

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF LUFKIN, TEXAS, BEING ORDINANCE NO. 3368, BY AMENDING ARTICLE XXI "SUPPLEMENTAL DEVELOPMENT REGULATIONS" TO CREATE A SECTION ENTITLED HISTORIC DISTRICT OVERLAY, CREATING A HISTORIC PRESERVATION COMMISSION, PROVIDING FOR THE DESIGNATION OF A HISTORIC DISTRICT OVERLAY, CREATING THE REQUIREMENTS FOR OBTAINING A CERTIFICATE OF APPROPRIATENESS OR DEMOLITION PERMIT, PROVIDING FOR THE ENFORCEMENT OF THE ORDINANCE AND PENALTIES; REPEALING CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Chapter 211 Texas Local Government Code, the Municipal Zoning Authority, specifically authorizes zoning functions and procedures for municipalities; and

WHEREAS, Chapter 211 Texas Local Government Code, Section 211.005 authorizes the governing body of a municipality to divide the municipality into districts, within which the governing body may regulate the erection, construction, reconstruction, alteration, repair, or use of buildings, other structures, or land and within which zoning regulation must be uniform for each class or kind of building in a district; however, zoning regulations may vary from district to district.

WHEREAS, the City Planning and Zoning Commission of the City of Lufkin, Texas, after due notice and hearing, recommends that the Zoning Ordinance of the City of Lufkin, Texas, being Ordinance 3368 be amended; and

WHEREAS, the City Council of the City of Lufkin, Texas, after receiving such recommendation, caused a notice, stating the date, place, and time thereof, of a public hearing on such proposed Historic District Overlay creation to be published in the Lufkin Daily News, a newspaper published within the City of Lufkin, Texas, such publication being more than fifteen (15) days prior to the date of such hearing which was held in the City Hall in the City of Lufkin, Texas, on the **xx** day of **xxx, 2009**, and

WHEREAS, at such public hearing each person present and interested in such proposed amendments was given an opportunity to be heard by the City Council; and,

WHEREAS, the City Council of the City of Lufkin, Texas, after giving due consideration to the recommendation of the City Planning and Zoning Commission and the statements made and facts brought out at such hearing on such proposed amendments to the zoning Ordinance and creation of the new district, and further, after giving due consideration to the orderly growth and development of the City of Lufkin, Texas, having decided that it is to the best interest of the citizens of the City such change be made.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LUFKIN, TEXAS:

SECTION I. That the Zoning Ordinance of the City of Lufkin, being Ordinance 3368 of the Civil Ordinances of the City of Lufkin as heretofore amended, and as recorded in Volume 40 of

the Civil Ordinances of the City of Lufkin, Texas, be, and is amended by amending Article XXI “Supplemental Development Regulations”, to create a section entitled Historic District Overlay” by adding the following provisions titled Historic District Overlay:

Historic District Overlay

1. General Purpose and Description

The City Council of Lufkin hereby declares that as a matter of public policy the protection, enhancement, and perpetuation of landmarks or districts of historical and cultural importance and significance is necessary to promote the economic, cultural, educational, and general welfare of the public. It is recognized that some properties represent the unique confluence of time and place that shaped the identity of generations of citizens, collectively and individually, and produced significant historic, architectural, and cultural resources that constitute their heritage.

This Ordinance is intended to:

- a. protect, enhance and perpetuate the landmarks and districts which represent distinctive elements of Lufkin’s historic, architectural, and cultural heritage;
- b. foster civic pride in the accomplishments of the past;
- c. protect and enhance Lufkin’s attractiveness to visitors and the support and stimulus to the economy thereby provided;
- d. insure the harmonious, orderly, and efficient growth and development of the city;
- e. promote economic prosperity and welfare of the community by encouraging the most appropriate use of such property within the city;
- f. encourage stabilization, restoration, and improvements of such properties and their values.

To achieve the objectives stated above the Council enacts this Ordinance which will provide for the creation of a Historic District Overlay (HDO) zoning classification, a Historic Preservation Commission, a procedure for designation of a Historic District or Landmark, a procedure for obtaining a Certificate of Appropriateness or Demolition permit, an appeals procedure for Economic Hardship circumstances, a method for addressing Demolition by Neglect and a Penalties section.

In order to define the distinctive areas of an HDO there shall be separate Ordinances required to designate each specific HDO area. Each Ordinance shall identify the designated boundaries, applicable designation criteria, and design standards for the HDO.

Nothing in this Ordinance or in the designation of property as being in a HDO shall affect the present legal use of property. Use classifications, for all property which may be included in a HDO, shall continue to be governed by the general Zoning Ordinance 3368 and the procedures therein. In no case, however, shall any use be permitted which requires the demolition, razing, remodeling, or alteration of any buildings or structures in such a HDO so as to adversely affect the character of the HDO, except upon compliance with the terms of this Ordinance.

An HDO is a zoning overlay which supplements the primary underlying zoning district

classification. The HDO is subject to the regulations of the underlying zoning district, except the Ordinance establishing the HDO may permit additional uses and provide additional regulations for the HDO. In cases of conflict, the regulations in the HDO Ordinance control.

2. Authority to Designate

The City Council may designate and zone certain sites, districts, areas, buildings, and lands in the City as historic landmarks to be protected, enhanced, and preserved in the interest of culture, prosperity, education and the general welfare of the people, and define, amend, and delineate the boundaries thereof. This Ordinance shall not apply to County, State or Federal property.

3. Authority to Initiate a Request for Designation

Any Historic District Overlay Zoning applications, and/or requests may be initiated by the Lufkin Historic Preservation Commission, the owner of the affected property or his/her authorized representative, or the City Manager may direct Staff to initiate such a request on behalf of the City.

4. Historic Preservation Commission

There is hereby created a Historic Preservation Commission (Commission) to be known as the Lufkin Historic Preservation Commission.

- a. The Commission shall consist of seven (7) members to be appointed, to the extent available among the residents of the community, by the City Council from the following categories when reasonably possible:
 - a certified architect, planner, engineer or representative of a design profession
 - a general contractor, licensed real estate broker or appraiser;
 - a representative of the Angelina County Historical Preservation Society;
 - an attorney (not employed by the city or county);
 - an owner, resident or tenant of a landmark or of a property in a historic district;
 - a member of the Planning and Zoning Commission.
- b. All Commission members, regardless of background, shall have a known and demonstrated interest, competence, or knowledge in historic preservation within the City of Lufkin.
- c. The Commission as a whole shall be residents of the City (with the exception of a member representative of the Angelina County Historical Preservation Society), and commit to maintaining attendance at meetings of the Commission.
- d. Commission members shall serve for a term of two years, with the exception that the initial term of four (4) members shall be two (2) years, and three (3) members

shall be three (3) years.

- e. In addition to the seven (7) members appointed by the City, the Historic Preservation Officer and any other person of experience and knowledge designated by the City Council as a special advisor, shall sit on the Commission as ex-officio members. None of the ex-officio members shall have voting power, but shall assist the Commission in its functions as requested. Ex-officio members shall consist of the Main Street Director, Building Official, City Engineer and other staff as appointed.
- f. The Chairman and Vice Chairman of the Commission shall be elected by and from the members of the Commission.
- g. The Commission shall be empowered to:
 - i. Make recommendations for employment of professional consultants as necessary to carry out the duties of the Commission.
 - ii. Prepare rules and procedures as necessary to carry out the business of the Commission, with said rules and procedures being ratified by the City Council.
 - iii. Recommend criteria for the designation of historic, architectural, and cultural landmarks and the delineation of Historic District Overlays, which may be adopted by the City Council.
 - iv. Conduct surveys and maintain an inventory of significant historic, architectural, and cultural landmarks and all properties located in historic district within Lufkin.
 - v. Recommend the designation of resources as landmarks and historic districts.
 - vi. Create committees from among its membership and delegate to these committees responsibilities to carry out the purposes of this Ordinance.
 - vii. Maintain, with the assistance of the Historic Preservation Officer, written records which record all actions taken by the Commission and the reasons for taking such actions.
 - viii. Recommend conferral of recognition upon the owners of landmarks or properties within districts by means of certificates, plaques, or markers.
 - ix. Increase public awareness of the value of historic, cultural, and architectural preservation by developing and participating in an annual public education programs.
 - x. Make recommendations to the City Council concerning the utilization of state, federal, or private funds to promote the preservation of landmarks

and historic districts within the City.

- xi. Approve or disapprove of applications for Certificates of Appropriateness and Certificates of Appropriateness for Demolition or Removal pursuant to this Ordinance.
 - xii. Prepare specific design guidelines for the review of landmarks and districts, with approval by City of Lufkin Council.
 - xiii. Identify cases of demolition by neglect, develop a course of action to address cases of demolition by neglect and initiate remedial actions where necessary.
 - xiv. Recommend the acquisition of a landmark structure by the City government where its preservation is essential to the purpose of this Ordinance and where private preservation is not feasible.
 - xv. Receive, review and make recommendations to the City Council on grant applications funded by the City of Lufkin.
- h. The Commission shall meet as necessary. Special meetings may be called at any time by the Chairman, at the request of City Council or its designee, or on the written request of any three (3) Commission members. All meetings shall be held in conformance with the Texas Open Meetings Act. The first meeting of the Commission shall be no later than thirty (30) days after initial appointment of the Commission by the City Council.
- i. A quorum for the transaction of business shall consist of not less than a majority of the fully authorized membership. A majority of voting members present will constitute an official vote for the mechanics of the Historic Preservation Commission, but a minimum of four (4) affirmative votes will be required to grant a Certificate of Appropriateness for Demolition or Removal, including Certificates of Appropriateness for Demolition or Removal of a Structure of No Economically Viable Use and to Replace with a New Structure.
- j. The Commission shall develop and adopt rules of procedure which shall govern the conduct of its business, subject to the approval of the City Council. Such rules of procedure shall be a matter of public record.
- k. Any member of the Commission having a conflict of interest as provided in Chapter 171 of the Texas Local Government Code shall not be eligible to vote and shall be required to complete and file such documentation (detailing the conflict of interest) with the City Secretary for each and every conflicting item. For the purpose of voting on a Certificate of Appropriateness for Demolition or Removal, the inability of a member to participate in a vote shall not reduce the mandatory requirement of four (4) affirmative votes requirement.

5. Appointment of Historic Preservation Officer

The City Manager shall appoint a qualified City official or staff person to serve as Historic Preservation Officer. This officer shall administer this Ordinance and advise the Commission on matters submitted to it.

In addition to serving as representative of the Commission, the officer is responsible for coordinating City preservation activities with those of state and federal agencies and with local, state, and national nonprofit preservation organizations.

6. Designation of Historic Landmarks

- a. These provisions pertaining to the designation of historic landmarks constitute a part of the comprehensive zoning plan of the City of Lufkin. As used in this Ordinance, days refer to calendar days.
- b. Property owners of proposed historic landmarks shall be notified prior to the Historic Preservation Commission's hearing on the recommended designation. At the Historic Preservation Commission's public hearing, owners, interested parties, and technical experts may present testimony or documentary evidence which will become part of a record regarding the historic, architectural, or cultural importance of the proposed historic landmark.
- c. The Historic Preservation Commission may recommend the designation of a historic landmark if it meets one or more of the criteria for designation of a landmark, as listed in "Criteria for Designation of Historic Landmarks and Historic Districts".
- d. Upon recommendation of the Historic Preservation Commission, the proposed historic landmark shall be submitted to the Planning and Zoning Commission within fifteen (15) days from the date of submittal of designation request to the Historic Preservation Commission. The Planning and Zoning Commission shall give notice and conduct its hearing on the proposed designation within twenty (20) days of receipt of such recommendation from the Historic Preservation Commission. Such hearing shall be in the same manner and according to the same procedures as specifically provided in the general Zoning Ordinance of the City of Lufkin for hearings on zoning matters. The Planning and Zoning Commission shall make its recommendation to the City Council within seven (7) days subsequent to the hearing on the proposed designation.
- e. The City Council shall schedule a hearing of the Historic Preservation Commission's recommendation to be held at the next regularly scheduled meeting of the City Council after receipt of the recommendation of the Planning and Zoning Commission. The City Council shall give notice, follow the publication procedure, hold a hearing, and make its determination in the same manner as provided in the general Zoning Ordinance of the City of Lufkin.

- f. Upon designation of a building, object, site or structure as a historic landmark, the City Council shall cause the designation to be recorded in the Official Public Records of Real Property of Angelina County, the tax records of the City of Lufkin, and the Angelina County Appraisal District as well as the official Zoning maps of the City of Lufkin. All City of Lufkin Zoning maps should indicate the designated landmarks with a mark which distinguishes the Historic Landmark.

7. Designation of Historic Districts

- a. These provisions pertaining to the designation of historic districts constitute a part of the comprehensive Zoning plan of the City of Lufkin.
- b. Property owners within a proposed historic district shall be notified prior to the Commission hearing on the recommended designation. At the Historic Preservation Commission's public hearing, owners, interested parties, and technical experts may present testimony or documentary evidence which will become part of a record regarding the historic, architectural, or cultural importance of the proposed historic district.
- c. The Historic Preservation Commission may recommend the designation of a district if it:
 - i. Contains properties, structures and an environmental setting which meet one or more of the criteria for designation of a landmark as listed in "Criteria for Designation of Historic Landmarks and Historic Districts"; and,
 - ii. Constitutes a distinct section of the City.
- d. Upon recommendation of the Historic Preservation Commission, the proposed historic district shall be submitted to the Planning and Zoning Commission within fifteen (15) days from the date of submittal of designation request to the Historic Preservation Commission. The Planning and Zoning Commission shall give notice and conduct its hearing on the proposed designation within twenty (20) days of receipt of such recommendation from the Historic Preservation Commission. Such hearing shall be in the same manner and according to the same procedures as specifically provided in the general zoning Ordinance of the City of Lufkin. The Planning and Zoning Commission shall make its recommendation to the City Council within seven (7) days subsequent to the hearing on the proposed designation.
- e. The City Council shall schedule a hearing on the Historic Preservation Commission's recommendation to be held at the next regularly scheduled meeting of the City Council after receipt of the recommendation of the Planning and Zoning Commission. The City Council shall give notice, follow the publication procedure, hold a hearing, and make its determination in the same manner as provided in the general zoning Ordinance of the City of Lufkin.

- f. Upon designation of a historic district the City Council shall cause the designated boundaries to be recorded in the Official Public Records of real property of Angelina County, the tax records of the City of Lufkin and the Angelina County Appraisal District as well as the official zoning maps of the City of Lufkin. All zoning maps should indicate the designated historic district by a mark which distinguishes the Historic District designation.

8. Criteria for Designation of Historic Landmarks and Historic Districts

A historic landmark or historic district may be designated if it meets one of the following standards:

- a. Possesses significance in history, architecture, archeology, and culture.
- b. Is associated with events that have made a significant contribution to the broad patterns of local, regional, state, or national history.
- c. Is associated with the lives of persons significant in the City's past.
- d. Embodies the distinctive characteristics of a type, period, or method of construction.
- e. Represents the work of a historic master designer, builder, or craftsman.
- f. Represents an established and familiar visual feature of the City of Lufkin.

9. Certificate of Appropriateness for Alteration or New Construction Affecting Historic Landmarks or Historic Districts

- a. No person shall carry out any exterior construction (including building of new structures), reconstruction, alteration, restoration, rehabilitation, or relocation of any historic landmark or any property within a historic district, nor shall any person make any material change in the light fixtures, signs, sidewalks, fences, steps, paving, plants, trees or other exterior elements visible from a public right-of-way which affect the appearance and cohesiveness of any historic landmark or any property within a historic district without first obtaining a Certificate of Appropriateness if such a Certificate is required.
- b. A Certificate of Appropriateness is required for all structures built prior to 1939 and designated as "Contributing" in a Historic Landmark or in a Historic District. A list of "Contributing" structures is attached as Exhibit "A". A Certificate of Appropriateness is required for all structures built between 1940 and 1959 and designated as "Significant" in a Historic Landmark or Historic District. A list of "Significant" structures is attached as Exhibit "B". A Certificate of Appropriateness is required for all new structures to be built in a Historic District.

- c. A Certificate of Appropriateness is not required for routine maintenance. A list of actions classified as routine maintenance is attached as Exhibit “C”.
- d. In the case of immediate life or safety hazards or situations where there is a danger of a structural collapse due to a catastrophic event, stabilization or hazard mitigation procedures can be considered by the Inspection Services Director without a Certificate of Appropriateness when the owner of the structure notifies the Inspection Services Director within forty-eight (48) hours of the event, excluding the hours of Saturday, Sunday and City holidays. The Inspection Services Director shall notify the Historic Preservation Commission and the Main Street Director when an owner of property in a area with a Historic designation contacts the Inspections Services Director regarding a catastrophic event.

10. Criteria for Approval of a Certificate of Appropriateness

In considering an application for a Certificate of Appropriateness, the Commission shall utilize adopted design guidelines, and *The Secretary of the Interior’s Standards for Rehabilitation of Historic Buildings* attached as Exhibit “D”. Any adopted design guidelines and *The Secretary of the Interior’s Standards for Rehabilitation of Historic Buildings* shall be made available to the property owners of historic landmarks or within historic districts.

- a. Every reasonable effort shall be made to adapt the property in a manner which requires minimal alteration of the building, structure, object, or site and its environment.
- b. The distinguishing original qualities or character of a building, structure, object, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- c. All buildings, structures, objects, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- d. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure, object, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- e. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure, object, or site shall be kept where possible.
- f. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should reflect the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based

on accurate duplications of features, substantiated by historical, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.

- g. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- h. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- i. Contemporary design for alterations and additions to existing properties are acceptable when such alterations and additions (including signs and accessory buildings) do not destroy significant historical, architectural, or cultural material, and such design is compatible with the size, scale, color, material, and character of the property, neighborhood, or environment.
- j. Whenever possible, new additions or alterations to buildings, structures, objects, or sites shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the building, structure, object, or site would be unimpaired.
- k. Structures that are “Contributing” (1939 or before) shall not be eligible for any Certificate of Appropriateness for Demolition or Removal unless a Civil Engineer certifies that the building cannot be utilized in any manner due to safety hazards caused by materials, construction or design incorporated in the structure. In the case of a request for a Certificate of Appropriateness for Demolition or Removal, demolition or removal is not necessitated by a failure to adequately maintain a structure.
- l. Signs shall be limited to one (1) per building front. Neon lighting and electronic messages (screens, boards, etc.) are not permitted. Materials should be consistent with the period in which the structure was built.

11. Certificate of Appropriateness Application Procedure

- a. Prior to the commencement of any work requiring a Certificate of Appropriateness, the owner shall file an application for the Certificate with the Historic Preservation Commission. If requested, the Historic Preservation Officer shall assist the owner in preparation and completion of the application. The application shall be filed on the forms provided by the City and contain:
 - i. Name, address, telephone number of applicant, detailed description of proposed work.
 - ii. Site plans for new construction.
 - iii. Location and photograph of the property and adjacent properties and historical photographs (should any be available personally or in the office).

- iv. Elevation drawings and descriptions of the proposed changes.
- v. Samples of materials to be used on all surfaces, with finishes shown. In particular; samples and information on materials should clearly detail where materials used differ from existing or original materials.
- vi. Recommendations of a Structural Engineer regarding the feasibility and impact of the work if the property has common party walls, along with documentation that the adjoining owner of a party wall has been notified of the proposed work and the request for a Certificate of Appropriateness.
- vii. If the proposal includes signs or lettering, a scaled drawing (at a scale of 1 inch : 20 feet or larger) showing the type of lettering to be used, all dimensions and colors, construction materials, a description of materials to be used, method of illumination (if any), and a plan showing the sign's location on the property.
- viii. In the cases of requests for either a Certificate of Appropriateness for Demolition or Removal and/or Certificate of Appropriateness for Demolition or Removal of a Structure to Replace with a New Structure the application must include the following:

Any conditions proposed to be placed voluntarily on the new structure proposed for the property; complete architectural drawings of the new structure; a guarantee agreement between the owner and the city that demonstrates the owner's intent and financial ability to construct the new structure. The guarantee agreement must: contain a covenant to construct the proposed structure by a specific date in accordance with architectural drawings approved by the City through the Certificate of Appropriateness process; require the owner to provide proof of financial capability for, and plans of, construction for a new structure acceptable to the Historic Preservation Commission to ensure construction of the new structure and that the agreement be approved as to form by the city attorney. Additionally, the Certificate of Appropriateness for Demolition or Removal and/or Certificate of Appropriateness for Demolition or Removal of a Structure to Replace with a New Structure will only be issued with an approved building permit for a replacement structure (or a site plan noting the future configuration for the site if there is no replacement structure).

- ix. Applications for a Certificate of Appropriateness for Demolition or Removal of a Structure of No Economically Viable Use must also include the following:
 - The past and current uses of the structure and property;
 - The name of the owner and if the owner is a legal entity, the type of entity and states in which it is registered;

- The date and price of purchase or other acquisition of the structure and property, and the party from whom acquired, and the owner's current basis in the property;
- The relationship, if any, between the owner and the party from whom the structure and property were acquired (if one (1) or both parties to the transaction were legal entities, any relationships between the officers and the Board of Directors of the entities must be specified);
- All appraisals obtained by the owner and prospective purchasers within the previous two (2) years in connection with the potential or actual purchase, financing, or ownership of the structure and property;
- All listings of the structure and property for sale or rent within the previous two years, prices asked and offers received;
- A mortgage history of the property for the prior five (5) year period, including the principal balances and interest rates on the mortgages and the annual debt services on the structure and property;
- A profit and loss statement for the property and structure containing the annual gross income for the previous two (2) years; itemized expenses (including operating and maintenance cost) for the previous two (2) years, including proof that adequate and competent management procedures were followed; the annual cash flow for the previous two years; and proof that the owner has made reasonable efforts to obtain a reasonable rate of return on the owner's investment and labor;
- All capital expenditures during the current ownership;
- All revenue received in the form of earnest money, fees for due diligence entry costs and usage;
- Records depicting the current conditions of the structure and property including drawings, pictures or written descriptions;
- A study of restoration of the structure or property, performed by a licensed architect, engineer or financial analyst, analyzing the physical feasibility (including architectural and engineering analyses) and financial feasibility (including pro forma profit and loss statements for a ten (10) year period, taking into consideration redevelopment options and all incentives available) of adaptive use and restoration of the structure and property;

- Any consideration given by the owner to profitable adaptive uses for the structure and property;
 - Construction plans for any proposed development or adaptive reuse, including site plans, floor plans and elevations;
 - The assessed value of the structure and property according to the most recent tax assessments;
 - The amount of real estate taxes on the structure and property for the previous two (2) years;
 - The current fair market value of the structure and property as determined by an independent licensed appraiser;
 - Any conditions proposed to be placed voluntarily on new development that would mitigate the loss of the structure;
 - Any other evidence that shows that the affirmative obligation to maintain the structure or property makes it impossible to realize a reasonable return.
- x. Any further information which the Historic Preservation Commission may find necessary in order to visualize the proposed work.
- b. No building permit shall be issued for such proposed work until a Certificate of Appropriateness has first been issued by the Historic Preservation Commission. The Certificate of Appropriateness required by this act shall be in addition to and not in lieu of any building permit that may be required by any other Ordinance of the City of Lufkin.
- c. During the application process, if the Historic Preservation Officer should determine that the applicant is seeking a Certificate of Appropriateness to authorize work that is minor repairs the HPO shall notify the owner in writing that the Certificate of Appropriateness is not required. Any interested party may appeal the decision of the Historic Preservation Officer to the Historic Preservation Commission.
- d. The Historic Preservation Commission shall review the application at a meeting held within fifteen (15) days from the date the application is received, at which time an opportunity will be provided for the applicant and any interested parties to be heard. The Historic Preservation Commission shall either: approve, deny or approve with modifications the certificate within fifteen (15) days after the review meeting. In the event the Commission does not act within thirty (30) days of the receipt of the application, a building permit may be granted.
- e. All decisions of the Historic Preservation Commission shall be in writing. The Commission's decision shall state in writing its findings pertaining to the approval, denial, or modification of the application. A copy shall be sent to the applicant.

Additional copies shall be filed as part of the public record for that property and dispersed to appropriate departments.

- f. An applicant for a Certificate of Appropriateness dissatisfied with the action of the Historic Preservation Commission relating to the issuance or denial of a Certificate of Appropriateness shall have the right to appeal to the City Council within sixty (60) days after receipt of notification of such action. In considering the appeal, the City Council shall give notice, follow publication procedure, hold hearings, and make its decision in the same manner as provided in the general zoning Ordinance of the city.

12. Certificate of Appropriateness for Demolition or Removal requirements

- a. A permit for the demolition or removal of a historic landmark or property within a historic district, including secondary buildings, shall not be granted without the Historic Preservation Commission's review of a completed application for a Certificate of Appropriateness for Demolition or Removal, as provided for in this section and in the above sections titled Certificate of Appropriateness for Alteration or New Construction Affecting Historic Landmarks or Historic Districts, Criteria for Approval of a Certificate of Appropriateness and Certificate of Appropriateness Application Procedure in this Ordinance.
- b. In the case of a request for a Certificate of Appropriateness for Demolition or Removal to Replace with a New Structure, the Historic Preservation Commission shall deny the application unless it finds that the new structure is more appropriate and compatible with the historic overlay district than the structure to be demolished or removed and that the owner has the financial ability to build the new structure. The Commission must first approve the proposed replacement plans for a Certificate of Appropriateness and the guarantee agreement to construct any proposed new structure before the Historic Preservation Commission may consider the application for a new Certificate of Appropriateness for Demolition or Removal.
- c. In the case of a request for a Certificate for Appropriateness for Demolition or Removal of a Structure of No Economically Viable Use, the Historic Preservation Commission shall deny the application unless it finds that the structure is incapable of earning a reasonable economic return unless the demolition or removal is allowed (a reasonable economic return does not have to be the most profitable return possible), that the structure cannot be adapted for any other use (whether by the owner or by a purchaser) which would result in a reasonable economic return and that the owner has failed during the last two years to find an entity (whether developer, financier, purchasers, tenant, preservation entity or foundation) that would be interested in acquiring the property and preserving it while enabling the owner to realize a situation whereby a reasonable economic return resulted.

13. Economic Hardship Application Procedure

- a. After receiving written notification from the Historic Preservation Commission of

the denial of a Certificate of Appropriateness, an applicant may commence the hardship process should the owner find there are economic conditions that warrant an application. No building permit or demolition permit shall be issued unless the Historic Preservation Commission makes a finding that an economic hardship exists.

- b. When a claim of economic hardship is made due to the effect of this Ordinance, the owner must provide, in writing, proof that:
 - i. the property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;
 - ii. the property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return; and
 - iii. efforts to find a purchaser interested in acquiring the property and preserving it have failed.
- c. The applicant shall consult in good faith with the Historic Preservation Commission, local preservation groups and interested parties in a diligent effort to seek an alternative that will result in preservation of the property. Such efforts must be shown to the Historic Preservation Commission in writing with the economic hardship application.
- d. The Historic Preservation Commission shall hold a public hearing on the application within fifteen (15) days from the date the application is received by the historic preservation officer. Following the hearing, the Historic Preservation Commission has fifteen (15) days in which to prepare a written recommendation. In the event that the Historic Preservation Commission does not act within thirty (30) days of the receipt of the application, a permit may be granted.
- e. All decisions of the Historic Preservation Commission shall be in writing. A copy shall be sent to the applicant by regular and registered mail and a copy filed with the City Clerk's office for public inspection. The Historic Preservation Commission's decision shall state in writing the reasons for granting or denying the economic hardship application.
- f. An applicant, for a Certificate of Appropriateness, dissatisfied with the action of the Historic Preservation Commission relating to the issuance or denial of a Certificate of Appropriateness shall have the right to appeal to the City Council within sixty (60) days after receipt of notification of such action. The City Council shall give notice, follow publication procedure, hold hearings, and make its decision in the same manner as provided in the general zoning Ordinance of the city.

14. Enforcement

All work performed pursuant to a Certificate of Appropriateness issued under this

Ordinance shall conform to any requirements included therein. It shall be the duty of the City to inspect periodically any such work to assure compliance. In the event work is not being performed in accordance with the Certificate of Appropriateness or upon notification of such fact by the Historic Preservation Commission and verification by the historic preservation officer, the designated employee shall issue a stop work order and all work shall immediately cease. No further work shall be undertaken on the project as long as a stop work order is in effect.

15. Ordinary Maintenance

Nothing in this Ordinance shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of a landmark or property within a historic district which does not involve a change in design, material, or outward appearance. In-kind replacement or repair is included in this definition of ordinary maintenance. A list of actions classified as routine maintenance is attached as Exhibit "C".

16. Demolition by Neglect

a. State of Demolition by Neglect

No owner or person with an interest in real property designated as a landmark or included within a historic district shall permit the property to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would, in the judgment of the Historic Preservation Commission, produce a detrimental effect upon the character of any structure or the life and character of the property or structure(s) itself. Owners of structures that are designated as historic landmarks or are Contributing or Significant structures within the historic districts and HDO have an affirmative obligation to maintain their structures in order to prevent deterioration of their structure.

This type of deterioration includes but is not limited to:

1. Deterioration of exterior walls or other vertical supports;
2. Deterioration of roof or other horizontal members;
3. Deterioration of exterior chimneys;
4. Deterioration or crumbling of exterior stucco or mortar;
5. Ineffective waterproofing of exterior walls, roof, or foundations, including broken windows or doors.
6. Deterioration of any feature so as to create a hazardous condition which could lead to the claim that demolition is necessary for the public safety. This shall include deterioration of features attached to the original structures such as advertising materials, drainage structures and decorative items.

b. Demolition by Neglect Procedure

1. Upon notification to the Historic Preservation Commission of such a state of disrepair, the Historic Preservation Officer shall meet with the owner (or the property owner's agent with control of the structure) to inspect the structure

(for areas not readily visible from the right of way) and to discuss the resources available for financing any necessary repairs. After the meeting, the Historic Preservation Officer shall prepare a report for the Historic Preservation Commission on the condition of the structure, the repairs needed to maintain and stabilize the structure, any resources available for financing the repairs and the amount of time needed to complete the repairs. This report shall be completed within fifteen (15) days of the site visit and shall be sent to the owner and the Commission fifteen (15) days prior to a Commission meeting set to discuss the case.

2. Upon receipt, review and discussion of the report, (and not less than 30 calendar days from the date of the site visit), the Commission shall hold a public hearing to determine whether or not to certify the property as a Demolition by Neglect case. At the hearing the owner may provide evidence regarding the alleged Demolition by Neglect and the Commission may take evidence from interested parties.
3. If, after a hearing before the Historic Preservation Commission, the Commission has determined that the deterioration has produced a detrimental effect as described in 16(a) of this section the Historic Preservation Commission shall notify the owner, in writing, of the condition of the structure, the repairs needed to maintain and stabilize the structure, the resources available to finance repairs, and the amount of time the owner shall be permitted for accomplishing work which will alleviate the condition of Demolition by Neglect.
4. The owner shall cure the deterioration by restoration or other appropriate actions within the period of time stated by the Commission.
5. The owner must comply with all requirements of requesting a Certificate of Appropriateness from the Commission prior to commencing work. This request may occur at the hearing described in 16(b)(1) though the request must include all items regularly required for an application for a Certificate of Appropriateness. Failure of the owner to cure the deterioration within the time specified by the Commission shall cause the structure to be ineligible for grants and incentives provided by the City to owners for the upcoming tax years until the condition is corrected. The owner is also subject to the penalties described in section 18, Penalties, below.

Where buildings are adversely affected and deterioration or neglect creates an unsafe situation the city may condemn the historic property and take it by the power of eminent domain for rehabilitation or reuse by the city or other disposition with appropriate preservation restrictions in order to promote the historic preservation purposes of this Ordinance in order to maintain the structure and protect it from demolition by neglect.

17. Historic Preservation Fund

- a. The Department of Planning and Zoning, in cooperation with the Historic Preservation Commission, shall develop appropriate funding structures and shall administer the historic preservation fund. The fund is composed of the following funds:
 1. Outside funding (other than the city general funds or capital funds), such as

grants and donations, made to the City for the purpose of historic preservation and funding partnerships with community organizations;

2. Damages recovered pursuant to Texas Local Government Code Section 315.006 from persons who illegally demolish or adversely affect historic structures.

b. Outside funding may be used to finance the following activities on the exterior of a structure:

1. Necessary repairs in demolition by neglect cases;
2. Full or partial restoration of low-income residential and nonresidential structures;
3. Full or partial restoration of publicly owned historic structures;
4. Acquisition of historic structures, places or areas through gift or purchase;
5. Public education of the benefits of historic preservation or the regulations governing historic overlay districts; and
6. Identification and cataloging of structures, places, areas, and districts of historical, cultural or architectural value along with factual verification of their significance.

c. Damages recovered pursuant to Texas Local Government Code Section 315.006 must be used only for the following purposes:

1. Construction, using as many of the original materials as possible, of a structure that is a reasonable facsimile of a demolished historic structure;
2. Restoration, using as many of the original materials as possible, of the historic structure; and
3. Restoration of another historic structure.

18. Penalties

Failure to comply with any of the provisions of this Ordinance after written notice shall be deemed a violation and the violator shall be liable for a misdemeanor charge, and be subject to a fine of not more than one thousand dollars (\$1000) for each day the violation continues.

Any person who adversely affects or demolishes a structure on property (subject to the pending designation or) in a HDO in violation of this section is liable pursuant to Texas Local Government Code Section 315.006 for damages to restore or replicate, using as many of the original materials as possible, the structure to its appearance and setting prior to the violation.

No pending designation of Certificates of Appropriateness will be issued on such a site except to restore or replicate the structure. When these restrictions become applicable to a site the Historic Preservation Office shall cause to be filed a verified notice in the County Deed records and these restrictions shall be binding on future owners of the property. These restrictions are in addition to any fines imposed. Prosecution in

municipal court for an offense under this section does not prevent the use of other enforcement remedies or procedures provided by other city Ordinances or state or federal laws applicable to the person charged with or the conduct involved in the offense.

19. Severability

If any section, subsection, paragraph, sentence, clause, phrase or word of this Ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, such holding shall not affect the validity of the remaining portion of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions despite such invalidity or unconstitutionality.

SECTION II. That all Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

SECTION III. The effective date shall be the approval date of the Second and Final Reading.

PASSED AND APPROVED on First Reading by the City Council of the City of Lufkin, Texas, at its regular meeting this the xx day of xxxxx, 2009.

Jack Gorden, Mayor
City of Lufkin

ATTEST:

Renee Thompson, City Secretary
City of Lufkin

PASSED AND APPROVED on Second and Final Reading by the City Council of the City of Lufkin, Texas, at its regular meeting this the xx day of xxxxxxx, 2009.

Jack Gorden, Mayor

ATTEST:

Renee Thompson, City Secretary
City of Lufkin

APPROVED:

Robert L. Flourney, City Attorney
City of Lufkin

Exhibit A

Building Number	Approximate Build Date	Contributing/ Significant	County Appraisal Office (Date)	R Numbers
1	1953	Significant		R42852
2	1950	Significant		R42624

Exhibit B

Building Number	Approximate Build Date	Contributing/ Significant	County Appraisal Office (Date)	R Numbers
1				R42562
2	1910's	Contributing		R42562
3	1920's	Contributing		R42625
4	1900	Contributing		R42692
5	N/A			R42691

6	N/A		R42687
7	1910-1920's	Contributing	R42849
8	1920's	Contributing	R42844
9	1920's	Contributing	R71419
10	1910-1920's	Contributing	R42838
11			R42939
12			R94005
13	N/A		R72565
14	N/A		R71478
15	N/A		R42947
16			R42945
17			R42942
18	N/A		R42948
19			R42949
20	1936	Contributing	R42950
21			R42712
22	1924	Contributing	R42705
23	1908	Contributing	R42723
24	N/A		R42723
25	1900	Contributing	R42724
26	1901	Contributing	R42725
27	1920's	Contributing	R42726
28	1901	Contributing	R42726
29	1908-1915	Contributing	R42727
30	1904-1908	Contributing	R42730
32			R42733
33	1915	Contributing	R42736
33	1920's	Contributing	R42736
33	1924	Contributing	R42736
34	1915	Contributing	R42574
35	1915	Contributing	R42583
36			R42584
37	1908	Contributing	R42584
38			R42587
39			R42589
40	1890-1900	Contributing	R42589
41	1904	Contributing	R42595
42	1900	Contributing	R42593
43			R42579
44			R42599
45	1910-1920	Contributing	R42600
46	1930's	Contributing	R42600
47	1900	Contributing	R42602
48	1916	Contributing	R42635

49	1900-1910	Contributing	R42633
50	N/A		R42631
51	1904	Contributing	R42631
52	1911	Contributing	R42629
53	1904	Contributing	R42628
54	1924	Contributing	R42740
55	FIRE		R42739
56	1908	Contributing	R42744
57	1904	Contributing	R42745
58	1904-1908	Contributing	R42746
59	1908	Contributing	R42748
60	N/A		R42748
61	1920's	Contributing	R42750
62	N/A		R97388
63			R91387
64			R42753
65	1920's	Contributing	R42770
66	1910	Contributing	R52135
67	1925-35	Contributing	R42135
68	1930's	Contributing	R82134
69			R42757
70			R42867
71	N/A		R42853
72	1908	Contributing	R42854
73	1904	Contributing	R42857
74	N/A		R42858
75			R42858
76			R42860
77	1920's	Contributing	R42861
78			R42863
79			R42864
80			R42955
81			R42960
82	1929	Contributing	R42961
82			R42961
83			R42964
84			R42965
85			R42971
86			R42972
87			R42887
88			R42891
89			R42783
90	1922	Contributing	R42643
91	1910-1925	Contributing	R42641

92				R42639
93	1922	Contributing		R42637
94				R42654
95				R42653
96				R95891
97				R42810
98				R42812
99				R42897
100				R42900

Exhibit C

Routine maintenance and ordinary repair work (and work listed below that is not visible from right-of-way) includes:

- a. The restoration or repair of original architectural elements using the same material and design as the original when the roof is not viewable from the public right of way;
- b. Re-roofing, using the same type and color of material but no change in roofline or structure;

- c. The process of cleaning (including but not limited to low pressure water blasting and stripping, but excluding sandblasting and high-pressure water blasting);
- d. The installation of gutters and downspouts of a color that matches or complements the dominant trim or roof color;
- e. The installation of a chimney located on an accessory building, or on the rear 50 percent of a main building and not part of the corner side façade;
- f. Skylights, solar panels and air-conditioned units when placed in non-character-defining facades or not visible from the front façade; include the location of proposed skylight or air-conditioned unit, list of materials and colors, sample brochure, catalog or manufacturer of skylight or air-conditioned unit;
- g. The installation of window screens and door screens;
- h. Landscape materials, including vegetation, irrigation, and xeriscaping in the front, rear, side yards, and parkways;
- i. Replacement fencing on the rear and side yards; include the location, type, material and color of proposed fencing the complies with all city Ordinances;
- j. Security coverings for windows and doors; include photographs showing the location and type of proposed security grill including material and color;
- k. Exterior accessibility ramps when placed in non-character-defining facades; include the location of proposed accessibility ramp and list of materials and color;
- l. Replacement of garage or household exterior doors that match the original doors; include sample of door from brochure, catalog or manufacturer;
- m. Walkways, driveways, and aprons; include location and materials;
- n. Placement of fire escapes when placed in non-character-defining facades and where allowed by other city Ordinances;
- o. Installation of outdoor lighting fixtures and security fixtures when such elements compliment the design context of the structure;
- p. Painting if the color is not changed;
- q. Painting of previously painted surfaces other than brick or any type of stone;

Appendix D

SECRETARY OF INTERIOR STANDARDS FOR REHABILITATION

- 1. A property will be used as it was historically or be given a new use that requires minimal change to it's distinctive materials, features, spaces, and spatial relationships.

2. The historical character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.
6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be sustained by documentary and physical evidence.
7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion and massing to protect the integrity of the property and its environment.
10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.