appearance of the resource except through the elimination of the usual and expected effects of weathering. Ordinary maintenance does not constitute work for purposes of this Historic Preservation Ordinance.

~~Proposed historic district~~ means an area, or group of areas not necessarily having contiguous boundaries, that has delineated boundaries and that is under review by a committee or other body

for the purpose of making a recommendation as to whether it should be established as a historic district or added to an established historic district.

Repair means to restore a decayed or damaged resource to a good or sound condition by any process. A repair that changes the external appearance of a resource constitutes work for purposes of this Historic Preservation Ordinance.

Resource means one or more publically or privately owned historic or non-historic buildings, structures, sites, objects, features, or open spaces located within a historic district.

Rochester Historic Landmark means a property that has local significance or possesses exceptional value or quality in illustrating or interpreting the heritage of Rochester, Michigan in history, architecture, archaeology, engineering, and culture, and that possesses a high degree of integrity of location, design, setting, materials, workmanship, feeling, and association. Some considerations for determining whether a property should be a Rochester Historic Landmark Property are as follows:

- a. Properties that are associated with events that have made a significant contribution to and are identified with, or that outstandingly represent, the broad national patterns of national and/or local history and from which an understanding and appreciation of those broad patterns may be gained;
- b. Properties that are associated importantly with the lives of persons nationally significant in the history of Rochester;
- c. Properties that represent some great idea or ideal of the American people;
- d. Properties that embody the distinguishing characteristics of an architectural type or specimen exceptionally valuable for the study of a period, style, or method of construction;
- e. Properties that represent a significant, distinctive, and exceptional entity whose components may lack individual distinction;
- f. Properties that are composed of integral parts of the environment not sufficiently significant by reason of historical association or artistic merit to warrant individual recognition but collectively compose an entity of exceptional historical or artistic significance, or outstandingly commemorate or illustrate a way of life or culture; or
- g. Properties that have yielded or may be likely to yield information of major scientific importance by revealing new cultures, or by shedding light upon periods of occupation over large areas of the United States. Such sites are those which have yielded, or which may reasonably be expected to yield, data affecting theories, concepts, and ideas to a major degree.

Smoke alarm means a single-station or multiple-station alarm responsive to smoke and not connected to a system. As used in this subdivision, a "single-station alarm" means an assembly incorporating a detector, the control equipment, and the alarm sounding device into a single unit, operated from a power supply either in the unit or obtained at the point of installation. "Multiple-station alarm" means 2 or more single-station alarms that are capable of interconnection such that actuation of 1 alarm causes all integrated separate audible alarms to operate.

Study Committee means a historic district study committee appointed by the City Council.

Work means construction, addition, alteration, repair, moving, excavation, or demolition.

Sec. 27-4. Historic District Study Committee and the Study Committee Report.

(a) Before establishing a historic district, the City Council shall appoint a Historic District Study Committee. A majority of the persons appointed to the Study Committee shall have a clearly demonstrated interest in or knowledge of historic preservation. The Study Committee shall contain representation of at least one member appointed from one or more duly organized local historic preservation organizations. The Study Committee shall do all of the following:

- (1) Conduct a photographic inventory of resources within each proposed historic district following procedures established by the State Historic Preservation Office of the Michigan Historical Center (SHPO).
- (2) Conduct basic research of each proposed historic district and historic resources located within that district.
- (3) Determine the total number of historic and non-historic resources within a proposed historic district and the percentage of historic resources of that total. In evaluating the significance of historic resources, the Committee shall be guided by the selection criteria for evaluation issued by the United States Secretary of the Interior for inclusion of resources in the National Register of Historic Places, as set forth in 36 CFR part 60, and criteria established or approved by SHPO.
- (4) Prepare a preliminary Historic District Study Committee report that addresses at a minimum all of the following:
 - a. The charge of the Study Committee.
 - b. The composition of Committee membership.
 - c. The historic district(s) studied.
 - d. The boundaries of each potential historic district in writing and on maps.
 - e. The history of each potential historic district.
 - f. The significance of each district as a whole, as well as a sufficient number of its individual resources to fully represent the variety of resources found within the district, relative to the evaluation criteria.
 - g. Transmit copies of the preliminary report for review and recommendations to the Planning Commission, City Council, SHPO, the Michigan Historical Commission, and the State Historic Preservation Review Board.
 - h. Make copies of the preliminary report available to the public pursuant to Section 399.203 (4) of Public Act 169 of 1970, as amended.

- (5) Upon receipt and consideration of the preliminary report, City Council shall direct administration to notify the owners of properties identified in the preliminary report that the property has been so identified as a potential historic resource. The notice will provide the owner with contact information for the State Historic Preservation Office and the means to obtain the United States Secretary of the Interior Standards referenced in Subsection (a)(3) above. Such notice will also state that if the owner wants the property considered for possible inclusion in a historic district, the owner will need to contact the City and fill out the appropriate agreement reflecting the owner's desire to proceed with the process. This can be done electronically through the City's website or by filling out the agreement at the City offices. If the owner has not decided to "opt in", but would like more information, the owner may request more information and will be contacted by a member of the Study Committee and/or the City to schedule a meeting to review the options available and the reasons why owner's property has been identified as a potential historic resource.
- (6) If any identified property owner wishes to pursue historic district inclusion, the Study Committee shall hold a public hearing. Said public hearing shall be held in compliance with the Open Meetings Act, MCL 15.263, et seq. Public notice of the time, date and location of the hearing shall be provided in a newspaper of general circulation, and mailed to the owner by first class mail, not less than 14 days prior to the hearing. In no event shall said hearing be held less than 60 calendar days after the preliminary report is transmitted as set forth in Sec. 27-4 (a)(4)g.
- (7) After the date of the public hearing, the Committee and the City Council have not more than one year, unless otherwise authorized by the City Council, to take the following actions:
 - a. The Committee shall prepare and submit a final report with its recommendations and the recommendations, if any, of the local planning body to the City Council as to the establishment of a Historic District(s). If the recommendation is to establish a Historic District(s), the final report shall include a draft of the proposed ordinance(s).
 - b. After receiving a final report that recommends the establishment of a Historic District(s), the City Council, at its discretion, may conduct a public hearing, introduce and pass or reject an ordinance(s). If the City Council passes an ordinance(s) establishing one or more Historic Districts, the City shall file a copy of the ordinance(s), including a legal description of the property or properties located within the Historic District(s) with the Register of Deeds. The City Council shall not pass an ordinance establishing a contiguous historic district unless all of the property owners within the proposed district agree to inclusion. In no event, however, shall the ordinance be adopted less than 60 days after

unanimous agreement is received. The owners are those as listed on the tax rolls of the local unit.

- (8) Notwithstanding the above "opt-in" triggers, the Study Committee will identify approximately 12 properties from the preliminary report that it deems to be foundational historic properties ("Rochester Historic Landmark Properties") in the City, the preservation of which being critical to the history of the City. The list and supporting documents will be transmitted to City Council for consideration. The City Council may conduct a public hearing and, after said public hearing, may approve, modify or reject said list. The list of approved Rochester Historic Landmark Properties will be maintained by the City, and notice of inclusion to each owner shall be provided. Should the City become aware or otherwise determine that the historic nature of any of the Rochester Historic Landmark Properties is threatened in any manner, whether because of actions taken by the owner, by demolition by neglect, or otherwise, the City Council may initiate the above process to establish a historic district for said property without the initiation of the owner. This process includes, but is not limited to, issuing an ordinance or taking any other action to stop the threatened diminution or destruction of the property's historic nature.

Sec.27-5. Establishing Additional, Modifying, or Eliminating Historic Districts.

(a) The City Council may at any time establish by ordinance additional historic districts, including proposed districts previously considered and rejected, may modify boundaries of an existing historic district, or may eliminate an existing historic district. Before establishing, modifying, or eliminating a historic district, a historic district study committee appointed by the City Council shall follow the procedures as stated in Section 399-203 (1-3) of Public Act 169 of 1970, as amended. To conduct these activities, the City Council may retain the initial Study Committee, establish a standing committee, or establish a committee to consider only specific proposed districts and then be dissolved. The committee shall consider any previously written committee reports pertinent to the proposed action.

(b) In considering elimination of a historic district, a committee shall follow the procedures set forth in Section 399-203 (1-3) of Public Act 169 of 1970, as amended for the issuance of a preliminary report, holding a public hearing, and issuing a final report but with the intent of showing one or more of the following:

- (1) The historic district has lost those physical characteristics that enabled the establishment of the district.
- (2) The historic district was not significant in the way previously defined.
- (3) The historic district was established pursuant to defective procedures.

Sec.27-6. The Historic District Commission.

The City Council may establish by ordinance a commission to be called a Historic District Commission. The Commission may be established at any time, but not later than the time the first

historic district is established. Each member of the Commission shall reside within the city limits. The Commission shall consist of seven (7) members. Members shall be appointed by the City Council. A majority of the members shall have a clearly demonstrated interest in or knowledge of historic preservation. Members shall be appointed for a term of three (3) years, except the initial appointments of three (3) members for a term of two (2) years and two (2) members for a term of one year. Subsequent appointments shall be for three-year terms. Members shall be eligible for reappointment. In the event of a vacancy on the Commission, interim appointments shall be made by the City Council within sixty (60) calendar days to complete the unexpired term of such position. Two (2) members shall be appointed from a list submitted by duly organized local historic preservation organizations. If such a person is available for appointment, one member shall be an architect who has two years of architectural experience and is duly registered in the State of Michigan. The City Council may prescribe powers and duties of the Commission, in addition to those prescribed in this Ordinance, that foster historic preservation activities, projects, and programs in the City.

Sec.27-7. Historic District Commission Meetings, Recordkeeping & Rules of Procedure.

- (1) The Historic District Commission shall meet monthly, or more frequently at the call of the Commission.
- (2) The business that the Commission may perform shall be conducted at a public meeting held in compliance with the Open Meetings Act. A meeting agenda shall be part of the meeting notice and shall include a listing of each permit application to be reviewed or considered by the Commission.
- (3) The Commission shall keep a record of its resolutions, proceedings and actions. A writing prepared, owned, used, in the possession of, or retained by the Commission in the performance of an official function shall be made available to the public in compliance with the Freedom of Information Act.
- (4) The Commission shall adopt its own rules of procedure and shall adopt design review standards and guidelines to carry out its duties under this Historic Preservation Ordinance.

Sec.27-8. Delegation of Minor Classes of Work.

The Commission may delegate the issuance of certificates of appropriateness for specified minor classes of work to the City Building Official. The Commission shall provide specific written standards for issuing certificates of appropriateness under this section. The Commission shall review the certificates of appropriateness issued by the Building Official on at least a quarterly basis to determine whether or not the delegated responsibilities should be continued.

Sec.27-9. Ordinary Maintenance.

Nothing in this Ordinance shall be construed to prevent ordinary maintenance or repair of a resource within a historic district or to prevent work on any resource under a permit issued by City officials before the Historic Preservation Ordinance was enacted.

Sec.27-10. Review by the Commission.

The Commission shall review and act upon only exterior features of a resource and shall not review and act upon interior arrangements unless specifically authorized to do so by the City Council or unless interior work will cause visible change to the exterior of the resource. The Commission shall not disapprove an application due to considerations not prescribed in subsection 399 205 (3) of Public Act 169 of 1970, as amended.

Sec.27-11. Design Review Standards and Guidelines.

- (1) In reviewing plans, the Commission shall follow the U.S. Secretary of Interior's Standards for Rehabilitation and guidelines for rehabilitating historic buildings as set forth in 36 C.F.R. part 67. Design review standards and guidelines that address special design characteristics of historic districts administered by the Commission may be followed if they are equivalent in guidance to the Secretary of Interior's Standards and guidelines and are established or approved by the SHPO.
- (2) In reviewing plans, the Commission shall also consider all of the following:
 - (a) The historic or architectural value and significance of the resource and its relationship to the historic value of the surrounding area.
 - (b) The relationship of any architectural features of the resource to the rest of the resource and to the surrounding area.
 - (c) The general compatibility of the design, arrangement, texture, and materials proposed to be used.
 - (d) Other factors, such as aesthetic value, that the Commission finds relevant.
 - (e) Whether the applicant has certified in the application that the property where work will be undertaken has, or will have before the proposed project completion date, a fire alarm system or a smoke alarm complying with the requirements of the State of Maryland single state construction code act 1972 PA 230, MCL 12.1501 to 12.1531.

Sec.27-12. Permit Applications.

- (1) A permit shall be obtained before any work affecting the exterior appearance of a resource is performed within a historic district. The person, individual, partnership, firm, corporation, organization, institution, or agency of government proposing to do that work shall file an application for a permit with the inspector of buildings. Upon receipt of a complete application, the Building Official shall immediately refer the application, along with all required supporting materials that make the application complete to the Commission.
- (2) A permit shall not be issued and proposed work shall not proceed until the Commission

has acted on the application by issuing a certificate of appropriateness or a notice to proceed as prescribed in this Historic Preservation Ordinance. The commission shall not issue a certificate of appropriateness unless the applicant certifies in the application that the property where work will be undertaken has, or will have before the proposed project completion date, a fire alarm system or a smoke alarm complying with the requirements of the Stille-D eRossett-H ale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

- (3) The Commission shall file certificates of appropriateness, notices to proceed, and denials of applications for permits with the Building Official. A permit shall not be issued until the Commission has acted as prescribed by this Historic Preservation Ordinance.
- (4) If an application is for work that will adversely affect the exterior of a resource the Commission considers valuable to the City, the State of Michigan, or the nation, and the Commission determines that the alteration or loss of that resource will adversely affect the public purpose of the City, State, or nation, the Commission shall attempt to establish with the owner of the resource an economically feasible plan for the preservation of the resource.
- (5) The failure of the Commission to act on an application within sixty (60) calendar days after the date a complete application is filed with the Commission, unless an extension is agreed upon in writing by the applicant and the Commission shall be considered to constitute approval.
- (6) The local unit may charge a reasonable fee to process a permit application, which fee(s) shall be set by City Council by resolution.

Sec. 27-13. Denials.

If a permit application is denied, the decision shall be binding on the Building Official. A denial shall be accompanied by a written explanation by the Commission of the reasons for denial and if appropriate, a notice that an application may be re-submitted for Commission review when the suggested changes have been made. The denial shall also include the notification of the applicant's right to appeal to the State Historic Preservation Review Board and to the circuit court.

Sec. 27-14. Notice to Proceed.

Work within a historic district shall be permitted through the issuance of a Notice to Proceed by the Commission if any of the following conditions prevail and if the proposed work can be demonstrated by a finding of the Commission to be necessary to substantially improve or correct any of the following conditions:

- (a) The resource constitutes a hazard to the safety of the public or to the structure's occupants.
- (b) The resource is a deterrent to a major improvement program that will be of substantial benefit to the community and the applicant proposing the work has obtained all necessary planning and zoning approvals, financing, and environmental clearances.

- (c) Retaining the resource will cause undue financial hardship to the owner when a government action, an act of God, or other events beyond the owner's control created the hardship, and all feasible alternatives to eliminate the financial hardship, which may include offering the resource for sale at its fair market value or moving the resource have been attempted and exhausted by the owner.
- (d) Retaining the resource is not in the interest of the majority of the community.

Sec. 27-15. Appeal of a Commission Decision.

- (1) An applicant aggrieved by a decision of the Commission concerning a permit application may file an appeal with the State Historic Preservation Review Board. The appeal shall be filed within sixty (60) calendar days after the decision is furnished to the applicant. The appellant may submit all or part of the appellant's evidence and arguments in written form. The State Historic Preservation Review Board shall consider an appeal at its first regularly scheduled meeting after receiving the appeal. A permit applicant aggrieved by the decision of the Historic Preservation Review Board may appeal the decision to the circuit court having jurisdiction over the Commission whose decision was appealed to the State Historic Preservation Review Board.
- (2) Any citizen or duly organized historic preservation organization in the City as well as resource property owners, jointly or severally aggrieved by a decision of the Commission may appeal the decision to the circuit court except that a permit applicant aggrieved by a decision rendered under this Historic Preservation Ordinance may not appeal to the court without first exhausting the right to appeal to the State Historic Preservation Review Board.

Sec. 27-16. Work Without a Permit.

When work has been done upon a resource without a permit, and the Commission finds that the work does not qualify for a certificate of appropriateness, the Commission may require an owner to restore the resource to the condition that the resource was in before the inappropriate work or to modify the work so that it qualifies for a certificate of appropriateness. If the owner does not comply with the restoration or modification requirement within a reasonable time, the City may seek an order from the circuit court to require the owner to restore the resource to its former condition or to modify the work so that it qualifies for a certificate of appropriateness. If the owner does not comply or cannot comply with the order of the court, the City or its agents may enter the property and conduct work necessary to restore the resource to its former condition or modify the work so that it qualifies for a certificate of appropriateness in accordance with the court's order. The costs of the work done shall be charged to the owner, and may be levied by the City as a special assessment against the property. When acting pursuant to an order of the circuit court, the City or its agents may enter a property for purposes of this section.

Sec. 27-17. Demolition by Neglect.

Upon a finding by the Commission that a historic resource within a historic district or a proposed historic district subject to its review and approval is threatened with demolition by

neglect, the Commission may do either of the following:

- (a) Require the owner of the resource to repair all conditions contributing to demolition by neglect.
- (b) If the owner does not make repairs within a reasonable time, the City or its agents may seek a court order to enter the property and make such repairs as necessary to prevent demolition by neglect. The costs of the work shall be charged to the owner, and may be levied by the City as a special assessment against the property. The City or its agents may enter the property for purposes of this section upon obtaining an order from the circuit court.

Sec.27-18. Review of Work in Proposed Districts.

Upon receipt of substantial evidence showing the presence of historic, architectural, archaeological, engineering, or cultural significance of a proposed historic district, the City Council may, at its discretion, adopt a resolution requiring that all applications for permits within the proposed historic district be referred to the Commission. The Commission shall review permit applications with the same powers that would apply if the proposed historic district was an established historic district. The review may continue in the proposed historic district for not more than one year, or until such time as the City Council approves or rejects the establishment of the historic district by ordinance, whichever occurs first.

Sec.27-19. Emergency Moratorium .

If the City Council determines that pending work will cause irreparable harm to resources located within an established or proposed historic district, the City Council may by resolution declare an emergency moratorium on all such work for a period not to exceed six (6) months. The City Council may extend the emergency moratorium for an additional period not to exceed six (6) months, upon finding that the threat of irreparable harm to resources is still present. Any pending permit application concerning a resource subject to an emergency moratorium may be summarily denied.

Sec.27-20. Penalties for Violations.

- (1) In addition to any other penalty or consequence in the City Code, a person, individual, partnership, firm, corporation, organization, institution, or agency of government that violates this Historic Preservation Ordinance is responsible for a civil violation and may be fined not more than \$5,000.00.
- (2) A person, individual, partnership, firm, corporation, organization, institution, or agency of government that violates this act may be ordered by the court to pay the costs to restore or replicate a resource unlawfully constructed, added to, altered, repaired, moved, excavated or demolished.

Sec.27-21. Acceptance of Gifts or Grants.

The City Council may accept state or federal grants for historic preservation purposes; may participate in state and federal programs that benefit historic preservation, and may accept public or private gifts for historic preservation purposes. The City Council may appoint the Commission to accept and administer grants, gifts, and program responsibilities.

Sec.27-22. Acquisition of Historic Resources.

If all efforts by the Commission to preserve a resource fail, or if it is determined by the City Council that public ownership is most suitable, the City Council, if considered to be the public interest, may acquire the resource using public funds, public or private gifts, grants or proceeds from the issuance of revenue bonds. The acquisition may be based upon the recommendation of the Commission. The Commission is responsible for maintaining publicly owned resources using its own funds, if not specifically designated for other purposes, or public funds committed for that use by the City Council. The City may sell resources acquired under this section with protective easements included in the property transfer documents, if appropriate.

Sec.27-23. Historic District Boundary.

_____ Historic District, _____, Rochester

[LEGAL DESCRIPTION AND SIDWELL]

THIS ORDINANCE shall become effective upon publication.

A true copy of this ordinance may be purchased or inspected at the office of the City Clerk at the Rochester Municipal Building, 400 Sixth Street, Rochester, Michigan, 48307, during regular business hours, 8:00 a.m. to 5:00 p.m. daily, except weekends and holidays.

Made and passed by the City Council of the City of Rochester, State of Michigan, this 10th day of November, 2014.

CITY OF ROCHESTER
A Michigan Municipal Corporation

By: _____
Jeffrey T. Cuthbertson, Mayor

By: _____
Lee Ann O'Connor, City Clerk