

Ordinance Recommended by Historic Preservation 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; ESTABLISHING PROCEDURES BY WHICH ANY SUCH QUALIFYING BUILDING SUBJECT TO A REQUEST FOR DEMOLITION MAY BE CONSIDERED FOR DESIGNATION AS A LOCAL HISTORIC LANDMARK; 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.

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3. Applicability to Demolition Permits for Historic Age Resources. All applications for demolition of a building shall be subject to review in 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 a complete application for the demolition of any building, part of thereof, or addition thereto:

- 1.** located inside the *My Historic SMTX* historic resources survey boundaries, as amended or supplemented, and evaluated therein as a high or medium preservation priority; or
- 2.** located outside the *My Historic SMTX* historic resources survey boundaries, as amended or supplemented, that are at least 50 years of age, listed on the National Register of Historic Places (NRHP), or a Recorded Texas Historic Landmark (RTHL).
- 3.** No building nor any part of or addition to a building 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, part thereof or addition thereto, within a local historic district or that is a local historic landmark and for which a certificate of appropriateness for demolition is required; or

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2. the demolition of a building, part thereof or addition thereto, the condition of which is determined by the Chief Building Official or the Fire Marshal to be an imminent threat to public safety.

Section 2.7.4.2 Application Requirements

- A. An application to demolish a building, part thereof or addition thereto, 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 subject to Section 2.7.4.1(B).
2. If the responsible official determines that the application concerns a building subject to Section 2.7.4.1(B), the responsible official shall schedule a public hearing before the Historic Preservation Commission for an initial determination of eligibility for consideration as a local historic landmark.
3. 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 send notices of the request for demolition 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. President of the Heritage Association (E- Notice);
 - e. Hays County Historical Commission (E- Notice);
 - f. Neighborhood Commission (E- Notice);
 - g. President of the Council of Neighborhood Associations (“CONA”) (E- Notice);
 - h. Certified Local Government Coordinator with the Texas Historical Commission (E-Notice);
 - i. Executive Director of Preservation Texas (E-Notice); and
 - j. Any interested persons signed up to receive Notice of Application under Sec. 2.3.2.1. (E-Notice).

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- 4.** If the responsible official determines that the application does not concern a building subject to Section 2.7.4.1(B), the responsible official shall issue the construction permit for demolition, subject to and in accordance with applicable ordinances.

B. Neighborhood Presentation Meeting

- 1. When Required.** If the responsible official determines that the application concerns a building subject to Section 2.7.4.1(B), the applicant shall facilitate a Neighborhood Presentation Meeting in accordance with this Section. The purpose of a neighborhood presentation meeting is to begin the discussion about the proposed demolition and is not a forum for final decisions or the acceptance of formal comments concerning public support or opposition.
- 2. Procedures.** When a neighborhood presentation meeting is required:
 - a.** The applicant or authorized representative must schedule and facilitate a minimum of one neighborhood presentation meeting to discuss the proposed application.
 - b.** Within 12 days of the determination by the responsible official that the application concerns a building subject to Section 2.7.4.1(B), the responsible official shall send electronic notification of the meeting to all parties requesting notification of a submitted application within that region and post the meeting date and location on the City's website.
 - c.** The responsible official shall be present to take notes and report the number of participants included in the neighborhood presentation meeting in any subsequent staff reports. Meeting decorum should follow protocol as stated in section 2.045(h) of the City Code.
 - d.** The neighborhood presentation meeting shall be held on or in close proximity to the area of the request.
 - e.** The neighborhood presentation meeting shall be held 20-28 days prior to the Historic Preservation Commission meeting.

C. Historic Preservation Commission Action

- 1.** If the responsible official schedules a public hearing under Section A.2, the Historic Preservation Commission shall conduct a public hearing concerning the application for demolition in accordance with Section

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2.3.3.1 for an initial determination whether the building is eligible for consideration as a local historic landmark.

2. The Historic Preservation Commission shall consider the criteria for eligibility in accordance with Section 2.5.4.5 when making the initial determination.
 - a. If the building is not initially determined eligible, the demolition permit shall be issued after the termination of the 90-day review period, subject to the requirements of other applicable ordinances.
 - b. If the building is determined eligible, then the Commission may initiate a request for designation of the property as a local historic landmark in accordance with Section 2.5.4.1, in which event the 90-day review period under Section 2.4.7.1(B) shall be extended until such time as the city council renders a final decision on the commission's recommendation to designate the building a local historic landmark.
 - c. If the city council designates the building as a local historic landmark, the request to demolish the building shall be subject to the requirements for a certificate of appropriateness under Section 2.5.5.1. If the city council does not designate the building as a local historic landmark, the demolition permit may be issued within three business days after the city council's determination, subject to the requirements of other applicable ordinances.

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

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SECTION 5. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION 6. 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