

FILE NUMBER: DCA189-001(KS)

DATE INITIATED: October 4, 2018

TOPIC: Development Code Amendment regarding certificates for demolition for a residential structure with no more than 3,000 square feet of floor area pursuant to a court order within a Historic Overlay District

CITY COUNCIL DISTRICTS: All

CENSUS TRACTS: All

PROPOSAL: Consideration of amending Chapter 51A of the Dallas Development Code, Subsection (i), "Certificates for demolition for a residential structure with no more than 3,000 square feet of floor area pursuant to a court order," within Section 51A-4.501, "Historic Overlay District," and related sections with consideration to be given to remove this Subsection and other appropriate standards.

SUMMARY: The proposal to remove subsection (i) in Section 51A-4.501, eliminates a provision that allows demolitions of residential structures of 3,000 square feet or less in Historic Districts that have been declared substandard urban nuisances and ordered demolished pursuant to court order to bypass Landmark Commission. Although this subsection of the ordinance is applicable to all historic districts, it disproportionately impacts our minority and low-income historic districts because those districts have many of the substandard houses.

STAFF RECOMMENDATION: Approval.

APPENDICES

- A. CPC memo, dated October 4, 2018
- B. LMC memo, dated September 5, 2023

BACKGROUND INFORMATION:

- On June 23, 2010, Council adopted Ordinance No. 27922 to create Subsection (i), “Certificates for demolition for a residential structure with no more than 3,000 square feet of floor area pursuant to a court order,” within Section 51A-4.501, “Historic Overlay District”.
- CPC initiated an amendment to this Subsection on October 4, 2018.
- On August 14, 2019, City Council unanimously passed a resolution instructing the City Manager to not spend any city funds or resources demolishing structures within the Tenth Street Historic District unless the Dallas Fire Marshall finds that the structure is hazardous to life or property and presents a clear and present danger in accordance with the Dallas Fire Code and Dallas Development Code.
- On September 5, 2023, the Landmark Commission requested that CPC rescind Subsection (i) of Section 51A-4.501.

STAFF ANALYSIS:

The ordinance was developed to address substandard structures that were considered urban nuisances and ordered demolished pursuant to court order to prevent blight and safeguard the public health, safety, and welfare. The code provides for notification of the Landmark Commission and public hearing. The Landmark Commission must approve the demolition application if a court or other tribunal has issued a final order requiring the demolition of the structure pursuant to Texas Local Government Code Chapters 54 or 214, as amended; and suspension of the certificate for demolition is not a feasible option to alleviate the nuisance in a timely manner.

The ordinance states that the procedures seek to preserve historic structures while eliminating urban nuisances. However, from 2010 to 2023, according to information from the Historic Preservation office, in the Tenth Street Historic District alone, the Landmark Commission has seen the demolition of 30 historic homes which could have been rehabilitated. Although this subsection of the ordinance is applicable to all historic districts, it disproportionately impacts our minority and low-income historic districts because those districts have many of the substandard houses. The Landmark Commission is losing the opportunity to work with property owners, interested parties, and other city departments to maintain and rehabilitate the housing in these districts. As Dallas struggles to provide housing for middle- and lower-income levels, this subsection of the ordinance allows it to be easily torn down. Additionally, we are losing the fabric and history of these important and diverse historic districts.

The conditions noted can often be addressed by employing one of the four preservation treatments practiced across the nation for similar conditions – rehabilitation of historic buildings. City programs and partnerships with non-profit organizations and neighborhood groups can result in a more positive outcome.

The procedures that were set out in the respective subsection of the ordinance cannot therefore seek to preserve historic structures while eliminating urban nuisances. This approach is inconsistent with the purpose of preservation and best preservation practices regarding approaches for addressing deteriorated conditions. The stated purpose of the subsection to abate urban nuisances through demolition is incongruous with the preservation of historic properties and neighborhoods.

The term “urban nuisance” as a condition is not fully described. There is no opportunity prescribed in the subsection to address the historic significance and integrity of the structure or conduct a condition assessment of the property. The opportunity for such evaluation appropriately rests with the Historic Preservation division and the Landmark Commission. In the current code, the Landmark Commission and Historic Preservation staff do not have this opportunity.

The Historic Preservation Ordinance (51A-4.501) has well defined procedures for demolition of historic properties including hazardous structures. These are clear and logical as to under what conditions a demolition can occur with well-defined processes. Therefore, this subsection is not necessary.

The City has a myriad of goals and objectives by utilizing ordinances, codes, regulations, procedures, interpretations, and practices including promoting an environment conducive to retaining and nurturing businesses; supporting strong neighborhoods maintaining character and distinctive community resources; supporting sustainability; attracting jobs; and environmental responsibility – to highlight a few that are relevant here. The subsection of the ordinance conflicts with these goals and objectives of building a stronger more equitable and inclusive City.

Staff Recommendation

The Landmark Commission has been concerned about this portion of the ordinance since it passed City Council in 2010. The Landmark Commission was concerned that the historic districts such as Tenth Street and Wheatley Place would be targeted with more demolitions under this part of the code, which is what has happened. In September of 2023, they voted to send a letter to the Chair of the Plan Commission asking that this portion of the code be rescinded. Staff also recommends that 51A-4.501(i) be deleted.

STAFF RECOMMENDED AMENDMENTS:

Staff recommends that 51A-4.501(i) be deleted.

SEC. 51A-4.501. HISTORIC OVERLAY DISTRICT.

(i) Certificate for demolition for a residential structure with no more than 3,000 square feet of floor area pursuant to court order.

(1) Findings and purpose. Demolition of a historic structure constitutes an irreplaceable loss to the quality and character of the city. Elimination of substandard structures that have been declared urban nuisances and ordered demolished pursuant to court order is necessary to prevent blight and safeguard the public health, safety, and welfare. Therefore, the procedures in this subsection seek to preserve historic structures while eliminating urban nuisances.

(2) Notice to landmark commission by email. A requirement of this subsection that the landmark commission be provided written notice of a matter is satisfied if an email containing the required information is sent to every member of the landmark commission who has provided an email address to the director.

(3) Referral of demolition request to landmark commission and director. When a city department requests the city attorney's office to seek an order from a court or other tribunal requiring demolition of a residential structure with no more than 3,000 square feet of floor area on a property subject to a predesignation moratorium or in a historic overlay district, that department shall provide written notice to the landmark commission and director of that request within two business days after the date it makes the request. The notice must include a photograph of the structure, the address of the property, and (if known) the name, address, and telephone number of the property owner. If the city attorney's office determines that the department did not provide the required notice, the city attorney's office shall provide that notice within two business days after the date it determines that the department did not provide the notice.

(4) Notice of court proceedings to landmark commission and director. The city attorney's office shall provide written notice to the landmark commission and director at least 10 days before any hearing before a court or other tribunal where the city attorney's office seeks an order requiring demolition of a residential structure with no more than 3,000 square feet of floor area subject to a predesignation moratorium or in a historic overlay district. If a court or other tribunal orders demolition of the structure subject to a predesignation moratorium or in a historic overlay district, the city attorney's office shall provide written notice to the landmark commission and director within five days after the order is signed and provided to the city attorney's office.

(5) Application. If the city or a property owner seeks demolition of a residential structure with no more than 3,000 square feet of floor area subject to a predesignation moratorium or in a historic overlay district pursuant to an order from a court or other tribunal requiring demolition obtained by the city, a complete application for a certificate

for demolition must be submitted to the landmark commission. Within 10 days after submission of an application, the director shall notify the city's representative or the property owner in writing of any documentation required but not submitted. The application must be accompanied by the following documentation before it will be considered complete:

(A) An affidavit in which the city representative or the property owner affirms that all information submitted in the application is correct.

(B) Records depicting the current condition of the structure, including drawings, pictures, or written descriptions, and including Historic American Buildings Survey or Historic American Engineering Records documentation if required by law or agreement.

(C) A signed order from a court or other tribunal requiring the demolition of the structure in a proceeding brought pursuant to Texas Local Government Code Chapters 54 or 214, as amended.

(D) A copy of a written notice of intent to apply for a certificate for demolition that was submitted to the director and the landmark commission at least 30 days before the application.

(E) Any other evidence the city representative or property owner wishes to submit in support of the application.

(6) Hearing. Within 40 days after submission of a complete application, the landmark commission shall hold a public hearing to determine whether the structure should be demolished. If the landmark commission does not make a final decision on the application or suspend the granting of the certificate of demolition pursuant to this subsection within that time, the building official shall issue a demolition permit to allow the demolition. The city representative or the property owner has the burden of proof to establish by a preponderance of the evidence the necessary facts to warrant favorable action by the landmark commission.

(7) Standard for approval. The landmark commission shall approve the certificate for demolition if it finds that:

(A) a court or other tribunal has issued a final order requiring the demolition of the structure pursuant to Texas Local Government Code Chapters 54 or 214, as amended; and

(B) suspension of the certificate for demolition is not a feasible option to alleviate the nuisance in a timely manner.

(8) Suspension. The purpose of the suspension periods is to allow an interested party to rehabilitate the structure as an alternative to demolition.

(A) Residential structures with no more than 3,000 square feet of floor area.

(i) Initial suspension period.

(aa) The landmark commission may suspend the granting of the certificate for demolition until the next regularly scheduled landmark commission meeting (the initial suspension period) to allow time to find a party interested in rehabilitating the structure.

(bb) If during the initial suspension period no interested party is identified, the landmark commission shall grant the certificate for demolition.

(cc) If during the initial suspension period an interested party is identified, the landmark commission shall suspend the granting of the certificate for demolition for no more than two more regularly scheduled landmark commission meetings (the extended suspension period).

(ii) Extended suspension period.

(aa) During the extended suspension period, the interested party shall:

[1] submit an application for a predesignation certificate of appropriateness or a certificate of appropriateness;

[2] provide evidence that the interested party has or will obtain title to the property and has authority to rehabilitate the structure, or is authorized to rehabilitate the property by a party who has title to the property or has the right to rehabilitate the property;

[3] provide evidence that the structure and property have been secured to prevent unauthorized entry; and

[4] provide a guarantee agreement that:

[A] contains a covenant to rehabilitate the structure by a specific date, in accordance with the predesignation certificate of appropriateness process or certificate of appropriateness, which the landmark commission may extend if the interested party shows circumstances preventing rehabilitation of the structure by that date that are beyond the control of the interested party;

[B] is supported by a performance and payment bond, letter of credit, escrow agreement, cash deposit, or other similar enforceable arrangement acceptable to the director to ensure rehabilitation of the structure; and

[C] is approved as to form by the city attorney.

(bb) If during the extended suspension period the interested party does not meet the requirements of Subparagraph (A)(ii), the landmark commission shall grant the certificate for demolition.

(cc) If during the extended suspension period the interested party meets the requirements of Subparagraph (A)(ii), the landmark commission shall continue to suspend the granting of the certificate for demolition (the continuing suspension period).

(iii) Continuing suspension period.

(aa) The interested party must rehabilitate the structure to comply with Dallas City Code [Chapter 27](#) and request an inspection by the city before the end of the continuing suspension period.

(bb) At each landmark commission meeting during the continuing suspension period, the interested party shall provide a progress report demonstrating that reasonable and continuous progress is being made toward completion of the rehabilitation.

(cc) If during the continuing suspension period the landmark commission finds that the interested party is not making reasonable and continuous progress toward completion of the rehabilitation, the landmark commission shall grant the certificate for demolition, unless the interested party shows circumstances preventing reasonable and continuous progress that are beyond the control of the interested party.

(dd) If during the continuing suspension period the landmark commission finds that the interested party has rehabilitated the structure to comply with Dallas City Code [Chapter 27](#), the landmark commission shall deny the certificate for demolition.

(9) Appeal. The city representative or property owner may appeal a decision of the landmark commission under this subsection to the city plan commission by filing a written notice with the director within 10 days after the date of the decision of the landmark commission. The city plan commission shall hear and decide the appeal at the next available city plan commission meeting. The standard of review shall be *de novo*, but the director shall forward to the city plan commission a transcript of the landmark commission hearing. In considering the appeal, the city plan commission may not hear or consider new evidence unless the evidence corrects a misstatement or material omission at the landmark commission hearing or the evidence shows that the condition of the property has changed since the landmark commission hearing. The city plan commission chair shall rule on the admissibility of new evidence. The city plan commission shall use the same standard required for the landmark commission. The city plan commission may reverse or affirm, in whole or in part, modify the decision of the landmark commission, or remand any case back to the landmark commission for further proceedings; however, the city plan commission shall give deference to the decision of the landmark commission. Appeal to the city plan commission constitutes the final administrative remedy.

(10) Expiration. A certificate for demolition expires if the work authorized by the certificate for demolition is not commenced within 180 days after the date of the certificate for demolition. The director may extend the time for commencement of work upon written request by the city representative or the property owner showing circumstances justifying the extension. If the certificate for demolition expires, a new certificate for demolition must first be obtained before the work can be commenced.

(11) Procedures for all other structures. If the city or a property owner seeks demolition of any structure other than a residential structure with no more than 3,000 square feet of floor area subject to a predesignation moratorium or in a historic overlay district pursuant to an order from a court or other tribunal requiring demolition obtained by the city, an application must be filed under Subsection (h) of this section.

Memorandum

APPENDIX A



DATE October 4, 2018

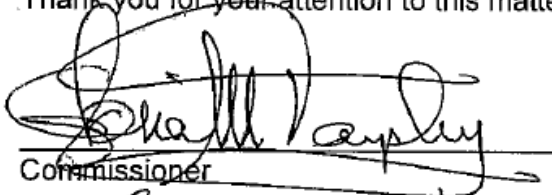
TO Kris Sweckard, Director
 Department of Sustainable Development and Construction

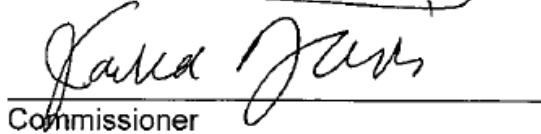
SUBJECT Request for Agenda Item for Consideration of Code Amendment

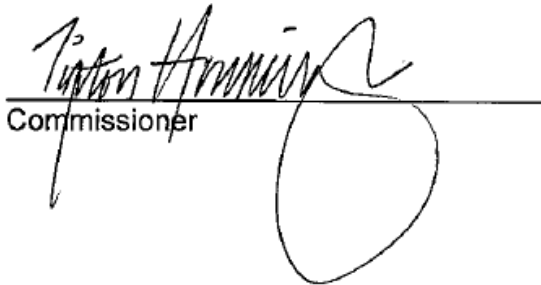
We respectfully request that the following item be placed on the City Plan Commission agenda and advertised as required by Section 51A-7.701(a)(1) of the City of Dallas Development Code.

Consideration of authorizing a public hearing to consider a code amendment to Section 51A-4.501(i), "Certificate for demolition for a residential structure with no more than 3,000 square feet of floor area pursuant to court order."

Thank you for your attention to this matter.


Commissioner


Commissioner


Commissioner

APPENDIX B



September 14, 2023

Mr. Tony Shidid
Chair, City Plan and Zoning Commission
City of Dallas
1500 Marilla
Dallas, TX. 75201

Dear Mr. Shidid,

The Dallas Landmark Commission respectfully requests the City Plan Commission (CPC) review and act on our request to rescind Ordinance 27922, passed on June 23, 2010, now part of Section 51A-4.501. This section of the historic preservation ordinance (Sec. 51A-4.501 (i)) dictates that historic residential structures of 3,000 square feet or less can more easily be demolished, bypassing the other demolition processes in the Code.

As a result, of the over 4,000 protected and designated properties, approximately 90% are at risk of demolition because of this provision of the ordinance. From 2010 to 2023 in the Tenth Street Historic District alone, the Landmark Commission has seen the demolition of 30 historic homes, many which could have been rehabilitated. This section of the ordinance disproportionately impacts our minority and low-income historic districts. The Landmark Commission is losing the opportunity to work with property owners, interested parties, and other city departments to maintain and rehabilitate the housing in these districts. As Dallas struggles to provide affordable housing, this section of the ordinance allows it to be easily torn down. Additionally, we are losing the fabric and history of these important and diverse historic districts.

The Landmark Commission encourages the City Plan Commission to move forward with recommending this request to ZOAC as soon as possible. Further, the Landmark Commission requests that the CPC suspend its normal process and allow the Landmark Commission to discuss and provide their recommendation to the CPC after ZOAC. The Commission is available to work with CPC and ZOAC to answer any questions and help move this request through the process.

Sincerely,

A handwritten signature in black ink, appearing to read 'Evelyn Montgomery'.

Evelyn Montgomery, PhD.
Chair, Landmark Commission

Cc: Julia Ryan, Director, Planning and Development