

ORDINANCE NO. 2996

AN ORDINANCE OF THE CITY OF WAXAHACHIE, TEXAS, AMENDING THE CITY ZONING ORDINANCE, ORDINANCE NO. 2287, AS AMENDED, TO SECTIONS 31.A.1 THROUGH 31.A.9, TO UPDATE SAID SECTIONS OF THE ZONING ORDINANCE, RELATING TO THE HISTORIC OVERLAY DISTRICT, AND ESTABLISHING RULES RELATING TO HISTORIC STRUCTURES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 211.001 et .seq. of the Texas Local Government Code authorizes the City Council of the City of Waxahachie to:

Protect and preserve places and areas of historical and cultural importance and significance and to designate places and areas of historic and cultural importance, and to regulate and restrict the construction, alteration, reconstruction, or razing of buildings and other structures to maintain property values; and

WHEREAS, the City contemplates amending Sections 31.A.1 through 31.A.9 of the Code of Ordinances to oversee programs for historic properties and districts, and provide criteria and procedures for administering these programs; and

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

That all of the above premises are found to be true and correct and are incorporated into the body of this ordinance as if copied in their entirety and that Sections 31.A.1 through 31.A.9 of the Code of Ordinances of the City of Waxahachie, Texas hereby is amended to read as follows:

SECTION 31.A HISTORIC OVERLAY DISTRICTS

31.A.1 GENERAL PURPOSE AND DESCRIPTION:

The City hereby declares that as a matter of public policy, the protection, preservation and enhancement of districts and landmarks of architectural, archaeological, cultural, and historic importance is necessary to promote the economic, cultural, educational, and general welfare of the citizens of Waxahachie. The unique identity of the City of Waxahachie and the history of the area since its founding, which produced significant historic, architectural, archaeological and cultural resources, require this ordinance to:

1. Safeguard the City's historic and cultural heritage, as embodied and reflected in such historic areas, places, buildings and structures, by appropriate regulations.
2. Promote economic stability and prosperity of the community by encouraging the most appropriate use of such significant property in Waxahachie.
3. Protect and enhance the City's attractions to tourists and visitors, as well as provide support and stimulus to business and industry.

4. Ensure the identification and evaluation of buildings, structures, places and areas of historical, architectural and cultural importance or value; and to provide efficient procedures for that process, and any necessary adjustments or variances from unduly harsh application of the provisions of this ordinance.
5. To balance the rights of the public which justify preservation of the City's history and culture, with those of private property owners who own and control property, and are entitled to the reasonable use and return from their assets.

31.A.2 DESIGNATION OVERVIEW

A. Nature of District

The City may designate a site, building, structure, landscape or object as a historic resource and a unique area as a historic district together with the public rights of way in and surrounding the resource or district, by establishing a Historic Overlay District that combines with one or more base zoning districts pursuant to the procedures set forth in Section 10 of the City's zoning ordinance.

1. Permitted uses within the Historic Overlay District shall be those allowed in the base zoning district.
2. Unless expressly modified by or limited by an action taken pursuant to this Section 31.A, the height and area standards, special requirements and other regulations shall be those applicable within the base zoning district.

B. Criteria for Historic Resources:

A Historic Overlay District may be established to preserve historic resources of exemplary architectural, archaeological, cultural or historic value having one or more of the following characteristics:

1. Possesses significance in history, architecture, archeology, or culture of the city, county, state or nation.
2. Is associated with events that have made a significant contribution to the broad patterns of local, regional, state or national history.
3. Is associated with the lives of persons significant in Waxahachie's past.
4. Embodies distinctive characteristics of a type, period or method of construction.
5. Represents the work of a master designer, builder or craftsman.
6. Represents an established and familiar visual feature of the City of Waxahachie.
7. Is the location of a significant event.

C. Criteria for Historic Area

A Historic Overlay District may be established to preserve a historic area if the area contains properties that meet one or more of the criteria for designation contained for

a historic resource and constitutes a unique section of the City of Waxahachie that contributes to the heritage of the community.

D. Request for Designation

1. A property owner, interested citizen, or the Heritage Preservation Commission (HPC) may request to designate certain sites, buildings, structures, landscapes or objects as historic resources. Owners of said property shall be notified prior to the Commission's hearing to consider designation. At the aforementioned public hearing, commissioners, owners, and other interested parties may present testimony or documentary evidence that will become part of a record regarding the historic, architectural, or cultural importance of the proposed historic resource. The record may also contain staff reports, public comments, or other evidence offered outside of the hearing. Designation as a historic resource does not necessarily impose the obligation on the property owner to improve, alter, or change a property.
2. A property owner or the Heritage Preservation Commission (HPC) may request that a unique area be preserved as a historic district. The Heritage Preservation Officer will send notification to property owners within the proposed district boundaries of the proposal. When the HPO has received verifiable written support from the owners of at least thirty (30) percent of the properties within the proposed historic district boundary, the Heritage Preservation Officer shall forward the application to the Heritage Preservation Commission for a public hearing and recommendation. Prior to such hearing, the HPC shall conduct studies and research and make a report on the historic significance of the exteriors of buildings, structures, features, sites, objects and surroundings in the and other interested parties may present testimony or documentary evidence that will become part of a record regarding the historic, architectural or cultural importance of the proposed historic resource or historic district. The record may also contain staff reports and public comments. Following the public hearing, the HPC shall formulate its recommendation to the Planning and Zoning Commission and the City Council concerning establishment of a Historic Overlay District.

E. Process for Designation

1. The HPC shall make its recommendation on the proposed Historic Resource or Historic District to the Planning and Zoning Commission within thirty (30) days from the date of the public hearing on the proposed designation of the historic resource or historic district, coupled with a request to establish a Historic Overlay District for the site or area.
2. Upon receipt of the HPC recommendation, the Planning and Zoning Commission shall give notice, conduct its public hearing and make recommendations to the City Council in the same manner and according to the same procedures as provided in Section 10.
3. The City Council shall give notice, follow the publications procedure, hold public hearings and make its determination on the Historic Overlay District in the same

manner and in accordance with the procedures for a zoning amendment, as provided in Section 10.

4. Upon establishment of the Historic Overlay District designation, the Historic Overlay District shall be recorded on the official zoning map of the City of Waxahachie. All zoning maps shall identify the Historic Overlay District with the suffix "H". The boundaries of each Historic Overlay District shall be described in detail and shall be filed in the city secretary's office for public inspection.

31.A.3 CERTIFICATE OF APPROPRIATENESS FOR ALTERATION, RESTORATION, OR NEW CONSTRUCTION WITHIN HISTORIC OVERLAY DISTRICTS:

A. Prohibition on Alteration or Development

1. Within a Historic Overlay District, no person shall alter any building, site, structure, landscape or object designated as a historic resource or alter any portion of the exterior of a structure within a historic district, or place, construct, maintain, expand or remove any structure on such site without first obtaining a Certificate of Appropriateness from the HPC.
2. No building permit shall be issued until an application for a Certificate of Appropriateness has been reviewed and approved by the HPC. The Certificate of Appropriateness shall be in addition to, and not in lieu of, any building permit that may be required by any other ordinance of the City of Waxahachie.

B. Procedures for Certificate of Appropriateness

1. Prior to the commencement of any work requiring a Certificate of Appropriateness, the property owner shall file an application for such a certificate with the Heritage Preservation Commission. The Commission, if requested, shall aid the property owner in preparation and completion of the application. The application form shall contain the following:
 - (a) Name, address, telephone number of the applicant, and a detailed description of the proposed work.
 - (b) Current photographs of the property
 - (c) Historical photographs (if available) upon which the proposed work is based
 - (d) Elevation drawing(s) of any part of the structure that is visible from the public right-of-way with details drawn to scale for work to be done
 - (e) List of materials for all exterior surfaces and/or signs
 - (f) Dollar value of improvements to be made
 - (g) Location map of proposed buildings and structures
 - (h) Details of proposed light fixtures
 - (i) Sample(s) of material(s) to be used
 - (j) Any other reasonable information that the Commission may deem necessary in order to visualize the proposed work.
2. An application for a Certificate of Appropriateness shall be submitted to the Heritage Preservation Officer or other designated City official as stipulated by the City Manager. The HPC shall hold a public meeting on the application within

thirty (30) days of receipt of the completed application. All applications received twenty (20) days in advance of the next meeting will be reviewed and discussed at the next scheduled Commission meeting.

3. The HPC shall make a final decision on the application within forty-five (45) days of the filing date. If no action has been taken by such date, a Certificate of Appropriateness shall be deemed issued by the Commission.
4. All decisions of the HPC shall be in writing and will be sent to the applicant and the Building Official within ten (10) working days of the Commission's decision.

C. Criteria

The HPC shall take into account the following criteria for determining whether to issue a Certificate of Appropriateness.

1. The Downtown Waxahachie Design Guidelines, adopted by the City Council in August 2011, which are based on the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitation of Historic Buildings shall be used in this process.
2. The judgment of new construction proposals and the rehabilitation of non-historic buildings will be based on the compatibility of the design within the context of the property's adjacent and nearby historic buildings.
3. The design of new buildings may have key elements of an existing or previous building of the historic period, including massing, scale, fenestration and materials. Buildings may not be absolute reproductions and shall appear as clearly contemporary.
4. Infill buildings between contributing buildings shall be similar in setback, roof form, cornice line and materials, to one of the adjacent buildings. The height of the new buildings shall relate to the heights of adjacent structures. New buildings should not tower over existing buildings. Exterior building finishes shall be similar to that of surrounding historic structures.
5. When constructing an addition to a historic building, it shall be done in a manner so that there is the least possible loss of historic materials and so that character defining features are not obscured, damaged or destroyed. Every effort should be made to locate the addition at the rear of the building or on an inconspicuous side of a historic building; and limiting its size and scale in relationship to the historic building.
6. The new addition should be designed in a manner that makes it clear what is historic and what is new. Design for the new work may be contemporary or may reference design motifs from the historic building. In either case, it should always be clearly differentiated from the historic building and be compatible in terms and mass, materials and relationship of solids to voids.

D. Appeal from Action of HPC Concerning Application for Permits

1. An applicant for a Certificate of Appropriateness dissatisfied with the action of the HPC on the application may appeal the decision to the City Council within fifteen (15) days after receipt of notification of such action. The applicant shall be advised by the Heritage Preservation Officer of the time and place of the hearing at which his appeal will be considered and shall have the right to attend and be heard as to his reasons for filing the same.
2. In determining the appeal, the City Council shall consider the same factors as the HPC, the report of the HPC and any other matters presented at the hearing on the appeal. The City Council shall affirm, modify or reverse the decision by the HPC on the application for the Certificate of Appropriateness, and may impose such conditions as are necessary to assure that the proposed action meets the criteria for approval. If the application is disapproved, the City Council may indicate what changes in the plans and specifications would meet the conditions for protecting the distinctive historical character of the district. The applicant and the HPC shall be notified of the Council's decision by the Heritage Preservation Officer.

E. Issuance of Permits

1. Upon approval of an application for a Certificate of Appropriateness, the Building Official shall be authorized to issue a building permit or other permits required to undertake the action proposed in the application consistent with all applicable City standards.
2. No change shall be made in the scope of work for any building permit after issuance of Certificate of Appropriateness without submittal of an application to amend the Certificate, which shall be considered by the HPC in the same manner as provided above. If a property owner wishes to change the scope of work under a Certificate of Appropriateness, the property owner shall consult the Heritage Preservation Officer who shall have the authority to approve non-substantive changes. If the Heritage Preservation Officer deems the requested changes to be substantive, such changes shall be referred to the Heritage Preservation Commission for action.

31. A.4 MINOR IN KIND REPAIRS AND ORDINARY MAINTENANCE

1. Nothing in this Section 31.A shall be construed to prevent minor in kind repairs or ordinary maintenance. Minor in kind repairs and ordinary maintenance, including painting, do not require a Certificate of Appropriateness unless the tax incentive for maintenance is being sought. If the 25% tax incentive for maintenance is requested, all provisions of Section 24.57 in Ordinance #2288 will apply.
2. The Downtown Waxahachie Design Guidelines should be consulted when performing minor in-kind repairs or ordinary maintenance. The Heritage Preservation Officer is also available as an additional resource and should be consulted concerning questions about minor in-kind repairs and ordinary maintenance. If the Heritage Preservation Officer deems a Certificate of Appropriateness necessary, the procedures in Section 31.A.3 shall apply.

31.A.5 DEMOLITION OR RELOCATION OF HISTORIC RESOURCES

A. Demolition Permit Required

A permit for the demolition or relocation of a historic resource or any structure within a Historic Overlay District shall not be granted by the Chief Building Official without the review and approval of a completed application by the Heritage Preservation Commission. Any person, firm, or corporation who violates, disobeys, omits, neglects or refuses to comply with the provision of this ordinance shall be fined not more than \$2,000 for each offense.

B. Application

Certain information must be submitted by the applicant along with an application for a permit for demolition or relocation prior to the Heritage Preservation Commission making a ruling on the application. The applicant must supply the following information before the application is considered complete:

1. Information describing the condition of the structure.
2. An estimate of the cost of restoration or repair.
3. Demonstration that adaptive use or restoration of the structure has been seriously considered.
4. Any available historic records of the building (drawings, photographs).
5. Architectural drawings for the proposed new construction which is intended to replace the historic structure if applicable.
6. Any improvements proposed by the property owner to be placed on the land or new development that would mitigate the loss of the historic structure if applicable.
7. Any other information deemed appropriate by the Commission to assist in rendering a decision on the application.

C. Action on Application

Upon formal notification from the Heritage Preservation Officer that the application has been received, an automatic sixty (60) day stay will go into effect. During this time the Heritage Preservation Commission shall consider the state of repair of the building, reasonableness of the cost of restoration or repair, the existing and/or potential usefulness, the purpose behind preserving the structure, the character of the neighborhood, and all other factors it finds appropriate. If the Commission determines that, in the interest of preserving historical values, the structure should be preserved, it shall notify the building official that the application has been disapproved. If disapproved, the applicant may appeal to the City Council in the same manner as for a Certificate of Appropriateness. If demolition or relocation is approved, the HPC shall notify the building official so the appropriate permit(s) can be issued.

31.A.6 DUTY TO MAINTAIN/DEMOLITION BY NEGLECT

No owner or person with an interest in real property designated as a historic resource, a National Register property, or included in a historic district shall allow such property to fall into a serious state of disrepair without requesting a demolition permit. Property owners who allow properties to fall into a serious state of disrepair are subject to all the provisions of Chapter 8, Article III in the City of Waxahachie Code of Ordinances.

Examples of a state of serious disrepair shall include, but are not limited to, the following:

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

31.A.7 ENFORCEMENT

A. Compliance Required

All work performed pursuant to a Certificate of Appropriateness issued under this Ordinance shall conform to all requirements included herein and all other City codes. It shall be the duty of the building inspector to periodically inspect any such work to ensure compliance.

B. Enforcement Proceedings

In the event that work being performed is found to not be in accordance with the Certificate of Appropriateness or upon notification of such fact by the Heritage Preservation Commission, the Building Official shall issue a stop work order and all work shall immediately cease. No further work shall be undertaken on the project as long as a stop work order is in effect. All other remedies authorized under this Zoning Ordinance shall be applicable to non-compliance with a Certificate of Appropriateness.

Any person, firm, or corporation who violates, disobeys, omits, neglects or refuses to comply with the provisions of this ordinance shall be fined not more than \$2,000 for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

31.A.8 DEFINITIONS

For purposes of this Section 31.A, the following definitions apply:

Archeology—the science or study of material remains of past life or activities and the physical site, location, or context in which they are found, as delineated in the Department of the Interior’s Archeological Resources Protection Act of 1979.

Area—a specific geographic division in the City of Waxahachie

Building—any structure created to shelter people or things, such as a house, barn, church, office, hotel, or similar structure.

Certificate of Appropriateness – a signed and dated document evidencing the approval of the Heritage Preservation Commission and/or Heritage Preservation Officer for work proposed by an owner or applicant of a structure within a Historic Overlay District or an individual Historic Resource.

Citizen—a legal resident of the City of Waxahachie.

Demolition – an act or process (not withstanding acts of God, criminal activity, etc.) 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.

Downtown Waxahachie Design Guidelines – guidelines adopted by the Heritage Preservation Commission and the City Council for property designated as a Historic Resource or Historic District to protect, perpetuate and enhance the historical, cultural, architectural or archaeological character of an object, site, structure or district.

Development Review—means processing of proposed development requests.

Heritage Preservation, Heritage Commission or Commission – the Heritage Preservation Commission of the City of Waxahachie, as established by Ordinance 2288, Section 1-3, as amended.

Heritage Preservation Officer (HPO) – a staff person for the City of Waxahachie whose duties encompass all historic preservation activities for the city as established by Ordinance 2288, Section 1-4, as amended.

Historic Resource Preservation Plan (or Preservation Plan)—a document established by the Heritage Preservation Commission and adopted by the City Council to provide a current inventory of Historic Resources and Historic Districts and policy recommendations to guide historic preservation activities for the City of Waxahachie.

Historic Preservation—the identification, evaluation, recordation, documentation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance and reconstruction of Historic Resources, or any one or a combination of the foregoing activities.

Historic Property—the full range of properties identified in the Historic Resource Survey and/or special studies which are significant in history, pre-history, architecture, engineering,

archaeology and culture, including properties significant to the whole nation or those significant at the state, regional, or local level.

Historic Resource—a structure, site, building, or landmark, or a collection of the same within an contiguous area of the City, which satisfies one (1) or more of the criteria set out in Section 31.A.2.B of this ordinance and which is designated as such in accordance with that Section.

Historic Overlay District—an area which includes two (2) or more structures or sites which satisfy one (1) or more of the criteria set out in Section 31.A.2.B, together with their accessory buildings, fences, and other appurtenances, located within a geographically definable area possessing a significant concentration, linkage or continuity of objects, sites or structures united by past events or aesthetically by plan or physical development, and which is established as a zoning district in accordance with chapter 31.A of the Zoning Ordinance. A Historic Overlay District may have within its boundaries other structures that, while not of such historical, cultural, architectural or archeological significance as to be designated as an Historic Resource, nevertheless contribute to the overall visual setting of or characteristics of the Historic District.

Historic Resource Survey—the survey of Historic Resources published by the Heritage Preservation Commission, as amended from time to time.

Landmark—a structure or property that is of value in preserving the historical, cultural, architectural or archeological heritage, or is an outstanding example of design or a site closely related to an important personage, act or event in history.

Minor In-kind Repairs – small scale repairs to correct minor problems or damage to the exterior. Minor in-kind repairs do not include a change in design, material or outward appearance, only in-kind replacement or repair. Examples of minor in-kind repair include, but are not limited to touch-up painting, replacement of a window pane, caulking, securing loose boards, etc.

Non-Historic Resource—a structure, site, building, or landmark, which does not satisfy any of the criteria set out in Section 31.A.2.B of this ordinance and which is designated as such in accordance with that Section.

Object – material thing that can be seen or touched that is associated with cultural tradition or heritage. Examples include but are not limited to brass stop signs, obelisk street signs, or hitching stones.

Ordinary Maintenance – any work, the purpose and effect of which is to correct any deterioration or decay of or damage to a structure or property, or any part thereof, and to restore the same, as nearly as may be practicable, to its condition prior to such deterioration, decay or damage, using the same materials or those material available which are as close as possible to the original and all of which must comply with applicable codes and ordinances. Ordinary Maintenance does not include a change in design, material or outward appearance, but does include in-kind replacement or repair. Examples of Ordinary Maintenance include, but are not limited to: replacement or repair of roofing materials, painting or other minor architectural features, etc.

Relocation—any change of the location of a structure, object or material thing in its present setting or to another setting.

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

Secretary of the Interior’s Standards for Rehabilitation– the Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitation of Historic Buildings, reported at 36 Code of Federal Regulations 67.7, as amended or as recodified.

Site—the location of a significant event, a prehistoric or historic occupation or activity, or a structure or cluster of structures, whether standing, ruined or vanished, where the location itself maintains historical or archeological value, regardless of the value of any existing structure.

Stabilization—the act or process of applying measures designed to re-establish a weather resistant enclosure and the structural stability of an unsafe or deteriorated structure or property while maintaining the essential form as it presently exists.

Structure—anything constructed or erected which requires location on the ground, or is attached to something having a location on the ground, including, without limitation, buildings.

31.A.9 TAX INCENTIVES

The owner of property within a Historic Overlay District may qualify for the tax incentives set forth in Section 24.57 of Ordinance No. 2288 by complying with the criteria identified in that section in accordance with the procedures set forth in Section 24.58 thereof.

Zoning Ordinance—The Zoning Ordinance of the City of Waxahachie, as may be amended from time to time.

Section 3. That if any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereto any person or circumstances is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance; and the City Council hereby declares it would have passed such remaining portions of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 4. That a public emergency is found to exist which affects health, safety, property or the general welfare, in that standards and regulations for the use and development of property must be brought up to date and made effective so that suitable rules for use and development of property may be known and in place.

Section 5. That this ordinance shall become effective from and after the date of its passage thirty days after its adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WAXAHACHIE, TEXAS on this 5th day of February, 2018.



M. Ken Streyth
MAYOR

ATTEST:

Lori Cartwright
City Secretary