

Section 5.19 HD Historic District Overlay**5.19.01 Intent**

This Overlay District is to designate, preserve, protect, enhance, and perpetuate those landmarks and landmark districts which are elements of the city's historical, cultural, archaeological, or architectural heritage; to stabilize and improve property values in such districts; to foster civic pride in the beauty and accomplishments of the past; to protect and enhance the city's attractions to tourists and visitors and the support and stimulus to business and industry thereby provided; to strengthen the economy of the city; to promote the use of landmark districts and landmarks for the education, pleasure, and welfare of the people of the city; and to promote and encourage continued private ownership and utilization of such places now so owned and used so that the objectives listed above can be attained while the owner can receive a reasonable economic return on the property.

5.19.02 Historic Preservation Commission

There is hereby created the Historic Preservation Committee (hereinafter, the "Preservation Committee"). The Preservation Committee will have an advisory role to the Planning Commission, City Council and Mayor regarding historic preservation.

The Preservation Committee shall consist of five members with demonstrated interest or expertise in historic preservation. Members shall be appointed by the Mayor with confirmation by a majority of the City Council. All members shall reside within the corporate limits of the City.

The Preservation Committee shall be made up of, to the extent available in the City, a majority of professionals in the fields of archaeology, historic archaeology, architectural history, architecture, or history. Other members may include the following individuals: a member of the City Council or Planning Commission, a member from the local Historical Society, a local real estate agent, and/or two citizens-at-large.

The members shall serve a three year term and appointed on a staggered basis. Members may serve for more than one term and each member shall serve until the appointment of a successor. In the event of a vacancy, an appointment shall be made to fill the vacancy in the same manner as if at the beginning of the term, and the person appointed to fill the vacancy shall hold such office for the unexpired term.

5.19.03 Organization

The Preservation Committee shall elect from among its own members a chairperson and such other officers as it may deem necessary.

The Preservation Committee shall make such rules and regulations as it may deem advisable and necessary for the conduct of its affairs, for the purpose of carrying out the intent of this section, which are not inconsistent with the laws of the City and the State.

Three members shall constitute a quorum for the transaction of business and three affirmative votes shall be required for final action on any matter acted upon by the Preservation Committee unless otherwise stated.

Members of the Preservation Committee shall serve without compensation. The Preservation Committee shall meet as necessary, but no less than four times a year.

No Committee member shall diverge from the conflict of interest rules as set forth in State or federal rules and procedures.

The City Administrator shall designate a City staff member to serve as Secretary to the Committee, without the right to vote.

5.19.04 Powers and Duties

The powers and duties of the Preservation Commission shall be as follows:

1. initiate and maintain survey of all places potentially eligible for designation as landmarks or landmark districts and adopt such criteria which are consistent with the Secretary of the Interior's "Standards for Identification;"
2. inventory and designate local landmarks and landmark districts, and adopt such criteria that are consistent with the Secretary of the Interior's "Standards for Evaluation and Registration;"
3. comment on and ensure public participation in the process of nominating properties to the National Register of Historic Places and cause to be processed nominations of properties potentially eligible for listing in the National Register;
4. consult with and consider the ideas and recommendations of civic groups including neighborhood and business organizations, public agencies, and citizens interested in historic preservation;
5. inspect and investigate places which are believed worthy of preservation;
6. disseminate information to the public concerning those places deemed worthy of preservation and encourage and advise property owners in the protection, enhancement, perpetuation, and use of landmarks and landmark districts;
7. solicit gifts and contributions to be made to the City and assist in the preparation of applications for grant funds to be made to the City for the purpose of preservation;
8. for every landmark or landmark district designated for preservation, maintain a guideline for preservation of the property;
9. present proposed landmarks and landmark districts to the Planning Commission to determine if such designation is consistent with the Comprehensive Development Plan and zoning provisions;
10. upon request of the property owner, render advice and guidance with respect to any proposed work on a landmark or in a landmark district;
11. committee members, staff or city officials should attend informational or educational meetings pertaining to the work of the Preservation Committee;
12. prepare and deliver an annual report of the Preservation Committee's past actions and future goals to the City Council as well as to the State Historic Preservation Officer;
13. recommend the approval or denial of a landmark or landmark district through the finding of facts and transmit such findings to the Planning Commission;
14. cooperate with the Nebraska State Historic Preservation Officer in matters of certification of this Ordinance and related duties and requirements; and
15. review alterations and demolitions of landmarks and properties within landmark districts and adopt the Secretary of the Interior's "Standards for Rehabilitation" and any other such guidelines for preservation.

5.19.05 Designation of Landmarks and Landmark Districts

All landmarks and properties within a landmark district shall be subject to the controls, standards and procedures set forth in this article. For every landmark or landmark district designated, a guideline for preservation shall be adopted.

1. A proposed landmark or landmark district must meet one or more of the following criterion:
 - a. historical importance or cultural significance, interest or value as part of the development, history, heritage or culture of the City, state or nation; or is associated with the life of a person significant in the past; or is the site of an historic event, or exemplifies the cultural, political, economic, educational, or social history of the community;
 - b. architectural or engineering importance, portraying the historic setting or environment of a distinctive characteristic of an architectural or engineering type, period, style, or method of construction; or is the work of a resident, builder or designer whose individual work is significant or contains elements of design, detail, materials or craftsmanship of distinctive quality, or which represents a significant innovation;
 - c. geographic importance, by being a part of or related to a city center, park or other distinctive area, significant for historic, cultural or architectural characteristics; or owing to its unique location or singular physical characteristic, represents an established and familiar visual feature of a neighborhood, community, or the City; or
 - d. archeological importance, having yielded or is likely to yield important information regarding the history or prehistory of the area.
2. A landmark or landmark district shall possess integrity of design, location, feeling, association, materials and workmanship. In the case of a landmark district, provisions shall be made to

define an accurate boundary, identify properties that contribute to the historical significance of the district, and those because of age or integrity that do not contribute. A property shall be eligible if it is 50 years of age or older, unless exceptional significance can be demonstrated.

3. A proposed landmark or landmark district may be initiated by the Preservation Committee, City Council, the Planning Commission, or upon petition of the owner(s). Any such application shall be filed with the City of Fairbury City Clerk upon forms prescribed by him or her, and shall include all data required by the Preservation Committee.
4. The application for the proposal of a landmark or landmark district designation shall be filed with the City of Fairbury City Clerk, who shall forward such paperwork to the Preservation Committee.
5. The Preservation Committee shall review the application in conformance with standards and criteria herein.
6. Within a reasonable time after receiving the application, the Preservation Committee shall act on such application for landmark or landmark district designation.
7. The Preservation Committee shall forward the application to the Planning Commission along with their findings and recommendations.
8. The application for landmark or landmark district designation shall then be considered by the Planning Commission at a public hearing. Notice of the time, place and purpose of the public hearing to be held on the application shall be given by the Planning Commission in a newspaper of general circulation within the city not less than 10 days prior to the date of the hearing and by notification by mail or personal service to the owner(s) of all property included in the proposed designation, using for that purpose the names and addresses of the last-known owner(s) as shown by the county real property tax records. Failure to send notice to any such property owner where the address of the owner is not so recorded shall not invalidate any proceedings in connection with the proposed designation. The Planning Commission may also give such other notice as may be deemed desirable and practicable, such as a notice in a newspaper of general circulation within the city. A record of the pertinent information presented at the hearing shall be made and maintained as a permanent public record.
9. The Planning Commission may approve, disapprove or modify the application and shall notify the applicant of the action taken within 60 days of the referral thereof to the Planning Commission.
10. The recommendation of the Planning Commission for approval of a proposed landmark or landmark district shall state the particular standards for such designation, as set out in this section, which are applied in each designation. The Planning Commission shall consider the degree of conformity or nonconformity with the Comprehensive Development Plan of the City, zoning provisions, and this Ordinance.
11. In the case of a proposed landmark, recommendation for designation shall require six votes of the Planning Commission members if the owner(s) thereof do not concur in the designation or a simple majority if the owner(s) of a proposed landmark concur in the designation.
12. In the case of a proposed landmark district, recommendation for designation shall require six votes if the owners of 51% of the front footage of the real property within the proposed district, not to include any public right-of-way located in such district, do not concur in the designation or a simple majority if they concur in the designation.

5.19.06 Transmittal to/Action by City Council

The Planning Commission shall transmit the application for the designation of a landmark or landmark district along with the Commission's recommendations on the application to the City Council. The City Council shall consider the degree of conformity or nonconformity with the Comprehensive Development Plan of the City, zoning provisions, and this Ordinance and may, if the Council deems it necessary, consult with and obtain further recommendations with regard to such application from the Preservation Committee.

5.19.07 Consideration by Council

1. When an application for the designation of a landmark or landmark district is presented to the City Council, it shall take into consideration the recommendation of the Planning Commission, and shall further give consideration to the economic consequences to the City and the affected property owners.
2. Objection to a landmark or landmark district designation must be acknowledged on a form available in the office of the City Clerk and any such objections must be filed with the City Clerk no later than the first reading of the proposed designation ordinance.

3. In order for the owners of a particular parcel of land to validly object to the designation, such objection shall be executed by all those owners who would otherwise be required to execute a valid conveyance of a fee simple interest in such parcel if it were conveyed and whose names appear in the records of the County Clerk.
4. If valid objections by all the owner(s) as described in 5.19.07 (3) of a proposed landmark are filed pursuant to Section 5.19.07 (2) then approval for such landmark shall require five affirmative votes by the City Council.
5. If valid objections by the owner(s) of 51% of the front footage of the property within a proposed landmark district, not to include any public right of way, are filed pursuant to Section 5.19.07 (2) then approval for such landmark shall require five affirmative votes by the City Council.
6. Pursuant to the provisions of this Ordinance, and the procedures set forth herein, the City Council may, by ordinance, designate a "Landmark," or a "Landmark District."
7. Each ordinance designating a landmark or landmark district shall include a description and statement of the significance of the real property or district to justify its designation as such and a description of the particular features that should be preserved, and shall include the legal description of the landmark or landmark district.
8. Within 10 days after final adoption of the ordinance designating property as a landmark or landmark district, the City Clerk shall send a copy of such ordinance and a letter outlining the basis of such designation and the obligations and restrictions which result from such designation to the owner(s) of record of each property so designated or each property within the designated district by registered or certified mail.

5.19.08 Amendment; Rescission

The City Council may, by ordinance, amend or rescind the designation of a landmark or landmark district at any time pursuant to the same procedures set forth in this article for the original designation.

5.19.09 Application to Public Property

All properties owned by government entities and/or public agencies shall be subject to the provisions of this Ordinance in the same manner as private persons. All visible modifications or additions to public areas within a landmark or landmark district, including street furniture, lighting fixtures, and paving materials shall be subject to review by the Preservation Committee.

5.19.10 Requirement of Certificate for Certain Work

No person shall carry out or cause to be carried out on a landmark or in a landmark district any alteration of a landmark or property within a landmark district for which a building, demolition or any other applicable permit is required, as specified in the Fairbury Building Code or Zoning Regulations for the city, or any change restricted by the particular designating ordinance without a certificate of work issued by the Preservation Committee as described below.

Ordinary maintenance and repair not otherwise subject to a building permit regulation or restricted by the designated ordinance may be carried out without a certificate issued by the Preservation Committee.

5.19.11 Procedure for Certificate

The application for such certificate shall be filed with the City of Fairbury Public Works and/or Zoning Administration Office and shall be accompanied by plans for the proposed work to be done and such other information as the Public Works Director and/or Zoning Administrator shall require.

The Public Works Director and/or Zoning Administrator shall review the application and plans for compliance with the existing building code ordinances and regulations. The application and plans shall be referred to the Preservation Committee for their review.

The Preservation Committee may issue a "certificate of appropriateness" if the application is for work which is not restricted by the designating ordinance and if the work contemplated in the application will have no effect on the landmark or property in a landmark district as detailed in the particular designating ordinance and will be in harmony therewith. The Secretary of the Interior's "Standards for Rehabilitation" and other such guidelines as may have been adopted shall be applied. For

properties within landmark districts, an alteration must also be compatible with the historic character of the district. New construction shall be compatible with the landmark district in which it is located.

Applications shall be transmitted by the Preservation Committee, along with any recommendations by the Public Works Director and/or Zoning Administrator.

Within 60 days of receipt of the application by the Public Works Director and/or Zoning Administrator, the Preservation Committee shall hold a public hearing on the applications received. Notice of the time, place, and purpose of such hearing shall be published by the City of Fairbury in a newspaper of general circulation in the city and shall be served upon the applicant or agent thereof by personal service or by mail not less than 10 days prior to the date of hearing. The Preservation Committee may also give such other notice as may be deemed necessary, including posting of the property affected.

During the public hearing, the Preservation Committee shall review the application and plans in conformance with the Secretary of the Interior's "Standards for Rehabilitation" or any other such guidelines for that landmark or landmark district.

5.19.12 *Certificate of Approval or Denial*

Within 30 days of the hearing, the Preservation Committee shall approve or deny the application for the certificate for certain work on the landmark or in a historic district.

The Preservation Committee:

1. may issue a "certificate of appropriateness" if, after focusing upon aesthetic, historical, and architectural values, it finds that the proposed work would not unduly hinder the protection, enhancement, perpetuation, and use of the landmark, property within a landmark district or the landmark district;
2. may issue a "certificate of exception" on the ground of insufficient return or hardship if it finds that the landmark or property within the historic district cannot yield a reasonable return if the proposed work is not permitted, that the plight of the applicant is due to unique circumstances, and that the hardship is the result of the application of the ordinance and is not the result of any act or omission by the applicant; or
3. may refuse to issue a certificate, if it finds that the application does not meet any of the above criteria.

The Preservation Committee's decision must be accompanied by written findings of fact. No change shall be made in the application for any building permit after issuance of a certificate by the Preservation Committee without resubmittal to the Preservation Committee and approval in the same manner as provided above.

5.19.13 *Procedure Following Certificate Denial*

If no certificate is issued, the applicant and the Preservation Committee shall enter into negotiations to develop a plan whereby modifications in the application would enable the Preservation Committee to issue a certificate under the criteria listed above and compatible with the guideline for preservation in the particular designation ordinance.

If the proposed work involves demolition of all or a significant portion of a landmark or property within a landmark district or involves construction upon open areas of a landmark or within a landmark district and no acceptable plan is negotiated and approved by the applicant within three months of the Preservation Committee's decision not to issue a certificate, the City may proceed by eminent domain proceedings to acquire the landmark or the affected property within the landmark district. But if the city does not initiate proceedings within 90 days, the Preservation Committee shall issue a "certificate of allowance," permitting the applicant to proceed with the work as proposed in the application.

If the proposed work on a landmark or to a property within landmark district is other than the above and no acceptable plan is negotiated and approved by the applicant within three months of the Preservation Committee's decision not to issue a certificate, the Preservation Committee shall issue a certificate of allowance permitting the applicant to proceed with the work as proposed in the application.

5.19.14 Hazardous Structures

The Preservation Committee shall issue a "certificate of allowance" on the grounds of hazardous conditions for razing a structure or other work if the Public Works Director has determined that the landmark or property within the landmark district poses an immediate hazard to human health and safety and that no alternative exists that would allow for saving the structure and protecting the public's health and safety. However, if an owner shall, by deliberate acts or deliberate neglect allow a landmark or property within a landmark district to become hazardous to human health and safety with the intent of then obtaining such permit, no such permit shall be issued, and the City shall take steps to declare the structure a nuisance and/or unsafe building, and shall proceed under those provisions to ensure the owner shall take steps necessary to protect the public's health and safety and to rehabilitate the structure, and failing to do so, the City shall do so, billing the costs to the owner.

5.19.15 Appeal

Any person aggrieved by any order, approval, disapproval, or other decision issued by the Preservation Committee or the Planning Commission, may appeal such order, approval, disapproval, or other decision to the City Council by filing a written appeal with the City Clerk within 30 days of such order. Such appeal shall fully state the order, approval, disapproval, or other decision appealed from, the date thereof, and the facts of the matter.

The City Council shall consider the appeal at a public hearing. The City Clerk shall refer the appeal to the City Council, which shall fix within 30 days a reasonable time for the hearing. Notice of time, place, and purpose of such hearing shall be published in a newspaper having a general circulation in the City of Fairbury by the City Clerk and shall be mailed by certified or registered mail to the appealing party not less than 10 days prior to the date of hearing.

The City Council shall review the appeal and may in conformance with the provisions of this title reverse or affirm, wholly or partially, or may modify the order, approval, disapproval or other decision appealed from. In making a determination, the Council may request information and recommendations from any department of the City of Fairbury.

Every decision by the City Council shall be accompanied by a written finding of fact based on testimony and other evidence, specifying the reason for granting or denying the appeal.



