

(Motion was made by _____, seconded by _____, and passed by a vote of _____ to _____, that the following ordinance be passed.)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS ESTABLISHING A HISTORIC PRESERVATION DISTRICT ZONING CLASSIFICATION AND DESIGNATING AND RE-ZONING CERTAIN PROPERTY FROM ITS CURRENT ZONING CLASSIFICATION TO THE ZONING CLASSIFICATION OF HISTORICAL OVERLAY DISTRICT; DIRECTING A CHANGE ACCORDINGLY IN THE OFFICIAL ZONING MAP OF THE CITY; ESTABLISHING DESIGN GUIDELINES FOR RESIDENTIAL AND COMMERCIAL STRUCTURES WITHIN THE HISTORIC PRESERVATION DISTRICT OR PROPERTY DESIGNATED AS A HISTORIC LANDMARK; ESTABLISHING A HISTORIC PRESERVATION COMMISSION; THE DESIGNATION OF HISTORIC LANDMARKS, AND THE DESIGNATION OF HISTORIC PRESERVATION DISTRICTS; PROVIDING PROCEDURES FOR THE CONSTRUCTION, RECONSTRUCTION, ALTERATION, RESTORATION REHABILITATION OR RELOCATION OF IMPROVEMENTS LOCATED IN A HISTORIC PRESERVATION DISTRICT OR ON PROPERTY DESIGNATED AS A HISTORIC LANDMARK; PROVIDING REQUIREMENTS FOR THE DEMOLITION OF IMPROVEMENTS WITHIN A HISTORIC PRESERVATION DISTRICT OR HISTORICAL LANDMARK; ESTABLISHING ENFORCEMENT PROVISIONS; PROVIDING CRIMINAL PENALTIES OF UP TO \$500 FOR VIOLATING THE ORDINANCE; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND EFFECTIVE DATE.

WHEREAS, Chapter 211 of the TEXAS LOCAL GOVERNMENT CODE, the Municipal Zoning Authority, specifically authorizes zoning functions and procedures for municipalities; and

WHEREAS, Chapter 211 of the 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; and

WHEREAS, the City of Montgomery, Texas has an existing number of properties

within its corporate boundaries with historical and cultural importance; and

WHEREAS, it is recognized that the City of Montgomery, Texas represents the unique influence 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; and

WHEREAS, the City Council of the City of Montgomery, Texas desires to protect and preserve the significant historic, architectural, and cultural resources existing in the City as such preservation activities will promote the health, safety, prosperity, education, and general welfare of the citizens residing in and visiting the City of Montgomery; and

WHEREAS, the matter was referred to the City of Montgomery Planning and Zoning Commission for consideration and recommendation, and the Planning and Zoning Commission, after due notice and public hearing, did consider and make a recommendation on the adoption of this ordinance and the zoning change; and

WHEREAS, the City Secretary caused to be issued and published the notices of public hearing required by the City of Montgomery Zoning Ordinance (the “Zoning Ordinance”) and laws of the State of Texas applicable thereto; and

WHEREAS, the City Council, pursuant to such notices, held its public hearing and heard all persons wishing to be heard both for and against the adoption of this ordinance and the change in the zoning classification of the affected property on _____ [date] _____; and

WHEREAS, the City Council, after determining that all legal requirements of notice and hearing have been met, and after considering the recommendations of the Planning and Zoning Commission that the requested ordinance be adopted and the zoning change be approved, is of the opinion and finds that such change would not be detrimental to the public health, safety, or general welfare, and will promote the best and most orderly development of the properties affected thereby, and to be affected thereby, in the City of Montgomery, Texas, and as well, the owners and occupants thereof, and the City generally;

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

That the following Historic Preservation Ordinance is hereby adopted as part of the Zoning Ordinance, pursuant to Chapter 211 OF THE TEXAS LOCAL GOVERNMENT CODE.

SECTION 1. Purpose

The City Council of the City of Montgomery, Texas (hereinafter referred to as the “City”) 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 the City represents 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 act is intended to:

- (1) protect and enhance the landmarks and districts which represent distinctive elements of the City's historic, architectural, and cultural heritage;
- (2) foster civic pride in the accomplishments of the past;
- (3) protect and enhance the City's attractiveness to visitors and the support and stimulus to the economy thereby provided;
- (4) insure the harmonious, orderly, and efficient growth and development of the City;
- (5) promote economic prosperity and welfare of the community by encouraging the most appropriate use of such property within the City;
- (6) encourage stabilization, preservation, restoration, and improvements of such properties and their values.

SECTION 2. Definitions.

Demolition. An act or process which destroys a site or structure in its entirety, or which destroys a part of a site or structure and permanently impairs its structural, historic or architectural integrity.

Design guidelines for the City of Montgomery. Written guidelines adopted by the City, as a reference and guide to provide information on appropriate methods for new construction of buildings within the historic preservation district and rehabilitation or restoration of historic properties. The design guidelines shall remain on file with the City Secretary.

Exterior architectural feature. The architectural style, design, general arrangement and components of all of the outer surfaces of a building or structure, as distinguished from the interior surfaces enclosed by such outer surfaces. Exterior architectural features shall include, by way of example but not by limitation, the kind, color, surface texture of the building material and the type and style of all windows, doors, lights, signs and other fixtures appurtenant to such building or structure.

Historic Preservation District. An area of the City designated by the City Council under subsection _____ of this article, as having definable geographic boundaries, a significant concentration, linkage or continuity of sites, buildings, or structures united historically or aesthetically by plan, appearance, or physical development. The designation "historic preservation district" recognizes that the component historic buildings, structures,

accessory buildings, fences, or other appurtenances of the district are of basic and vital importance for the preservation of culture and neighborhoods and economic development and promotion of tourism. The initial Historic Preservation District shall consist of the area shown on the attached map and the map shall remain on file with the City Secretary.

Historic Landmark. An individual property designated by the City Council under subsection _____ of this article, as having outstanding historical and cultural significance in the nation, region, or community. The designation “historic landmark” recognizes that the historic place, or the building(s), structure(s), accessory building(s), fences, or other appurtenances at the place are of basic and vital importance for the preservation of culture and neighborhoods and economic development and promotion of tourism. The initial Historic Landmarks shall consist of the tracts or parcels of land and existing buildings or structures located at the physical addresses shown on the list attached and shown on the attached map. For historical landmark buildings or structures located on a tract or parcel of land exceeding 9000 square feet in area, only the buildings or structures and a twenty-five (25) feet buffer around said buildings or structures shall be subject to the provisions of this ordinance. Said list and map shall remain on file with the City Secretary and the Montgomery County Clerk’s office.

Ordinary Maintenance. Repairs and other work necessary for the upkeep of buildings and other structures that may include but is not limited to minor building material replacement, cleaning, caulking, painting, etc. Ordinary maintenance does not require a building permit.

Nonconforming Structures. Commercial, residential, and/or institutional buildings or other structures existing within a Historic Preservation District but not possessing the character nor the designation of an official Historic Landmark.

Planning and Zoning Approval. An indication on the building permit evidencing the approval of the Planning and Zoning Commission, signed and dated by the chairman of the commission, for the installation, construction, alteration, change, restoration, removal, or demolition of an exterior architectural feature resource or other significant appurtenance of any historic landmark or of any building or structure located within the historic preservation district to be issued in cases further defined in this article, where approval for the same is required.

Planning and Zoning Commission. The Planning and Zoning Commission of the City of Montgomery, Texas (hereinafter may be referred to as the “Commission”) formed by City Council ordinance and appointment.

SECTION 3. Designation of Historic Landmarks

- (a) These provisions pertaining to the designation of historic landmarks both inside and outside of the historic preservation district constitutes a part of the comprehensive zoning plan of the City of Montgomery.
- (b) The City Council may, from time to time, following recommendation either for or against such designation by the Planning and Zoning Commission, designate certain sites and/or structures in the City as Historic Landmarks, and define, amend, or

eliminate the boundaries of designation. Such sites shall bear the words “Historic Landmark” in their zoning designation. Such designation and the requirement thereof shall be in addition to any other zoning district designation or requirement established in the City’s zoning ordinance and in this article. All zoning maps shall reflect the Historic Landmark by the letters “HL” as a suffix to the use designated.

- (c) Property owners of proposed historic landmarks shall be notified by certified mail no less than fifteen (15) calendar days prior to the Planning and Zoning Commission hearing on the recommended designation. At the 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.
- (d) The proposed historic landmark shall be submitted to the Planning and Zoning Commission at the earliest available meeting and no later than thirty (30) days from the date of the designation request. The Commission shall give notice and conduct its hearing on the proposed designation at the earliest possible meeting and within forty-five (45) days of receipt of a proposed landmark designation. 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 Montgomery. The Commission shall make its recommendation to the City Council within forty-five (45) days subsequent to the hearing on the proposed designation.
- (e) The City Council shall schedule a hearing of the Planning and Zoning Commission’s recommendation to be held within forty-five (45) days of receipt of the recommendation of the Commission. The City Council shall give notice, follow the publication procedure, hold required hearings, and make its determination in the same manner as provided in the general zoning ordinance of the City of Montgomery.
- (f) Upon designation of a historic landmark, the City Council shall cause the designated site(s)/structure(s) to be recorded on the official zoning map.

SECTION 4. Designation of Historic Preservation District(s)

- (a) These provisions pertaining to the designation of historic preservation districts constitute a part of the comprehensive zoning plan of the City of Montgomery.
- (b) The City Council may, from time to time, following recommendation either for or against such designation by the Planning and Zoning Commission, designate certain areas in the City as Historic Preservation Districts, and define, amend, or eliminate the boundaries of designation. Such districts shall bear the words “Historic Overlay” in their zoning designation. Such designation and the requirements thereof shall be in addition to any other zoning district designation or requirement established in the City’s zoning ordinance and in this article. All zoning maps shall reflect the Historic Preservation District by the letters “HO” as a suffix to the use designated. Changes to the same may be initiated by any person by request submitted to the Planning and Zoning Commission.

- (c) Property owners within a proposed historic preservation district shall be notified by certified mail no less than fifteen (15) days prior to the Planning and Zoning Commission hearing on the recommended designation. At the 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 preservation district.
- (d) The proposed addition of or modification to a historic preservation district shall be submitted to the Planning and Zoning Commission at the earliest available meeting and no later than thirty (30) days from the date of the designation request. The Commission shall give notice and conduct its hearing on the proposed designation at the earliest possible meeting and within forty-five (45) days of receipt of a proposed landmark designation. 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 Montgomery. The Zoning Commission shall make its recommendation to the City Council within forty-five (45) days subsequent to the hearing on the proposed designation.
- (e) The City Council shall schedule a hearing of the Planning and Zoning Commission's recommendation to be held within forty-five (45) days of receipt of the recommendation of the Commission. The City Council shall give notice, follow the publication procedure, hold required hearings, and make its determination in the same manner as provided in the general zoning ordinance of the City of Montgomery.
- (f) Upon designation of a historic preservation district, the City Council shall cause the designated district to be recorded on the official zoning map.

SECTION 5. Criteria for Designation of Historic Landmarks and Districts

- (a) Historic Landmarks are sites, structures, or features that possess significance in history, architecture, military, political, economic, scientific, archeology, culture or other value. A Historic Landmark may be designated if it exhibits two or more of the following characteristics:
 - (i) Represents an established and familiar visual feature of the City of Montgomery
 - (ii) Is believed to be of basic and vital importance for preservation of culture, neighborhoods and/or economic development
 - (iii) Is associated with events that have made a contribution to the patterns of local, regional, state and/or national history
 - (iv) Is associated with events that are significant to our past
 - (v) Is associated with an individual or group having a profound influence on the history of Montgomery
 - (vi) Is a prototype of, or an outstanding example of a period, style, architectural movement or construction
- (b) Historic Preservation Districts may be designated if the properties within the proposed district

contain a density of established sites, structures, or features that possess significance in history, architecture, military, political, economic, scientific, archeology, culture or other value. A Historic Preservation District may be designated if the proposed district exhibits a density of properties with the following characteristics:

- (i) Represents an established and familiar visual feature of the City of Montgomery
- (ii) Is believed to be of basic and vital importance for preservation of culture, neighborhoods and/or economic development
- (iii) Is associated with events that have made a contribution to the patterns of local, regional, state and/or national history
- (iv) Is associated with events that are significant to our past
- (v) Is associated with an individual or group having a profound influence on the history of Montgomery
- (vi) Is a prototype of, or an outstanding example of a period, style, architectural movement or construction

SECTION 6. Approval for Alteration or New Construction Within Historic Preservation Districts or Affecting Historic Landmarks

No person shall carry out any exterior construction, reconstruction, alteration, restoration, rehabilitation, demolition, or relocation of any historic landmark or any property within a historic preservation district, nor shall any person make any material change to other exterior elements visible from a public right-of-way which will affect the appearance and cohesiveness of any historic landmark or any property within a historic preservation district without receiving approval from the Planning and Zoning Commission. New construction within a historic preservation district or on property designated as a historic landmark, or buildings or structures moved onto a property within a historic preservation district or onto property designated as a historic landmark will be subject to Design Guidelines for the City of Montgomery.

SECTION 7. Nonconforming Structures

Commercial, institutional, and residential structures existing within the Historic Preservation District, or on property designated as a Historic Landmark, prior to the effective date of this ordinance shall not be required to be altered, repaired or modified to meet existing design criteria unless major facade or structural renovations are planned by the property owner. Major facade or structural renovations are defined as changes or renovations to 25% or more of any facade of the structure or improvements facing a street.

SECTION 8. Historic Preservation District/Landmark Building Permit Application Procedures

- (a) Prior to the commencement of any work requiring Planning and Zoning Commission

approval in accordance with this ordinance, the owner shall follow standard procedures for a building permit application and provide the following information for review:

- (i) Name, address, telephone number of applicant and property owner, detailed description of proposed work;
 - (ii) Location and photograph of the property and adjacent properties;
 - (iii) A written narrative describing the design intent and historical precedence is required. Historical photographs may be submitted if available;
 - (iv) Elevation drawings of the proposed changes;
 - (v) Description of materials to be used;
 - (vi) If the proposal includes signs or lettering, a scale drawing showing the type of lettering to be used, all dimensions and colors, a description of materials to be used, method of illumination (if any), and a plan showing the sign's location on the property;
- (b) Planning and Zoning Commission approval required by this act shall be in addition to and not in lieu of any other building permit requirements for the City of Montgomery.
- (c) The Planning and Zoning Commission shall review the application at the first regularly scheduled meeting after the application is received, at which time an opportunity will be provided for the applicant to be heard. The shall approve, approve with modifications, or deny the request. A denied application may be resubmitted to the Planning and Zoning Commission after required adjustments are made.
- (d) All decisions of the Planning and Zoning Commission shall be in writing. The Commission's decision shall state its findings pertaining to the approval, denial, or modification of the application. A copy shall be sent to the applicant and a copy shall be filed with the City Secretary as part of the public record.
- (c) An applicant dissatisfied with the action of the Planning and Zoning Commission relating to the issuance or denial of building permit approval shall have the right to appeal to the City Council within (30) 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.

SECTION 9. Criteria for Approval by the Planning and Zoning Commission

Approval by the Planning and Zoning Commission shall be guided by the adopted Design Guidelines for the City of Montgomery. The Design Guidelines for the City of Montgomery shall be made available at the office of the City Secretary.

SECTION 10. Special Setback Provisions

New commercial structures or improvements being built in the historic downtown commercial area (i.e. any building with front and/or rear facades facing Liberty, Caroline, Prairie, Maiden, McCown, John Butler, or College Streets, and which are located between State Highway 105 on the south and Clepper Street on the north) will be allowed to adhere to setbacks that match immediately adjacent buildings or structures facing the same street, including zero lot lines on all sides, if applicable. If new commercial structures or improvements are being constructed between existing buildings or structures whose setback lines do not match, the new building or structure may match the adjacent building or structure whose setback line is closest to the street in which the adjacent structure or building faces. With the exception of restaurants and food establishments, buildings within the Historic Preservation District and facing the abovementioned streets are exempt from existing City parking requirements.

SECTION 11. Approval Required for Demolition

- (a) A permit for the demolition of a Historic Landmark or property within a Historic Preservation District, including secondary buildings, must be reviewed and approved by the Planning and Zoning Commission and forwarded to City Council for final approval. The Commission shall consult with the City Building and Standards Commission on any application submitted, and shall consider and review any findings and recommendations of the Building and Standards Commission.
- (b) A structure deemed hazardous by the City Building and Standards Commission shall override the requirement for Planning and Zoning Commission Approval.

SECTION 12. Economic Hardship Application Procedure

- (a) After receiving written notification from the Planning and Zoning Commission of the denial of a permit request, an applicant may commence the hardship process. No building permit or demolition permit may be issued unless the 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 prove 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 Planning and Zoning 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 Commission.
- (d) The Planning and Zoning Commission shall hold a public hearing on the application within sixty (60) days from the date the application is received by the City Secretary. Following the hearing, the Commission has thirty (30) days in which to prepare a written response to the applicant. In the event that the Commission does not act within ninety (90) days of the receipt of the application, a permit may be granted.
- (e) All decisions of the Planning and Zoning Commission shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the City Secretary's office for public inspection. The Commission's decision shall state the reasons for granting or denying the hardship application.
- (f) If an applicant is dissatisfied with the action of the Planning and Zoning Commission, he/she shall have the right to appeal to the City Council within thirty (30) 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.

SECTION 13. Enforcement

All work performed pursuant to a building permit issued under this ordinance shall conform to any requirements included therein. It shall be the duty of the City building official (or other designated official) to inspect periodically any such work to assure compliance. In the event work is not being performed in accordance with the approved scope of work, or upon notification of such fact by the Planning and Zoning Commission and verification by the designated official, the official 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 is in effect.

SECTION 14. 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 Preservation District which does not involve a change in design or outward appearance.

SECTION 15. Demolition by Neglect

No owner or person with an interest in real property designated as a landmark or included within a Historic Preservation 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 Planning and Zoning Commission, produce a detrimental effect upon the character of the Historic Preservation District as a whole or the life and character of the property itself. Examples of such deterioration include:

- (a) Deterioration of exterior walls or other vertical supports.
- (b) Deterioration of roof or other horizontal members.
- (c) Deterioration of exterior chimneys.
- (d) Deterioration or crumbling of exterior stucco or mortar.
- (e) Ineffective waterproofing of exterior walls, roof, or foundations, including broken windows or doors.
- (f) 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.

SECTION 16. Penalties

- (a) *Violation of article.* A person, firm, corporation or other entity commits an offense if he/she/it violates this article. Each day the offense continues constitutes a separate offense. The following penalties, which are nonexclusive, and the exercise of one or more of which shall not preclude exercise of the others, shall be imposed on those persons or entities found to have violated this article:
 - (i) The same penalties as set forth in the zoning ordinance of the City for all violations of requirements set forth in said zoning ordinance; or
 - (ii) The penalties set forth in section 1-6 of this Code of Ordinances of the City for non-zoning violations.
- (b) *Restrictions on future development.* If a historic resource, either a landmark or one located within the boundaries of the Historic Preservation District, is demolished or relocated without proper approval, or in the event the plans are changed for the property from which the resource was removed without approval of the changed plans by the Planning and Zoning Commission, then the following restrictions, in addition to any other penalties or remedies set forth in this article, shall be applicable to the site where the structure or property was formerly located:
 - (i) No building or other permits will be issued for construction on the site, with the exception of a permit to restore such structure or property after obtaining a certificate of appropriateness, for a period of two (2) years after the date of such demolition or removal.
 - (ii) No permits shall be issued by the City for any curb cuts on the site for a period of two (2) years from and after the date of such demolition or removal.
 - (iii) No parking lot for vehicles shall be operated whether for remuneration or not on

the site for a period of two (2) years from and after the date of such demolition and removal.

(iv) The owner of the site shall maintain the site in a clean and orderly state and shall properly maintain all existing trees and landscaping on the site. When these restrictions become applicable to a particular site, the City building official shall cause to be filed a verified notice thereof in the real property records of Montgomery County and such restrictions shall then be binding on future owners of the property.

(c) *Cumulative remedies.* The provisions of this section shall apply in addition to other enforcement procedures or penalties which are available at law or in equity, including, but not limited to, those available for adversely affecting historic structures or property under V.T.C.A., Local Government Code § 315.006 and **V.T.C.A.**, Government Code § 442.016 as the same may be amended from time to time, injunctive remedies and the like.

(d) *Civil action.* As an additional remedy in addition to the penalties stated above, the City attorney for the City of Montgomery or his or her designee shall have the power to take all necessary civil action to enforce the provisions hereof and to request appropriate legal or equitable remedies or relief.

SECTION 17. If any provision, section, exception, subsection, paragraph, sentence, clause or phrase of this Ordinance or the application of same to any person or set of circumstances, shall for any reason be held unconstitutional, void, invalid or otherwise unenforceable, the invalidity or unenforceability shall not affect other provisions of this Ordinance or their application to other sets of circumstances and to this end all provisions of this Ordinance are declared to be severable.

SECTION 18. All provisions of the ordinances of the City of Montgomery in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Montgomery, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

SECTION 19. This Ordinance shall become effective immediately upon its passage and approval as provided by law.

PASSED AND APPROVED this _____ day of _____, 2007.

CITY OF MONTGOMERY, TEXAS

By: _____

Edith L. Moore, Mayor

ATTEST:

By: _____

Carol Langley, City Secretary

APPROVED AS TO FORM:

By: _____

Bryan P. Fowler, City Attorney