

Alternate Ordinance Requested by Planning and Zoning Commission

ORDINANCE NO. 2019-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING CHAPTER 2 OF THE SAN MARCOS DEVELOPMENT CODE BY REQUIRING A 90-DAY REVIEW PERIOD FOR APPLICATIONS TO DEMOLISH CERTAIN QUALIFYING HISTORIC AGED BUILDINGS; REQUIRING ADVANCE PUBLIC NOTICE OF THE PROPOSED DEMOLITION OR REMOVAL OF ANY SUCH BUILDING; PROVIDING EXCEPTIONS TO SUCH REVIEW PERIOD FOR ANY PART OF A BUILDING THAT IS NOT HISTORICALLY SIGNIFICANT; PROVIDING FOR PENALTIES; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF ANY CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. Section 2.7.3.1(B) of the San Marcos Development Code, Subchapter B of the San Marcos City Code, is amended by adding a new subsection 3, as set forth below. Added text is indicated by underlining.

DIVISION 3: CONSTRUCTION PERMITS

Section 2.7.3.1 Purpose, Applicability, Exceptions and Effect

- A. Purpose.** Approval of a construction permit confirms that the application conforms to all requirements of this Development Code pertaining to the construction of the proposed structure.
- B. General Applicability.** A construction permit is required prior to the construction, demolition, alteration or placement of a structure on a lot, tract or parcel.
 - 1. Applicability related to Building Permits.** An application for a building permit is required within the city limits, or in the city's extraterritorial jurisdiction when provided for in a development agreement or when tying into the City's water, wastewater or electric utility.
 - 2. Applicability related to Certificates of Occupancy.** A certificate of occupancy must be obtained prior to habitation, occupation, or use of any structure, within the city limits, or in the city's extraterritorial jurisdiction when provided for in a development agreement.
 - 3. Applicability to Demolition Permits for Historic Age Resources.** All applications for demolition of a building shall be subject to review in

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accordance with Division 4 of this Article for a determination whether historic age resources are affected before the application may be approved and a permit issued.

SECTION 2. Chapter 2, Article 7 of the San Marcos Development Code, Subchapter B of the San Marcos City Code, is amended by adding a new Division 4, as set forth below. Added text is indicated by underlining.

DIVISION 4: DEMOLITION REVIEW FOR HISTORIC AGE RESOURCES

Section 2.7.4.1 Purpose, Applicability, Exceptions, and Effect

A. Purpose. The purpose of this process is to provide criteria to prevent or minimize unnecessary damage to the quality and character of the city's historic resources by requiring the review of any request for demolition of a building meeting the criteria in this Division to enable a determination of its historic significance, and to provide the public, other interested preservation-based organizations, and city staff an opportunity to work with the property owner on alternative solutions to demolition where possible.

B. 90-Day Review Period for Certain Buildings. A demolition permit shall not be issued until at least 90 days after the date of filing of a complete application for the demolition of any building or part thereof:

- 1.** located inside the *My Historic SMTX* historic resources survey (the "Historic Resources Survey") boundaries, as amended or supplemented, and evaluated therein as a high or medium preservation priority; or
- 2.** located outside the Historic Resources Survey boundaries, as amended or supplemented, that is listed on the National Register of Historic Places (NRHP), or a Recorded Texas Historic Landmark (RTHL).

No building, nor any part thereof, subject to this Section may be demolished or removed unless a permit authorizing such demolition or removal has been issued by the city.

C. Exceptions. This Section does not apply to:

- 1.** the demolition of a building, or part thereof, within a local historic district or that is a local historic landmark and for which a certificate of appropriateness for demolition is required; or
- 2.** the demolition of a building, or part thereof, the condition of which is determined by the Chief Building Official or the Fire Marshal to be an imminent threat to public safety; or

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3. the demolition of a building, or part thereof, identified in the Historic Resources Survey as not historically significant; or
4. the demolition of a building, or part thereof, located on a property identified in the Historic Resources Survey that is not at least 50 years old or older.

Section 2.7.4.2 Application Requirements

- A. An application to demolish a building, or part thereof, subject to this Division shall conform to the requirements for a construction permit and shall be submitted in accordance with the universal application procedures in Section 2.3.1.1, subject to the requirements of this Division.

Section 2.7.4.3 Process

A. Responsible Official Action

1. The responsible official shall complete the review of the application, and determine if the application concerns a building, or part thereof, subject to Section 2.7.4.1(B).
2. If the application is determined by the responsible official to concern a building subject to Section 2.7.4.1(B), the responsible official shall schedule a meeting and public hearing before the Historic Preservation Commission under Subsection (B). The responsible official shall send notice of the request for demolition and of the public hearing within 20 days of the complete application being submitted to the following:
 - a. San Marcos Daily Record (published notice) in accordance with Section 2.3.2.1(A);
 - b. The owners of real property Owners within 400 feet of the lot or tract of land subject to the request (mailed notice) in accordance with Section 2.3.2.1(B);
 - c. Historic Preservation Commission (E- Notice);
 - d. Planning and Zoning Commission (E-Notice);
 - e. Neighborhood Commission (E-Notice);
 - f. President of the Heritage Association (E- Notice);
 - g. Hays County Historical Commission (E- Notice);
 - h. Neighborhood Commission (E- Notice);
 - i. President of the Council of Neighborhood Associations (“CONA”) (E- Notice);
 - j. Certified Local Government Coordinator with the Texas Historical Commission (E-Notice);
 - k. Executive Director of Preservation Texas (E-Notice); and

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1. Any interested persons signed up to receive Notice of Application under Sec. 2.3.2.1. (E-Notice).

B. Historic Preservation Commission Action

1. The Historic Preservation Commission shall hold a public hearing to consider the demolition delay period and allow the discussion of alternatives to demolition and methods for the potential preservation of historic character.
2. The Historic Preservation Commission shall consider the criteria for eligibility in accordance with Section 2.5.4.5 and the potential for preservation of historic character when determining the demolition delay period.
 - a. If the building, or part thereof, is not initially determined to be historically significant, the demolition permit shall be issued following the Commission's determination without further notice, subject to the requirements of other applicable ordinances.
 - b. If the building is determined to be historically significant, and there is potential for the preservation of historic character then the Commission may extend delaying the issuance of the demolition permit to allow all potentially interested parties to take whatever steps deemed appropriate to accomplish the preservation of the building. The delay may be extended for good cause by the Commission for an additional 90 days but in no event shall the total extension be for more than 180 days.

SECTION 2.7.4.4 Violation and Penalties

- A. It is a violation of this Division to demolish or remove a building subject to this Division, or part of or addition to such building, without having been issued a permit from the city specifically authorizing the demolition or removal. A person who violates this ordinance shall be subject to a fine of \$2,000.00. A culpable mental state is not required to establish a violation of this ordinance.
- B. In addition to the assessment of any criminal penalties, the city may pursue any remedies available at law or in equity, including injunctive relief, to enforce the provisions of this ordinance.

SECTION 4. In codifying the changes authorized by this ordinance, paragraphs, sections and subsections may be renumbered and reformatted as appropriate consistent with the numbering and formatting of Subchapter B of the San Marcos City Code.

SECTION 5. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this

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ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 6. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION 7. This ordinance will take effect after its passage, approval and adoption on second reading.

PASSED AND APPROVED on first reading on _____, 2019.

PASSED, APPROVED AND ADOPTED on second reading on _____, 2019.

Jane Hughson
Mayor

Attest:

Approved:

Jamie Lee Case
City Clerk

Michael J. Cosentino
City Attorney