

## ARTICLE XII. PRESERVATION OF HISTORIC RESOURCES\*

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**\*Editor's note:** Ord. No. O-12-96, adopted Dec. 2, 1996, repealed Art. XII, §§ 24-223-24-233, preservation of historic resources, and enacted similar new provisions as herein set out. Formerly, such provisions derived from Ord. No. O-12-81; Ord. No. O-9-92, adopted Jul. 20, 1992; Ord. No. O-4-84, adopted Mar. 5, 1984; Ord. No. O-15-87, adopted Jul. 6, 1987; Ord. No. O-13-88, adopted Dec. 5, 1988; and Ord. No. O-3-95, adopted Apr. 10, 1995.

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### **Sec. 24-223. Purpose.**

It is the purpose of this article to provide for the preservation of structures, districts, sites, and resources of historic, architectural, and archaeological significance together with their appurtenances and environmental settings, consistent with the general welfare of the city, its inhabitants, and visitors thereto.  
(Ord. No. O-12-96, 12-2-96)

### **Sec. 24-224. Definitions.**

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

*Appurtenances and environmental setting.* The entire parcel, as of the date on which the historic resource is designated by resolution of the historic district commission, and structures thereon, on which is located a historic resource. Appurtenances and environmental settings shall include, but not be limited to, walkways and driveways (whether paved or not), vegetation (including trees, garden and lawns), rocks, pasture, cropland, and waterways.

*City manager.* The city manager or his designee.

*Commission.* The historic district commission of the city, as described hereinafter.

*Demolition by neglect.* The willful failure to provide ordinary and necessary maintenance and repair to a designated historic site or a historic resource, not including appurtenances and environmental settings within the city, whether by willful neglect, purpose or design, by the owner, agent or contractor thereof, or any party in possession of such a site, not caused by financial inability, which results in any of the following conditions:

(a) The deterioration of exterior features so as to create or permit a hazardous or unsafe condition to exist.

(b) The deterioration of exterior walls, roofs, chimneys or windows, the lack of adequate waterproofing or deterioration of interior features or foundations which will or could result in permanent damage, injury or loss of or to the exterior features.

*Exterior features.* The architectural style, design and general arrangement of the exterior of a historic resource, including the nature and texture of building materials and the type of style of all windows, doors, light fixtures, signs or other similar items found on or related to the exterior of a historic resource.

*Designated historic resource or site.* Any designated historic resource outside the boundaries of a historic district of historic, archaeological, architectural, or cultural significance and which has been so designated by resolution of the historic district commission.

*Historic district.* A significant concentration, linkage or continuity of sites, structures or objects which contributes to the historical, architectural, archaeological or cultural values within the city, and which have been so designated by the historic district commission.

*Historic district commission, commission.* The mayor and city council shall appoint a commission of six (6) members, all of whom are qualified consistent with the provisions of Article 66B, § 8.03, MD. CODE ANN., as established by the following criteria:

(a) Persons who have previously served on a local legislative body exercising planning and zoning powers; or

(b) Persons who have previously served on a planning commission, board of appeals or historic preservation commission or advisory body; or

(c) Persons who have demonstrated special interest, participation, specific knowledge or professional or academic training in such fields as history, architecture, architectural history, planning, archaeology, anthropology, curation, conservation, landscape architecture, historic preservation, urban design or related disciplines;

and agree to serve on this commission and a majority of whom are residents of the city. A majority shall consist of four (4) members. The members of the commission shall be appointed for terms of three (3) years each, except that, in making the initial appointments, some appointments shall be established for less than three (3) years in order that, as these initial terms expire, all appointments shall be for three (3) years, and shall not expire at the same time. The mayor and members of the city council shall be eligible for appointment to the commission, provided they possess the qualifications described hereinabove. Commission members may be reappointed. Any vacancy shall be filled for the unexpired term of the particular position.

*Historic resource.* A site or group of sites, buildings, structures or objects, including appurtenances and environmental setting, which is significant in national, state or local history, architecture, archaeology or culture.

*Historic site.* The location of an event of historic significance or a structure, whether standing or ruined, which possesses historic, archaeological or cultural significance.

*Permit.* A historic area work permit issued by the historic district commission authorizing work on a designated historic site or a historic resource located within the city.

*Planning commission.* The planning commission for the city.

*Routine maintenance.* Work that does not alter the exterior material or features of a site or structure and has no material effect on the historical, archaeological or architectural significance of the historical site or structure, including tree trimming on private property.

(Ord. No. O-12-96, 12-2-96)

### **Sec. 24-225. Powers and duties of historic district commission.**

The historic district commission shall have those powers, duties and authority assigned to it by Article 66B, MD. CODE ANN., the zoning ordinance of the City of Gaithersburg, and those acts or enactments of the city council of the City of Gaithersburg. The commission shall adopt such rules and regulations as may be necessary for the proper transaction of its business.

(Ord. No. O-12-96, 12-2-96)

### **Sec. 24-226. Designation of historic districts and historic sites; criteria.**

(a) The historic district commission, on its own motion or by petition of the property owners of record or the planning commission, may, after prescribed notice and public hearing, designate by ordinance or resolution historic districts, historic resources, and historic sites in the city which are deemed to be of historic, archaeological or architectural significance following the procedure applicable to classifications in zoning. These resources shall thereafter be subject to the provisions of this article and any rules and regulations promulgated by the commission. The procedures are substantially similar to those applicable to local map amendments, as provided in Article VIII of Chapter 24 of this Code.

(b) In considering historic resources for designation as historic districts and historic sites, the historic district commission shall apply the following criteria:

(1) *Historical and cultural significance.* The historic resource:

- a. Has character, interest or value as part of the development, heritage or cultural characteristics of the city, county, state or nation;
- b. Is the site of a significant historic event;
- c. Is identified with a person or a group of persons who influenced society; or
- d. Exemplifies the cultural, economic, social, political or historic heritage of the city and its communities.

(2) *Architectural and design significance.* The historic resource:

- a. Embodies the distinctive characteristics of a type, period or method of construction;
- b. Represents the work of a master;
- c. Possesses high artistic values;
- d. Represents a significant and distinguishable entity whose components may lack individual distinction;
- e. Represents an established and familiar visual feature of the neighborhood, community or city due to its singular physical characteristic or landscape; or
- f. Embodies design, setting, materials, workmanship and ambience to the city's sense of time, place and historic development.

(c) Prior to the conduct of a public hearing on the designation of a historic district or historic site, the historic preservation advisory committee shall investigate, research, and submit findings and recommendations to the historic district commission on each request. Prior to the closing of the public hearing record:

(1) The city planning department shall submit its findings and recommendations to the historic district commission on the proposed designation; and

(2) The city planning commission, after public hearing on the designation, shall make its recommendation to the historic district commission prior to the close of the historic district commission's record. In formulating such recommendation, the planning commission may consider public hearing testimony before the historic district commission, the recommendation of the historic preservation advisory committee, the city planning department, and any other relevant and material matters.

(Ord. No. O-12-96, 12-2-96)

### **Sec. 24-227. Historic preservation advisory committee.**

The mayor and council of the city are authorized to create by resolution a historic preservation advisory committee consisting of seven (7) members appointed for three-year terms with the initial appointments staggered, so that no more than any two (2) of the appointments shall expire each year. The mayor may, subject to confirmation by the city council, appoint not more than three (3) alternate members of the committee for the purpose of sitting in place of regular members who may be necessarily absent, disqualified or otherwise unable to vote or participate in committee matters. Alternate members shall be appointed on a nonstaggered basis for a term of three (3) years. The

majority of committee members and alternate members shall be city residents, selected to the extent feasible from various geographic areas of the city, and possess either interest or special knowledge or training in such fields as history, architecture, architectural history, planning, archaeology, anthropology, curation, conservation, landscape architecture, historic preservation, urban design or related disciplines (historic preservation, design or architecture). The committee shall have the powers, duties and responsibilities as may hereafter be designated by ordinance or resolution of the mayor and council and as provided by this Article XII of Chapter 24 of the City Code.

Members of the committee are eligible for reappointment and any vacancy on the committee shall be filled by the appointing authority for the unexpired term of the particular position. Consistent attendance at all meetings of the committee shall be a prerequisite to continuing membership on the committee. The chairperson or the committee may recommend to the mayor and city council that any member with a persistent absentee record be replaced, and the mayor and council may appoint a replacement for the remainder of the term of the removed member.

The committee shall adopt rules and regulations as may be necessary for the proper transaction of its business. Rules and regulations of the committee shall be subject to approval by resolution of the historic district commission.  
(Ord. No. O-12-96, 12-2-96)

**Sec. 24-228. Historic area work permit; when required.**

(a) A historic area work permit for work on public or private property which would affect the historic, archaeological or architectural significance of a designated historic resource, any portion of which is visible or intended to be visible from a public way, must be issued pursuant to the provisions of this chapter before:

(1) Constructing, reconstructing, moving, relocating, demolishing or in any manner modifying, changing or altering the exterior features of any designated historic site or historic resource located within the city;

(2) Performing any grading, excavating, constructing or substantially modifying, changing or altering the environmental setting of a historic site or a historic resource located within the city;

(3) Erecting or causing to be erected any sign or advertisement (with the exception of those signs which temporarily advertise for sale, lease or rental a historic site or a historic resource located within the city, or which for a temporary period advertise a political viewpoint) on the exterior or on the environmental setting of any historic site or any historic resource located within the city.

(b) Nothing in this section shall be construed to require the issuance of a historic area work permit for any routine maintenance or repair of exterior features, any customary farming operations or any landscaping, which will have no material effect on historic resources located within the city, of which such features are a part. For the purposes of clarification of this section, the commission may adopt, develop and publish standards and guidelines for the rehabilitation and new construction of designated sites that are consistent with those generally recognized by the Maryland Historical Trust; and also, for demolition and relocation of historic sites and interpret and decide what activities constitute routine maintenance.

(c) Applicants for permits to demolish or substantially alter the exterior features of any historic site or historic resource located within the city are required to disclose its identification as such in writing on any application therefor.

(d) Work undertaken by the city or any other governmental entity or by any public utility or cable company within any historic district shall be subject to the provisions of this article; provided, however, in lieu of obtaining an individual certificate of approval for

each activity in the district, the city or other governmental entity, or public utility or cable company may obtain a master certificate of approval from the historic district commission. A master certificate of approval shall be valid only for one year from the date of issuance, and for each historic district in which work is to be undertaken.

(e) An application for a work permit which is identical to a rejected application shall not be resubmitted within a period of one year after the rejection, including any appeals of the decision to reject. No permit for any such change may be granted until the commission has acted thereon, as hereinafter provided.

(Ord. No. O-12-96, 12-2-96)

**Sec. 24-228.1. Historic area work permit; application procedure.**

(a) *Generally.* Applications for issuance of a historic area work permit shall be filed with the city manager. The application shall be in a form and contain such information as may be required to provide information as shall be necessary for the historic district commission to evaluate and act upon such applications in accordance with the provisions of this article.

(b) *Referral.* Upon the filing of a completed application, within three (3) days the city manager shall forward the application and all attachments to the historic preservation advisory committee and the planning and code administration for their review. Notwithstanding any other provision contained in this article, the city manager may approve an application without referral or further approval for minor alterations or improvements which do not alter the design, historicity, archaeological or structural features of any historic building, structure or site.

(c) *Review and public meeting.* The historic preservation advisory committee shall schedule and conduct a public meeting on the application, giving notice pursuant to subsection (d) below. The committee shall maintain minutes of its proceedings and a public file of all relevant correspondence, documents and other materials on the request for the historic area work permit. The committee and the Planning and Code Administration of the City of Gaithersburg shall thereafter promptly forward their written recommendations to the historic district commission. The historic district commission may render its decision based upon these recommendations or public comment received before the committee, or in its discretion, hold a public hearing giving notice pursuant to subsection (d) below. Further, where the property owner and the historic preservation advisory committee agree to the approval of the application and any conditions of such approval, the historic district commission may, in its discretion, render its decision based on said agreement without the necessity of further public comment.

(d) *Notice.* After scheduling a public meeting, notice thereof shall be accomplished by city staff, by ordinary mail, being given to property owners within two hundred (200) feet of the property, not less than seven (7) working days prior to the meeting at which the matter is to be heard, and to those citizens or organizations which the city manager determines may have an interest in the proceedings. In addition, notice shall be accomplished by posting an appropriate sign on the site and publication in one or more newspapers in general circulation in the city at least once, not less than seven (7) days prior to the meeting.

(e) *Action by historic district commission.*

(1) The historic district commission may instruct the city manager to:

a. Issue the permit.

b. Issue the permit subject to such conditions as are necessary to ensure conformity with the provisions and purposes of this article; or

c. Deny the permit subject to the requirements contained in section 24-228.1(c).

(2) In the event of a denial of a permit, the applicant shall receive a written notification of the reasons for such denial. An application which is identical to the denied application shall not be resubmitted within a period of one year after the denial or any appeal from such denial.

(3) Failure of the historic district commission to act on a completed application within forty-five (45) days from the date the completed application was accepted for filing, or in the event the record is held open by the commission, within fifteen (15) days after the close of the record, shall be deemed to constitute automatic approval of the proposed changes unless an extension of this forty-five (45) day period is agreed upon mutually by the applicant and the commission or the application is withdrawn. Action by the commission on a completed application as provided by this subsection shall mean: (i) actions provided for in subsection (e)(1) of this section 24-228.1; or (ii) a remand of the matter to the historic preservation advisory committee for further review and recommendation; provided, that the period of remand to the date of final decision by the commission shall not exceed ninety (90) days.

(f) If work on an approved project has not begun within six (6) months after the issuance by the historic district commission of a certificate of approval, or within time frames as stated in the approval, the certificate of approval shall expire. If the work has not been completed within one year of the date of its issuance, or within time frames stated in the approval, the certificate of approval shall expire. A time extension for one more year is permissible through written request for extension to the historic district commission. If the extension is not approved, the historic area work permit becomes null and void.

(g) *Miscellaneous provisions.*

(1) Properties subject to covenants or easements held by other historic preservation organizations shall submit proof of approval of exterior architectural review by the organizations holding the easement.

(2) The commission may acquire easements in connection with individual sites or structures, or sites or structures located in or adjacent to a designated historic district to protect such structures or sites from changes which would affect its historic, archaeological or architectural significance. The city planning commission may condition an approval of a subdivision or site development plan upon a determination by the historic district commission as to whether such easement should be acquired.

(3) Any permit issued by the city manager may be subject to such conditions imposed by the historic district commission as are reasonably necessary to assure that work in accordance with the permit shall proceed and be performed in a manner not injurious to those characteristics and qualities of the historic resource which are of historical, architectural, archaeological or cultural value.

(4) In the event that there is a conflict between the permit and the requirements of the building code, the permit will control; provided, that all health and safety requirements are met.

(5) The city manager is responsible for the enforcement of this article.

(Ord. No. O-12-96, 12-2-96)

### **Sec. 24-228.2. Historic area work permits; criteria for decision.**

(a) The historic district commission, in evaluating an application for a historic area work permit, shall consider and render its decision based on the following factors:

(1) The preservation of the historic, archaeological, or architectural significance of the site or structure and its relationship to the historic, archaeological or architectural significance of the surrounding area;

(2) Guidelines for rehabilitation and new construction design for designated sites, structures, and districts adopted by resolution of the historic district commission, including criteria for construction, alteration, reconstruction, moving and demolition which are consistent with the Secretary of the Interior's *Standards for Rehabilitation*.

(3) The relationship of the exterior architectural features of the structure to the remainder of the structure and surrounding area;

(4) The general compatibility of the exterior design, scale, proportion, arrangement, texture and materials proposed to be used; and

(5) Any other factors, including aesthetic factors, which the commission deems pertinent.

(b) In the case of an application for work on a historic resource, the commission shall be lenient in its judgment on plans for structures of little historical or design significance or for plans involving new construction, unless such plans would seriously impair the historic or architectural significance of surrounding historic resources. The historic district commission shall be strict in its judgment of plans for site or structures determined by research to be of historic, architectural or archaeological significance.

(c) Where the historic district commission deems a structure to be of unusual historic importance, it shall, prior to denial of a historic area work permit, attempt with the owner to formulate an economically feasible plan for its preservation. If no economically feasible plan can be formulated, the commission shall have ninety (90) days from the time it concludes that no economically feasible plan can be formulated to negotiate with the owner and other parties in an effort to find a means of preserving the structure. The ninety (90) day negotiating period may be extended only by mutual consent of all parties.

(d) Notwithstanding anything to the contrary contained in subsection (c) of this section, the commission may approve a historic area work permit if the structure is a deterrent to a major improvement program of substantial benefit to the public or its retention would either cause substantial financial hardship to the owner or its retention would not be in the best interests of the citizens in the community.

(e) The historic district commission shall consider only exterior features of a structure, and shall not consider any interior features or arrangements.

(f) Failure to adhere to or comply with the requirements or conditions of a historic area work permit or any other provision of this article shall be grounds for revocation or suspension of the permit by the city manager. In addition thereto, the penalties and actions provided for in section 24-232 may be instituted against an alleged violator.

(Ord. No. O-12-96, 12-2-96)

### **Sec. 24-229. Advisory committee recommendations on impact review areas.**

(a) The historic preservation advisory committee may review and make recommendations to the city planning commission on applications for site development plan approvals, including amendments and modifications thereto, involving the construction, reconstruction of, or additions to existing buildings or structures or demolition thereof, or the erection, modification or removal of fences, signs, and trees on a site located within an impact review area, as defined in this section.

(b) The historic preservation advisory committee shall provide such recommendations at the concept plan and final plan approval stages, or amendment to final approved plans, within twenty (20) days from filing of said development plans. The committee recommendations shall provide, where relevant, analysis and comment upon the following matters:

(1) Architectural compatibility, including such elements as signs, masonry and architectural details, width and height of buildings and structures, roof, door and window styles, and other elements contained within the adopted guidelines of the historic district commission; and

(2) The effect or impact upon the preservation and protection of buildings, structures or districts designated historic; and

(3) The effect or impact upon historic appurtenances and environmental settings related to (b) above.

Failure to provide the recommendation within the time set forth above shall be deemed a waiver of the requirement unless additional time for such recommendation is consented to by the applicant.

(c) The historic preservation advisory committee may waive the requirement of providing the recommendations required by this section upon a finding by city staff of no significant adverse impacts upon any historic building, structure, site, resource, district or appurtenance, or environmental settings connected therewith.

(d) The term "impact review area" is defined as that area adjoining the perimeter boundaries of any historic district, historic site or resource which is determined by resolution of the historic district commission and which shall be reflected upon the zoning maps of the city.

(Ord. No. O-12-96, 12-2-96)

### **Sec. 24-230. Relocation of utility and cable facilities within historic districts.**

The city council may enact by ordinance a requirement that utility and cable companies relocate underground, existing overhead lines and facilities within the defined part of the historic district or the entire historic district, and requiring the connection thereto to be placed underground, if necessary, by private owners then receiving service from the overhead lines and facilities. The ordinance shall provide:

(a) The estimated cost to property owners for work to be performed on private property be determined and made available to affected property owners;

(b) Financing of these costs to private owners be provided, including any charges for the amortization of bonds issued to initially cover such private costs. The city may enter into agreement with individual property owners whereupon it will advance funds to cover the property owner's costs involved in the conversion of the overhead lines and facilities, and may appropriate funds, levy taxes or assessments, or borrow funds to pay and advance the costs of such conversion. The city may also impose a benefit assessment against the property in the historic district for which the conversion is made in order to recapture such expended costs and make appropriate provisions for the collection thereof; and

(c) Any other provisions reasonably related to the objective of placing underground, overhead lines and facilities, and the administration of such projects.

(Ord. No. O-12-96, 12-2-96)

### **Sec. 24-231. Demolition by neglect.**

In the event of a case of demolition by neglect of a historic resource on public or private property, the following provisions shall apply:

If the historic resource has been designated a historic site or a historic resource, the city manager shall issue a written notice to all persons of record with any right, title or interest in the subject property, or the person occupying the premises, of the conditions of deterioration and shall specify the minimum items of repair or maintenance necessary

to correct or prevent further deterioration. The notice shall provide that corrective action shall commence within thirty (30) days of the receipt of such notice and completed within a reasonable time thereafter. The notice shall state that the owner of record of the subject property or any person of record with any right, title or interest therein may, within ten (10) days after the receipt of such notice, request a meeting with the city manager on the necessity of the items and conditions contained in such notice. In the event a meeting is requested, it shall be held by the city manager upon written notice mailed to all persons of record with any right, title or interest in the subject property and to the planning commission and historic district commission, and any other person that the city manager feels may have an interest in the proceedings.

After such meeting on the issue of necessity of improvements to prevent demolition by neglect, if the city manager finds that such improvements are necessary, he shall issue a final notice to be mailed to the record owners and all parties of record with any right, title and interest in the subject property, advising of the items of repair and maintenance necessary to correct or prevent further deterioration. The owners shall institute corrective action to comply with the final notice within thirty (30) days of receipt of the revised notice.

In the event the corrective action specified in the final notice is not instituted within the time allotted, the city manager may institute, perform and complete the necessary remedial work to prevent deterioration by neglect, and the expenses, including administrative, legal, corrective and compensatory expenses, incurred by the city for such work, labor and materials shall be a lien against the property and draw interest at the same rate as delinquent property taxes, the amount to be amortized over a period of ten (10) years subject to a public sale if there is a default in payment; or, in the alternative, the city may seek equitable relief in any court of competent jurisdiction to compel such corrective action.

(Ord. No. O-12-96, 12-2-96)

#### **Sec. 24-231.1. Moratorium on alteration or demolition.**

(a) Where the historic district commission determines that any site, group of sites, structure or object is undergoing active consideration as a historic district, historic site or historic resource, or has the reasonable probability of being so designated or has been so designated, it may direct the city manager to withhold issuance of any permit to demolish, grade or substantially alter the exterior features of any such site, structure or object. The city manager shall withhold such permit for a maximum of six (6) months from the date of the directive of the commission.

(b) The commission may withdraw its directive to the city manager if it determines that failure to grant the permit applied for will have the effect of denying the property owner all reasonable use of his property or would cause the property owner to suffer undue hardship.

(Ord. No. O-12-96, 12-2-96)

#### **Sec. 24-232. Violations and penalties.**

Any person who violates a provision of this article, or fails to comply with any of the requirements thereof, or disobeys or disregards a decision of the historic district commission or city manager, or fails to abide by the conditions of a permit, shall be guilty of a misdemeanor, punishable as provided in section 1-7 of this Code.

In addition thereto, the city may institute injunctive or other appropriate action or proceedings at law or equity for the enforcement of this chapter or to correct violations of

this chapter, and any court of competent jurisdiction shall have the right to issue restraining orders, injunctions or other appropriate forms of remedy or relief.

(Ord. No. O-12-96, 12-2-96)

**Sec. 24-233. Appeals.**

In the event that any party is aggrieved by a decision of the historic district commission within thirty (30) days from the date on which the decision is made public, such party aggrieved may appeal to the circuit court of the county, which will review the decision based on the record of the proceedings before the historic district commission. Appeals shall be governed by the Maryland Rules of Procedure applicable to administrative appeals.

(Ord. No. O-12-96, 12-2-96)