

CITY OF DAYTON

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STAFF REPORT – ADDENDUM SHPO COMMENTS

PLANNING COMMISSION – OCTOBER 17, 2019

REPORT DATE: October 16, 2019
FILE NUMBER: LA 2019-01 (Legislative Amendment)
APPLICANT: City of Dayton
REQUEST: Amend the Dayton Development Code regarding Historic Resources.

I. PURPOSE

The purpose of this staff report addendum is to provide the Planning Commission with the 3 comments from the State Historic Preservation Office (SHPO) and the proposed responses to the SHPO comments.

The original staff report is the base for this report. Only the Dayton Land Use and Development Code (LUDC) sections that SHPO commented on are included, i.e., 7.2.112.05 and .06.

II. PROPOSED RESPONSES TO SHPO’S 3 COMMENTS

COMMENT 1.

Section 7.2.112.05, Landmark and District Designation, and specifically Subsection .05, G, Removal of Designation. The specific comment regarding Subsection .05, G, follows:

~~EG.~~ Removal of Designation. The process for removing a landmark *designation* or historic district designation may be initiated by the *City* Council, the *Planning* Commission, or by any interested person who submits to the City Manager an application for removal of the designation. The *City* Council may amend or rescind ~~its~~ *an existing* designation by following ~~the~~ procedures ~~required by this Code~~ *set forth in Section 7.2.112.05* for designating a landmark *or historic district*, including the adoption of ~~appropriate~~ findings.

Commented [KG1]: Goal 5 only allows remove if the property no longer meets the criteria. People can't just remove the local designation because they want to. This should be made clearer in this section.

To provide context, the entirety of 7.2.112.05 follows. The language from the original staff report is shown with ~~strikeout~~ for language proposed to be deleted and *bold italics* for language proposed to be added.

The proposed response to the SHPO comment is shown below in Subsection .05, G, in [[[[**quadruple brackets and underlined]]]]**.

7.2.112.05 Landmark and District Designation

- A. Process. The process for designating a landmark or historic district may be initiated by the **City Council**, the **Planning Commission**, or by any interested person who submits an application for designation to the City Manager. At the time of application the City Manager shall provide the property owner and applicant with information regarding the benefits and restrictions of designation.
- B. Information. The following information shall be required in an application:
1. The applicant's name and address **and the applicant's signature**;
 2. The owner's name and address, ~~if different from the applicant~~ **and evidence of legal and recorded ownership of the subject property and the owner's signature**;
 3. A written description of the boundaries of the proposed district or the location of the proposed landmark;
 4. A map, **drawn to scale**, illustrating the boundaries of the proposed district, or a **site plan, drawn to scale, indicating the location of structures on the subject property including the proposed landmark, and the dimensions of the structures and distances from the structures to the property lines**;
 5. A statement explaining the following:
 - a. The reason(s) why the proposed district or landmark should be designated under the ~~the~~ **decision criteria** specified in ~~§~~ Sub-section **7.2.112.05, E**.
 - b. The reason(s) why the boundaries of the proposed **historic** district are appropriate for designation;
 - c. The potential impact, if any, ~~which designation~~ of the proposed **historic** district or landmark ~~would have~~ on the residents or other property owners in the area.
 6. Any other information deemed necessary by the City Manager ~~necessary~~ to address **the** approval criteria.
- C. Historic Preservation Committee (HPC) Review: After the application is deemed complete, the Historic Preservation Committee shall review the application at ~~either one of their~~ **a** regularly scheduled meetings or ~~by arranging~~ **at** a special meeting. The **HPC Historic Preservation Committee** may provide to the **Planning Commission and the City Council** a written response in regards to their review of the application using

recommendation based on the approval criteria in Section 7.2.112.05, E as a guideline for their recommendation(s). The Committee serves in an advisory capacity.

- D. ***Planning Commission Action.*** *After the application is deemed complete, the City Manager shall schedule the application to be considered at a Planning Commission meeting. The application shall be processed in accordance with the Type IV process pursuant to Section 7.3.2 (Administrative Procedures). The City Manager shall forward the application and any comments from the Historic Preservation Committee to the Planning Commission. The Planning Commission, after notice and public hearing held in accordance with provisions in Section 7.3.2 (Administrative Procedures), shall pass an oral motion recommending the City Council approve or disapprove the application. Where the Historic Preservation Committee provides a recommendation to the Planning Commission, the Planning Commission shall consider the recommendation. The Commission serves in an advisory capacity.*
- ~~DE.~~ ***City Council Action.*** *After the application is deemed complete, the City Manager shall schedule the request application to be considered at the next available a City Council meeting. The Council shall conduct a public hearing (Type III) application shall be processed in accordance with the Type IV process pursuant to Section 7.3.2 (Administrative Procedures) of this Code. The City Manager shall forward the application, any comments from the Historic Preservation Committee and the Planning Commission's recommendation to the City Council. The City Council, after notice and public hearing held in accordance with provisions in Section 7.3.2 (Administrative Procedures), shall approve or disapprove the application. Where the Historic Preservation Committee provides a recommendation to the City Council, the City Council shall consider the recommendation. The Council shall make a written record approving, approving with conditions, disapproving, or postponing final action on the request.*
- ~~EF.~~ ***Decision Criteria.*** *The To approve the application the City Council shall consider the following criteria to determine if the potential landmark or district is significant enough to grant the designation the proposed Designated Landmark or historic district should be approved :*
1. The property is associated with events that have made a significant contribution to the broad patterns of local, state, or national history;
 2. The property is associated with the lives, persons, or groups of people, significant in local, state, or national history;
 3. The property is significant because it embodies the distinctive characteristics of an architectural type, style, period, or method of construction, or that represents the work of a master, or that possesses high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction;

4. The property is ~~significant because it~~ yielded or is likely to yield information which is ~~important~~ **significant** to local, state, or national history;
5. The property is ~~of significance as~~ a **significant** visual landmark;
6. The property is ~~of significance because the resource~~ contributes **significantly** to the continuity or historic character of the street, neighborhood, and/or community;
7. The resource is listed on the National Register of Historic Places ~~÷~~.
8. ~~If testimony or comments are provided, the Council considers the recommendation from the Historic Preservation Committee (HPC).~~

FG. Removal of Designation. The process for removing a landmark **designation** or historic district designation may be initiated by the **City** Council, the **Planning** Commission, or by any interested person who submits to the City Manager an application for removal of the designation. The **City** Council may amend or rescind ~~its~~ **an existing** designation by following ~~the~~ procedures ~~required by this Code~~ **set forth in Section 7.2.112.05** for designating a landmark **or historic district, [and determining the property no longer meets the criteria set forth in Section 7.2.112.05, F,]]** including the adoption of ~~appropriate~~ findings.

Commented [KG2]: Goal 5 only allows remove if the property no longer meets the criteria. People can't just remove the local designation because they want to. This should be made clearer in this section.

GH. If the property is listed on the National Registry of Historic Place ~~s~~, the removal shall be completed in cooperation with the State Historic Preservation Office (SHPO) and according to federal statute under CFR Part 60.15.

COMMENT 2.

Section 7.2.112.06, Demolition and Moving. The specific comment regarding Subsection .06, follows:

Comments 2 and 3 address 7.2.112.06, thus the entirety of 7.2.112.06 is below in Comment 3. The language from the original staff report is shown with ~~strikeout~~ for language proposed to be deleted and **bold italics** for language proposed to be added.

The proposed response to the SHPO comment is shown below in Subsection .06, in **[[[quadruple brackets and underlined]]]**.

7.2.112.06 Demolition and Moving

A. ~~City Manager~~ **Planning Commission** Approval. No person shall move ~~or~~ demolish, or cause to be ~~moved or~~ demolished, ~~a~~ **[[[an historic resource on the National Register of Historic Places, a]]] Designated** ~~Landmark or a significant resource in the Historical Property Overlay Zone or in~~ an historic district, unless a ~~permit to do so has first been obtained from the City Manager~~ **approved by the Planning Commission. A separate permit must be obtained from the Building Official to demolish or move the structure.** ~~Application for a permit shall be on a form provided by the City.~~

Commented [KG3]: This section needs to make clear that Dayton must also review demolition and relocation of properties listed on the national Register, even if they are not locally designated. This is a Goal 5 rule requirement.

COMMENT 3.

Section 7.2.112.06, Demolition and Moving. The specific comment regarding Subsection .06, B, follows:

To provide context for Comments 2 and 3, the entirety of 7.2.112.06 follows. The language from the original staff report is shown with ~~strikeout~~ for language proposed to be deleted and **bold italics** for language proposed to be added.

The proposed response to the SHPO comment is shown below in Subsection .06, B and E, in **[[[[quadruple brackets and underlined]]]]**.

B. Application Process. ~~An application for alteration of moving or demolishing a~~ **[[[[an historic resource on the National Register of Historic Places, a]]]] Designated** ~~Landmark or new construction in the Historical Property Overlay Zone or in an historic district or on a landmark site~~ **shall** be filed on a form provided by the City. The following information shall be required in an application:

Commented [KG4]: And National register listed properties.

1. The applicant's name and address **and the applicant's signature;**
2. The owner's name and address, ~~if different from the applicant~~ **and evidence of legal and recorded ownership of the subject property and the owner's signature;**
3. A written description ~~— explanation~~ of the proposed ~~relocation moving~~ or demolition **and an explanation of how the moving or demolition meets the approval criteria set forth in Section 7.2.112.06, E;**
4. A site plan, **drawn to scale**, indicating the location of structures on the subject property, **the dimensions of the structures and the distances from the structures to the property lines;**
5. Statements indicating the intended re-use of the subject property;
6. Any other information deemed necessary by the City Manager ~~necessary~~ to address **the** approval criteria.

C. Historic Preservation Committee (HPC): After the application is deemed complete, the Historic Preservation Committee ~~may~~ **shall** review the application at ~~either one of their a~~ regularly scheduled meeting ~~s~~ or ~~by arranging at~~ a special meeting. The **Historic Preservation Committee** may provide to the City **Planning Commission** a written response in regards to their review of the application using **recommendation based on** the approval criteria ~~as a guideline for their recommendation(s).~~ The **Historic Preservation** Committee serves in an advisory capacity.

D. Review Process. Upon receipt of a completed application, the City Manager shall ~~include the demolition request on the agenda for consideration~~ **schedule the application to be considered at the next available a Planning** Commission meeting. The **Planning** Commission shall hold a Type II public hearing pursuant to Section 7.3.2 (**Administrative**

Procedures) of this Code. **Where the Historic Preservation Committee provides a recommendation to the Planning Commission, the Planning Commission shall consider, if available, comments from the City's Historic Preservation Committee the recommendation.**

- E. Decision Criteria. ~~In order to~~ **To approve an application for the relocation to move or demolition of demolish a** ~~[[[an historic resource on the National Register of Historic Places, a]]]~~ **[[[an historic resource on the National Register of Historic Places, a]]]** Designated Landmark ~~[[[in the Historical Property Overlay Zone or in an historic district]]]~~ **[[[in the Historical Property Overlay Zone or in an historic district]]]**, the **Planning** Commission must find ~~that the following criteria are met~~ :
1. No prudent and feasible alternative exists ~~;~~ **;** or
 2. The designated property is deteriorated beyond repair, ~~;~~ **;** or
 3. The value to the community of the proposed use of the property outweighs the **historical or architectural** value of retaining the Designated Landmark .
- F. Planning Commission Approval. The **Planning** Commission may approve , **or approve with conditions**, the ~~demolition or moving request after considering the criteria in this section~~ **application where the application materials show at least one approval criterion is met**. If no appeal is filed, the **decision is effective on the day following the last day of the appeal period** ~~City Manager shall issue the permit in compliance with all other codes and ordinances of the City . A permit shall not be issued unless the applicant provides evidence of legal and recorded ownership of the subject property~~
- G. Planning Commission Denial. The **Planning** Commission may ~~disapprove~~ **deny** the ~~demolition or removal request~~ **application where the application materials do not show at least one approval criterion is met** if after considering the criteria in this section and based upon not satisfying the criteria, it determines that, in the interest of preserving historical or architectural values, the resource should not be demolished or moved. **If no appeal is filed, the decision is effective on the day following the last day of the appeal period.**
- H. Planning Commission Continuance. The **Planning** Commission may continue the final action ~~on a request for issuance of a demolition or moving permit based on compliance in~~ **accordance with Subsection 7.2.112.06, K, below, and consistent** with the State of Oregon 120-day rule for making a final decision on an application.
- I. Appeals. A decision by the **Planning** Commission to approve, **approve with conditions or deny** ~~disapprove an the~~ application to relocate or demolish an historic resource may be appealed to the **City Council** by an ~~y~~ aggrieved party who appeared orally or in writing, in person or through an attorney at the **Planning** Commission hearing and presented or submitted testimony related to the ~~request~~ **application** under consideration. The appeal shall comply with the requirements in Section 7.3.2. (**Administrative** Procedures).

- J. Alternative Actions. At the time a demolition or moving application is filed the *City* Manager shall review alternatives to demolition or moving with the owner of the resource, including local, state and federal preservation programs.
- K. Additional Requirements. During a period of continuance, the *Planning* Commission may require the property owner to:
1. List the resource for sale with a real estate agent for a period of time to allow for final decision within 120-days. The real estate agent shall advertise the resource in local and state newspapers of general circulation in the area for a minimum of 10 days and over a period of time that allows for a final decision within 120 days.
 2. Give public notice by posting the hearing notice on-site in addition to a "For Sale" sign which shall read: HISTORIC BUILDING TO BE MOVED OR DEMOLISHED - FOR SALE. Lettering on the sign shall be at least one foot in height. The sign shall be provided by the City and be posted *by the applicant* in a prominent and conspicuous place within ten feet of a public street abutting the premises on which the resource is located. The applicant is responsible for ~~assuring that~~ *ensuring* the sign is posted continuously within the time frame specified in ~~Number~~ *Subsection 7.2.112.06, K*, 1, above.
 3. Prepare and make available any information related to the history and sale of the property to all individuals, organizations, and agencies who inquire.
 4. ~~Assure that~~ *Ensure* the owner has not rejected the highest bona fide offer for sale and removal of the resource.
- L. Press Notification. Prior to issuance of a demolition permit, the City Manager shall issue a press release to local or state newspapers of general circulation in the county. The press release shall include, but *is* not limited to, a description of the significance of the resource, the reasons for the proposed *moving or* demolition ~~or removal~~, and possible options for preserving the resource.
- M. Permit Conditions. As a condition for approval of a demolition permit, the *Planning* Commission may:
1. Require photographic documentation, preparation of architectural drawings, and other graphic data or history as it deems necessary to preserve an accurate record of the resource. The historical documentation materials shall be the property of the ~~county~~ *City* or other party determined appropriate by the *Planning* Commission.
 2. Require that specific artifacts, materials, or equipment be protected and saved. The owner may keep all such materials *or donate or sell them to the City or other party determined appropriate by the Planning Commission*. The applicant shall be provided with a list of persons capable of salvaging the resource.

N. Dangerous Building. ~~This Code~~ *Section 7.2.112* shall not be construed to make it unlawful for any person, without prior approval of the *Planning* Commission, to comply with an order by the City Council to remove or demolish ~~any~~ *Designated* ~~Landmark~~ determined by the *City* Council to be dangerous to life, health, or property.

III. STAFF RECOMMENDATION

Staff recommends the proposed responses to the 3 SHPO comments shown above in [quadruple brackets] be included in the Planning Commission's recommendation to the City Council.