

**FILE NUMBER:** DCA189-002

**DATE INITIATED:** April 4, 2018

**TOPIC:** Historic Designation and Appeal Process

**COUNCIL DISTRICT:** All

**CENSUS TRACT:** All

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**PROPOSAL:** Consideration of an amendment to Chapters 51 and 51A, Dallas Development Code, Divisions 51-4.500 and 51A-4.500 to amend existing language for historic designation initiation, designation, and appeal processes and procedures.

**SUMMARY:** The purpose of the amendment is to add more due process for owner(s) of property being considered for historic designation. The proposed amendments extend the initiation notice periods by five days; include a Community Meeting for new districts and expansion of existing districts; provide more information, educational options, and the platform for the neighborhood to voice options at the Community Meetings; add five days to the appeal of an initiation; reduce by half the number of days to get an appeal to Council; and require specific information for Council to consider in an appeal.

On November 4, 2019, the Economic Development Committee recommended to move the item forward for consideration by the full Council. The amendments reviewed by the Committee included language that is compliant with recent State legislation.

**CPC RECOMMENDATION:** Approval.

**LANDMARK COMMISSION RECOMMENDATION:** Approval of LMC recommended amendments.

**STAFF RECOMMENDATION:** Approval of staff recommended amendments.

**BACKGROUND INFORMATION:**

- On April 4, 2018, as part of the City Council review of the Lake Cliff historic district appeals, Council directed the Landmark Commission to return within six months to the Mobility Solutions, Infrastructure, and Sustainability and Quality of Life, Arts and Culture Council Committees with proposed changes to the initiation of historic designation and initiation appeal processes and procedures.
- The Landmark Commission Chair appointed a committee of five Landmark Commissioners to review the current processes and procedures and make recommendations for improvement.
- The Historic Designation and Appeal Process Committee met six times in 2018: May 16, May 30, June 13, June 27, July 11, and July 25. In addition to the Committee members, other Landmark Commissioners, Designation Committee members, and interested citizens, including property owners within the proposed Lake Cliff expansion area, attended the meetings to listen and give feedback to the Committee.
- On August 6, 2018, the Landmark Commission was briefed on the Committee's recommendations and received public feedback about the proposed recommendations.
- September 4, 2018, the Landmark Commission recommended proposed changes to be presented to the respective Council committees.
- Mobility Solutions, Infrastructure and Sustainability and Quality of Life Council Committees were briefed on the recommendations during separate meetings on October 22, 2018, and moved to have the proposed amendments follow the appropriate process for adoption.
- On March 4, 2019, the Landmark Commission reviewed the draft changes to the enabling ordinance and recommended approval with proposed changes. (The City Plan Commission suspended their rules to allow LMC to make a recommendation on the Code Amendment in lieu of the Zoning Ordinance Advisory Committee).
- On April 18, 2019, the City Plan Commission considered the code amendments. Three people spoke during the public hearing, with one in support and two in opposition. CPC held the item under advisement to June 20, 2019, and suggested the Chair appoint an ad-hoc committee to review the points of contention.
- The CPC Historic Designation and Appeal Process Ad Hoc Committee met three times in 2019: May 21, May 28, and June 4. In addition to the Committee members, other Landmark Commissioners, Designation Committee members, and interested citizens, attended the meetings.

- On June 20, 2019, City Plan Commission recommended approval of the item. The CPC Ad Hoc Committee's recommendations were considered by CPC.
- On July 17, 2019, prior to review by the Economic Development Committee, staff recommended additional amendments pursuant to recent state law changes, H.B. 2496 passed by the 86<sup>th</sup> Texas Legislature on May 25, 2019.
- On November 4, 2019, the Economic Development Committee recommended to move the item forward to full Council.

### **STAFF ANALYSIS:**

The goal of the revisions to the historic designation initiation and appeal processes is to provide greater community engagement, especially for the creation of new or expansion of existing historic districts, and provide longer time periods for both notification of initiations and initiation appeals.

The current historic designation process is initiated by either property owners submitting a zoning change or one Landmark Commissioner, three City Plan Commissioners, or five City Council members requesting an item be placed on the agenda for consideration of authorization of a public hearing by the requesting body. A notification letter is sent to the property owner(s) at least 10 days prior to the public hearing to initiate.

The proposed change increases the number of Landmark Commissioners required to place an item for a district or expansion of an existing district on the Commission's agenda for consideration of initiation to three commissioners instead of one. One Landmark Commissioner could still request an item be placed on the agenda for consideration of the designation of an individual property.

The proposal increases the time period for sending a notification letter to the property owner(s) to at least 15 days prior to the public hearing to initiate. In addition, for an expansion of a district, the notification letter will be sent to the entire historic district proposed for expansion.

As part of this step, a statement of intent for historic designation, which provides the justification of action under consideration, will be generated for those properties or districts initiated by the members of the Landmark Commission, City Plan Commission, or City Council. The notice of intent will be presented at the first meeting of the respective body and must contain: the list of criteria that the building, site, district, or expansion meet; a brief history of the proposed location or district; purpose of the proposed designation. The CPC changed the LMC's wording from "a statement of intention for the initiation" to "purpose of the proposed designation." The Statement of Intent must be provided to the property owner(s) at the time the agenda for the meeting is posted.

For district expansions, CPC recommended a history and timeline of the existing district designation process and information on why the expansion area was not originally

included with the initial designation should be included with the revised Statement of Intent. Landmark Commission removed the requirement for proposed district expansions. Landmark Commission recommended that the statement include a history and timeline but not information on why the expansion area was not originally included. During both the Council appeal for Lake Cliff and subsequent Committee meetings where Lake Cliff residents were present, the importance of understanding why the area(s) for district expansions were not included in the original district was stressed.

The purpose of the initial public hearing is to determine whether sufficient information is presented to initiate the historic designation procedure. For an individual structure or site, if the Landmark Commission, City Plan Commission, or City Council determine that sufficient information has been presented in the Notice of Intent for Historic Designation, the property shall be initiated for historic designation at the respective body meeting.

For a new district or expansion of an existing district, a Community Meeting is required if the initiating body determines sufficient information was presented to consider the designation. The Community Meeting, organized by staff at a location within the neighborhood, will have the Statement of Intent for Historic Designation presented by the proposing body members, potential impacts of historic preservation, and neighborhood planning concerns and goals, and other relevant information. An opportunity for public comment is required.

After the Community Meeting, a revised Statement of Intent for Historic Designation is presented to the Landmark Commission, City Plan Commission, or City Council before the vote to initiate the district, subdistrict, or expansion. The revised Statement of Intent will include the original Statement of Intent, a transcription of the Community Meeting, benefits and incentives of preservation, additional neighborhood planning goals, concepts for additional development incentives paired with historic preservation, summary of concerns, and summary of economic incentives available. CPC added a statement reflecting the property owner(s) position, if available.

After the Community Meeting, a second public hearing will be conducted. The purpose of the second public hearing is for the Landmark Commission, the City Plan Commission, or City Council to review the revised statement of intent and determine whether sufficient information is presented to initiate the historic designation procedure for the new district or expansion of an existing district.

Currently the property owner(s) may appeal the initiation to City Council by sending a written notice to the director within 10 days after the action of the respective body that initiated. Staff has 180 days after the appeal is filed to prepare and present a designation report to the City Council. Council's sole issue on appeal is to make a determination whether Landmark Commission or City Plan Commission erred in evaluating the significance of the property based on the respective criteria.

The proposed changes increase the time period to submit an appeal to 15 days. The written notice of appeal by the property owner(s) must include why the property owner thinks the criteria used to justify the initiation does not apply. Staff and the Landmark Commission chair will have 90 days to present the Statement of Intent for Historic

Designation for individual properties or the Revised Statement of Intent for Historic Designation to the City Council. The proposed amendments do not require the full designation report, which includes proposed preservation criteria, to be presented to Council for an appeal because preparing proposed preservation criteria is not relevant to the standard on appeal. Council's review of the appeal remains to determine whether Landmark Commission or City Plan Commission erred in evaluating the significance of the property based on the criteria listed in the Development Code.

The CPC added a provision to allow the property owner(s) to request an additional 90 days, if requested within 45 days of the appeal, before the appeal is presented to City Council.

During the Lake Cliff appeal, a concern was raised regarding how to determine the deadline for filing an appeal. CPC recommended adding a section regarding the computation of time. The information mirrors the language in Chapter 1 of the Dallas City Code. Placing the language in Chapter 51A allows interested parties to have the information with the regulations for designation and appeals.

Staff included language to comply with a new state law regarding historic designation. The state law requires either the owner(s) consent to the designation or a three-fourths vote of the Landmark Commission, the City Plan Commission, and the City Council. The regulations indicate that the owner(s) may withdraw consent at any time during the process. The amendment further states if the property is owned by a religious organization as defined in Section 11.20 of the Texas Tax Code, the property may only be designed with the organizations consent. State law also requires the city to send a historic impact statement with the notice provided to property owners of the public hearing.

**Landmark Commission Action:  
March 4, 2019**

Discussion and consideration of City of Dallas historic designation initiation, designation and appeals procedures.

**Motion**

Approve with conditions:

1. Sec. 51A – 4.501 (c)(2)(A)(i) (dd) – remove “and information... district designations, ending statement at “process”
2. Sec. 51A-4.501 (c)(2)(A)(ii) (bb) – replace “may” with “must also include the following as applicable”
3. Sec. 51A-4.501 (c)(3) – add “the director, along with the chair of the Landmark Commission, shall...”

Maker:	Spellicy				
Second:	Flabiano				
Results:	15/0				
		Ayes:	-	15	Amonett, Childers, De La Harpe, Flabiano, Hinojosa, Montgomery, Payton, Peach, Richter, Seale, Slade, Spellicy, Strickland, Swann, Williams
		Against:	-	0	
		Absent:	-	0	
		Vacancies :	-	1	Dist. 3

CPC Action:  
June 20, 2019

**Motion:** It was moved to recommend **approval** of amending Chapter 51 and 51A of the Dallas Development Code, Divisions 51-4.500 and 51A-4.500 to amend existing language for historic designation initiation, designation, and appeal processes and procedures, subject to the Ad Hoc Committee recommendations with a modification to the Statement of Intent to include “if available”.

Maker: Ridley  
Second: Schultz  
Result: Carried: 11 to 0

For: 11 - MacGregor, Criss, Shidid, Carpenter, Brinson,  
Lewis, Jung, Housewright, Schultz, Murphy,  
Ridley

Against: 0  
Absent: 3 - Schulte, Johnson, Tarpley  
Vacancy: 1 - District 12

**Speakers:** For: David Preziosi, 2922 Swiss Ave., Dallas, TX, 75204  
Against: Herschel Weisfeld, 1508 Cadiz St., Dallas, TX, 75201  
Staff: Theresa Pham, Assistant City Attorney

## CPC Recommended Amendments

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### SEC. 51A-4.501. HISTORIC OVERLAY DISTRICT.

(c) Historic designation procedure and predesignation moratorium.

(1) Purpose. Temporary preservation of the status quo upon initiation of the historic designation procedure is necessary to allow time to evaluate each proposed historic overlay district, to consider appropriate preservation criteria, and to prevent circumvention of the purposes of this section. Relief from the predesignation moratorium may be obtained by applying for a predesignation certificate of appropriateness or certificate for demolition or removal.

(2) Initiation of historic designation procedure.

Landmark Recommendation:

(A) The procedure for adopting an ordinance to establish or amend a historic overlay district may be initiated by five members of the city council, three members of the city plan commission, one member of the landmark commission for an individual structure or site and three members of the landmark commission for an expansion of an existing district or creation of a new district, or by the owner(s) of the property.

CPC Recommendation:

(A) The procedure for adopting an ordinance to establish or amend a historic overlay district may be initiated by five members of the city council, three members of the city plan commission, one member of the landmark commission for an individual property and three members of the landmark commission for an expansion of an existing district or creation of a new district, or by the owner(s) of the property.

Landmark Recommendation:

(i) Statement of Intent for Historic Designation. The five city council members, three city plan commissioners, or one landmark commissioner if it is an individual structure or site, or three landmark commissioners if it is an expansion of an existing district or creation of a new district, must prepare and present a statement of intent for historic designation at the public hearing to initiate the historic designation procedure. The purpose of the statement of intent for historic designation is to provide justification of the action under consideration. The statement of intent of historic designation must contain the following:

CPC Recommendation:

(i) Statement of Intent for Historic Designation. The five city council members, three city plan commissioners, or one landmark commissioner if it is an individual property, or three landmark commissioners if it is an expansion of an existing district or creation of a new district, must prepare and present a statement of intent for historic designation at the public hearing to initiate the historic designation procedure. The purpose of the statement of intent for historic designation is to provide justification of the action under consideration. The statement of intent must be provided to the property owner(s) at the time the agenda for the meeting is posted. The statement of intent of historic designation must contain the following:

(aa) List of characteristics on which the initiation is based;



(bb) A brief description of the historical significance of the potential building, site, district or expansion;

Landmark Recommendation:

(cc) A statement of intention for the initiation; and

CPC Recommendation:

(cc) Purpose of the proposed designation; and

Landmark Recommendation:

(dd) For district expansions, a statement including the history and timeline of the existing district designation process.

CPC Recommendation:

(dd) For district expansions, a statement including the history and timeline of the existing district designation process and information on why the expansion area was not originally included with the initial district designation, if available.

CPC Recommendation:

(ii) Procedure for individual properties. The procedure to designate an individual property requires a minimum of one public hearing of the initiating body. The purpose of the hearing is to determine whether sufficient information is presented to initiate the historic designation procedure.

(iii) Procedures for expansions and new districts.

(aa) The procedure to expand an existing district or create a new district involves a minimum of two public hearings and a community meeting. The purpose of the first public hearing is to determine whether enough information is presented to consider a historic designation. This first public hearing does not initiate the historic designation procedure. If the city council, the city plan commission, or the landmark commission determines that sufficient information has been presented in the statement of intent for historic designation for consideration, the department shall conduct a community meeting. The purpose of the community meeting is for the proposing commissioners or city council members to present the statement of intent for historic designation to the property owners, neighbors, and interested parties to the proposed initiation, and to provide an opportunity for public comment. The meeting must be held at a facility open to the public within the neighborhood of the proposed historic district. The information presented must include the following:

- (I) Statement of intent for historic designation;
- (II) List of potential impacts of historic preservation;
- (III) List of neighborhood planning concerns and goals; and

(IV) Any other information that may be relevant.

(bb) Prior to the second public hearing to initiate the historic designation procedure, the proposing commissioners or city council members must revise the statement of the intent for historic designation. The revised statement of intent must include the following, as applicable:

(I) original statement of intent;

(II) transcription of the community meeting;

(III) benefits and incentives of preservation;

(IV) additional neighborhood planning goals;

(V) concepts for additional development incentives paired with historic preservation;

(VI) summary of concerns; and

(VII) summary of economic incentives available to the property owners such as city of Dallas historic tax exemption, tax increment financial districts, and federal or state opportunities.

CPC Recommendation:

(VIII) statement reflecting the property owner(s) position, if available.

The purpose of the second public hearing is to review the revised statement of intent and determine whether sufficient information is presented to initiate the historic designation procedure.

Landmark and CPC Recommendation:

(B) The director shall provide property owners with notice of a public hearing to initiate the historic designation procedure and information about the process at least 15 [40] days before the date set for the initial hearing using the procedure outlined in Section 51A-4.701(a)(1).

Staff Recommendation:

(B) The director shall provide property owners with notice of a public hearing to initiate the historic designation procedure, a statement that describes the impact that a historic designation of the owner’s property may have on the owner and the owner’s property, and information about the process at least 15 [40] days before the date set for the initial hearing using the procedure outlined in Section 51A-4.701(a)(1). The historic designation impact statement must include the following:

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- (i) regulations that may be applied to any structure on the property after the designation;
- (ii) procedures for the designation;
- (iii) tax benefits that may be applied to the property after the designation; and
- (iv) rehabilitation or repair programs that the city offers for a property designated as historic.

Landmark Recommendation:

(C) No permits to alter or demolish the property may be issued after provision of this notice until action is taken at that hearing by the city council, city plan commission, or landmark commission.

CPC Recommendation:

(C) No permits to alter or demolish the property may be issued after provision of this notice until action is taken at that initial hearing by the city council, city plan commission, or landmark commission.

(D) The historic designation procedure is considered to be initiated immediately when the city council, the city plan commission, or the landmark commission votes to initiate it or, in the case of initiation by the property owner(s), when the zoning change application is filed with the director.

Landmark Recommendation:

(3) Appeal. If the historic designation procedure is initiated by the landmark commission or the city plan commission, the property owner may appeal the initiation to the city council by filing a written notice with the director within 15 [40] days after the action of the landmark commission or city plan commission. The written notice must include why the property owner thinks the criteria used to justify the initiation does not apply. Within 90 [180] days after the filing of the appeal, the director and the chair of the Landmark Commission shall present the statement of intent for historic designation if it is an individual property, or the revised statement of intent for historic designation if it is an expansion or new district [prepare, and the landmark commission shall adopt, a designation report and submit it] to the city council. After submission of the statement of intent for historic designation if it is an individual property, or revised statement of intent for historic designation if it is an expansion or new district [designation report], the city council shall hold a public hearing on the appeal. The sole issue on appeal is whether the landmark commission or city plan commission erred in evaluating the significance of the property based on the characteristics listed in Section 51A-4.501(b). Appeal to the city council constitutes the final administrative remedy.

## CPC Recommendation:

(3) Appeal. If the historic designation procedure is initiated by the landmark commission or the city plan commission, the property owner may appeal the initiation to the city council by filing a written notice with the director within 15 [10] days after the action of the landmark commission or city plan commission. The written notice must include why the property owner thinks the criteria used to justify the initiation does not apply. Within 90 [180] days after the filing of the appeal or 180 days after filing the appeal, if a 90 day extension is requested by the property owner within 45 days of filing the initial written notice of appeal with the director, the director and the chair of the Landmark Commission shall present the statement of intent for historic designation if it is an individual property, or the revised statement of intent for historic designation if it is an expansion or new district [prepare, and the landmark commission shall adopt, a designation report and submit it] to the city council. After submission of the statement of intent for historic designation if it is an individual property, or revised statement of intent for historic designation if it is an expansion or new district [designation report], the city council shall hold a public hearing on the appeal. The sole issue on appeal is whether the landmark commission or city plan commission erred in evaluating the significance of the property based on the characteristics listed in Section 51A-4.501(b). Appeal to the city council constitutes the final administrative remedy.

(4) Enforcement. Upon initiation of the historic designation procedure, the historic preservation officer shall immediately notify the building official. The building official shall not accept any application for a permit to alter, demolish, or remove the structure or site subject to the predesignation moratorium, unless a predesignation certificate of appropriateness or certificate for demolition or removal has been issued.

(5) Designation report. Upon initiation of the historic designation procedure, the historic preservation officer shall coordinate research to compile a written report regarding the historical, cultural, and architectural significance of the place or area proposed for historic designation. This report must include a statement on each of the following to the extent that they apply:

(A) A listing of the architectural, archaeological, paleontological, cultural, economic, social, ethnic, political, or historical characteristics upon which the nomination is based;

(B) A description of the historical, cultural, and architectural significance of the structures and site;

(C) A description of the boundaries of the proposed historic overlay district, including subareas and areas where new construction will be prohibited; and

(D) Proposed preservation criteria for the proposed historic overlay district.

(6) Designation procedure. For purposes of Section 51A-4.701, "Zoning Amendments," once the designation report has been voted on by the Landmark Commission, the designation shall be treated as a city plan commission authorized public hearing and may not be

appealed to city council if the city plan commission recommends denial. The notice of authorization in Section 51A-4.701(a)(1) is not required.

Staff Recommendation:

(7) Historic designation. The city may not designate a property a historic district unless:

(A) the owner of the property consents to the designation; or

(B) the designation is approved by a three-fourths vote of:

(i) the landmark commission;

(ii) the city plan commission; and

(iii) the city council.

(C) The owner of the property may withdraw consent at any time during the designation process by filing a written notice with the director.

(D) If the property is owned by an organization that qualifies as a religious organization under Section 11.20 of the Texas Tax Code, the city may designate the property as a historic district only if the organization consents to the designation.

CPC Recommendation:

(8) Computation of time.

(A) Unless otherwise provided in this paragraph, computing any period of time prescribed in this subsection shall be in accordance with Section 1-5 of the Dallas City Code.

(B) If the last day of any period is a Saturday, Sunday, or official holiday observed by the city, the period is extended to include the next day that is not a Saturday, Sunday, or official holiday observed by the city.

(C) Except as otherwise specified, time periods will be calculated based on calendar days.

(9) Termination of the predesignation moratorium. The predesignation moratorium ends on the earliest of the following dates:

(A) The day after the city council, city plan commission, or landmark commission that voted to initiate the historic designation procedure, votes to terminate the historic designation procedure.

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(B) The day after the city council, in an appeal from an initiation by the city plan commission or landmark commission, votes to terminate the historic designation procedure.

(C) In the case of initiation by the property owner(s), the day after the zoning change application is withdrawn.

(D) If the proposed historic overlay district zoning change is approved, the effective date of the ordinance establishing the historic overlay district.

(E) If the proposed historic overlay district zoning change is denied, the day after either the city council makes its final decision denying the change or the expiration of the time period for appeal to the city council from a city plan commission recommendation of denial.

(F) Two years after the date the historic designation procedure was initiated, regardless of who initiated the procedure.

DRAFT