

ORDINANCE NO. O-23-10

AN ORDINANCE TO AMEND CHAPTER 24 (CITY ZONING ORDINANCE),
ARTICLE XII, ENTITLED, "PRESERVATION OF HISTORIC RESOURCES,"
SO AS TO PROVIDE REVISIONS TO THE DUTIES OF
THE HISTORIC DISTRICT COMMISSION AND ELIMINATE THE HISTORIC
PRESERVATION ADVISORY COMMITTEE

Text Amendment T-399

BE IT ORDAINED, by the Mayor and Council of the City of Gaithersburg, in public meeting assembled, that Chapter 24, Article XII of the City Code be, and it hereby is, amended to read as follows:

ARTICLE XII. PRESERVATION OF HISTORIC RESOURCES

Sec. 24-223. Purpose.

It is the purpose of this article to: (1) safeguard the heritage of the city by preserving sites, structures, or districts which reflect elements of cultural, social, economic, political, archaeological or architectural history; (2) strengthen the local economy; and (3) promote the preservation and appreciation of those sites, structures, and districts for the education and welfare of the residents of the city.

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 mayor and city council ~~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.

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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~~ mayor and city council.

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Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
Single strikethrough	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by Amendment.</i>
Double boldface strikethrough	<i>Deleted from existing law or the bill by amendment.</i>
* * * *	<i>Existing law unaffected by bill.</i>

~~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.~~

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Sec. 24-225. Historic District Commission

Historic district commission, commission. The mayor and city council shall appoint a commission of seven (7) members plus two (2) alternates 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 demonstrated special interest, 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. At least two members of the commission shall possess professional or academic training in one or more of the above listed fields in accordance with the minimum professional requirements of the United States Department of the Interior for certifying local governments under 36 C.F.R. Part 61.
- (b) 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. Members of the ~~committee~~ commission are eligible for reappointment and any vacancy on the ~~committee~~ commission shall be filled by the appointing authority for the unexpired term of the particular position.

- (c) Members of the historic district commission are appointed by the mayor and confirmed by the city council. Members may be recommended by local organizations to the Mayor for consideration. A councilmember may be appointed as a liaison to the historic district commission. The liaison will serve in non-voting capacity.
- (d) Members of the commission may be removed after public hearing by the city council for inefficiency, neglect of duty or malfeasance in office.
- (e) The commission shall adopt rules and regulations as may be necessary for the proper transaction of its business. Rules and regulations of the commission shall be subject to approval by resolution of the historic district commission.
- (f) Members of the historic district commission shall receive such compensation as deemed appropriate by the city council.

Sec. 24-225.1. 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.

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

(a) ~~The historic district commission, mayor and city council,~~ on its own motion or by petition of either the property owners of record, ~~the historic district commission,~~ 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.

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(c) Prior to the conduct of a public hearing by the mayor and city council on the designation of a historic district or historic site, ~~the historic preservation advisory committee~~ historic district commission shall investigate, research, and submit findings and recommendations to the ~~historic district commission~~ mayor and city council 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~~ mayor and city council on the proposed designation; and
- (2) The city planning commission, after public hearing on the designation, shall make its recommendation, as set forth in Section 24-240 of this Chapter 24 and consistent with the city master plan, to the ~~historic district commission~~ mayor and city council prior to the close of the ~~historic district commission's~~ mayor and city council'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~~ historic district commission, the city planning department, and any other relevant and material matters.

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.~~

Sec. 24-~~227~~228. Historic area work permit; when required

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(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 mayor and city council, in consultation with the historic district commission may shall 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, that will be used by the historic district commission to review applications. In addition, these guidelines may include standards for the demolition and relocation of historic sites-resources, and interpret and decide what activities constitute routine maintenance.

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24-2278.1. Historic area work permit; application procedure.

(a) *Generally.* Applications for issuance of a historic area work permit shall be filed with the city manager, or designee. 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. Notwithstanding any other provision contained in this article, the city manager, or designee, 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, setting, if designated, or site.

~~(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.~~

~~(be) *Review and public meeting.* The historic preservation advisory committee historic district commission shall schedule and conduct a public meeting on the application, giving notice pursuant to subsection (dc) below. The committee commission 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.~~

~~(ce) *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 or designee~~

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.

(de) *Action by historic district commission.*

- (1) The historic district commission may instruct the city manager or designee 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 (c)(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.~~

(ef) ~~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 two years 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.~~

(fg) *Miscellaneous provisions.*

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Sec. 24-2278.2. Historic area work permits; criteria for decision.

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- (2) ~~Design~~ Guidelines for rehabilitation and new construction design for designated sites, structures, and districts adopted by resolution of the mayor and city council 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*.

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Sec 24-227.3. Administrative Approvals

The historic district commission may identify categories of work that may be approved by designated staff from the department of planning and code administration provided that the work conforms with the adopted ~~design~~ guidelines. Staff shall submit the list of approvals to the commission at each historic district commission meeting. ~~The applicant shall provide written notice to owners of the property abutting and confronting the property within two (2) days of filing the request.~~ Notice shall be provided by ordinary mail, being given to property owners within two hundred (200) feet of the property, not less than seven (7) days prior to the review. In addition, notice shall be accomplished by posting an appropriate sign on the site and publication at least once, not less than seven (7) days prior to the review. Applications processed administratively do not need to be scheduled for hearings, unless written comments are received in response to the required written notice during the public comment period.

Sec 24-227.4. Courtesy Reviews

(a) The historic district commission may review and make recommendations to the 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 on a site located within courtesy review areas as stated in the historic preservation master plan element. The courtesy review areas include, but are not limited to, Olde Towne, and the subdivisions of Observatory Heights and Realty Park.

(b) The historic district commission 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 historic district commission 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 ~~design~~ 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.

Sec. 24-2289. ~~Advisory committee~~ Historic district commission recommendations on impact review areas.

(a) The ~~historic preservation advisory committee~~ historic district commission may review and make recommendations to the 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~~ historic district commission 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~~ historic district commission recommendations shall provide, where relevant, analysis and comment upon the following matters:

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(c) The ~~historic preservation advisory committee~~ historic district commission 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~~ mayor and city council and which shall be reflected upon the zoning maps of the city.

Sec. 24-22930. Relocation of utility and cable facilities within historic districts.

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Sec. 24-2304. Demolition by neglect.

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Sec. 24-2310-4.2. ~~Moratorium on alteration or demolition.~~

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Sec. 24-2324.2. ~~Violations and penalties.~~

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Sec. 24-2332.3. 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 the same to the city board of appeals within the time provided by, and

the requirements of, Article VII of this Chapter 24, and thereafter, 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.

~~**Sec. 24-233. (Reserved.)**~~

ADOPTED by the City Council of Gaithersburg, Maryland, this 7th day of September, 2010.

SIDNEY A. KATZ, MAYOR and
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland this 7th day of September, 2010. APPROVED by the Mayor of the City of Gaithersburg, Maryland this 7th day of September, 2010.

SIDNEY A. KATZ, MAYOR

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the 7th day of September, 2010, and the same was APPROVED by the Mayor of the City of Gaithersburg on the 7th day of September, 2010. This Ordinance will become effective on the 27th day of September, 2010.

ANGEL L. JONES, City Manager