1996

There's Treasures in Them Thar Hills...But Will They Be Saved?: Enhanced Historic Preservation in Fredericksburg, Texas

William Eric Breitkreutz
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THERE'S TREASURES IN THEM THAR HILLS...BUT WILL THEY BE SAVED?: ENHANCED HISTORIC PRESERVATION IN FREDERICKSBURG, TEXAS

William Eric Breitkreutz

A THESIS

in

Historic Preservation

Presented to the Faculties of the University of Pennsylvania in Partial Fulfillment of the Requirements for the Degree of

MASTER OF SCIENCE

1996

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TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>Chapter One: Fredericksburg, Texas - Past and Present</td>
<td>5</td>
</tr>
<tr>
<td>I. A Brief History of Fredericksburg</td>
<td>5</td>
</tr>
<tr>
<td>II. A Brief Description of Fredericksburg’s Historic Built Environment</td>
<td>8</td>
</tr>
<tr>
<td>III. The Problem Caused by Tourism and the Unsuccessful Attempts at Solving These Problems</td>
<td>10</td>
</tr>
<tr>
<td>IV. Potential Opposition to Strengthening the Regulatory Power of Fredericksburg’s Historic Preservation Ordinance</td>
<td>18</td>
</tr>
<tr>
<td>V. Another Problem with Tourism and Growth - The Dangers of Sprawl</td>
<td>21</td>
</tr>
<tr>
<td>Chapter Two: Proposed Amendments to the Historic Preservation Ordinance</td>
<td>23</td>
</tr>
<tr>
<td>I. Introduction</td>
<td>23</td>
</tr>
<tr>
<td>II. Preamble and Section 12.201</td>
<td>26</td>
</tr>
<tr>
<td>Preamble</td>
<td>26</td>
</tr>
<tr>
<td>Section 12.201</td>
<td>28</td>
</tr>
<tr>
<td>Analysis and Commentary</td>
<td>29</td>
</tr>
<tr>
<td>III. Sections 12.202-12.203</td>
<td>35</td>
</tr>
<tr>
<td>Section 12.202</td>
<td>35</td>
</tr>
<tr>
<td>Section 12.203</td>
<td>38</td>
</tr>
<tr>
<td>Analysis and Commentary</td>
<td>45</td>
</tr>
<tr>
<td>IV. Section 12.204</td>
<td>63</td>
</tr>
<tr>
<td>Section 12.204</td>
<td>63</td>
</tr>
<tr>
<td>Analysis and Commentary</td>
<td>64</td>
</tr>
<tr>
<td>V. Sections 12.205-12.208</td>
<td>70</td>
</tr>
<tr>
<td>Section 12.205</td>
<td>70</td>
</tr>
<tr>
<td>Section 12.206</td>
<td>72</td>
</tr>
<tr>
<td>Section 12.207</td>
<td>75</td>
</tr>
<tr>
<td>Section 12.208</td>
<td>75</td>
</tr>
<tr>
<td>Analysis and Commentary</td>
<td>75</td>
</tr>
<tr>
<td>VI. Sections 12.209-12.212</td>
<td>86</td>
</tr>
<tr>
<td>Section 12.209</td>
<td>86</td>
</tr>
<tr>
<td>Section 12.210</td>
<td>94</td>
</tr>
<tr>
<td>Section 12.211</td>
<td>96</td>
</tr>
<tr>
<td>Section 12.212</td>
<td>97</td>
</tr>
<tr>
<td>Analysis and Commentary</td>
<td>98</td>
</tr>
<tr>
<td>VII. Sections 12.213-12.215</td>
<td>117</td>
</tr>
<tr>
<td>Section 12.213</td>
<td>117</td>
</tr>
<tr>
<td>Section 12.214</td>
<td>118</td>
</tr>
<tr>
<td>Section 12.215</td>
<td>119</td>
</tr>
<tr>
<td>Analysis and Commentary</td>
<td>119</td>
</tr>
</tbody>
</table>
VIII. Sections 12.216-12.217
   Section 12.216 124
   Section 12.217 124
   Analysis and Commentary 126
IX. Section 12.218 130
   Section 12.218 130
   Analysis and Commentary 130
X. Section 12.219 132
   Section 12.219 132
   Analysis and Commentary 133
XI. Conclusion 139

Chapter Three: Recommendations for Necessary Amendments to the City’s
Tax Code, Signage Ordinance, Zoning Ordinance, Building Code,
and Fire Safety Code 142
I. A Temporary Amendment to the Hotel Occupancy Tax 143
II. A Temporary Amendment to the Signage Ordinance 148
III. Necessary Changes to the City of Fredericksburg Zoning
   Ordinance 151
IV. Necessary Changes to the City Building Code and Fire
   Safety Code 157

Chapter Four: The Problem with Sprawl and Recommendations for Helping
Curb Sprawl’s Effects and Preserve the Historic Landscape 160
I. Background Information 160
II. The Proliferation of Sprawl and the Problems It Causes 162
III. A Recommended Long Term Solution to the Problem of Sprawl
    and the Loss of the Historic Scenic and Agricultural Landscape 168
IV. Texas Law’s Limit Otherwise Viable Short Term Solutions to
    Protecting Area Agricultural Land and Scenic Hills 171
V. Amendments to City PUD Regulations to Preserve the Hills 175
VI. Amendments to City Subdivision Ordinance to Encourage Hill
    Preservation 179
VII. Prohibitions on the Development of Steep Hillsides 185
VIII. The Encouragement of Conservation Easement Donation 188

Chapter Five: Recommendations for Future Amendments to the City Historic
Preservation Ordinance 192
I. Additional Members of the Historic Review Board and Full-Time
   Status for the City Historic Preservation Officer 192
II. The Creation of Application Fees for Certificates of
    Appropriateness Applications 195
III. Municipal Tax Incentives 198
IV. Full Application of Ordinance to Properties Nominated for
    Designation 203
Chapter Six: Recommendations Concerning the Creation of A German-Texas Hill Country Heritage Area

I. Explanation and Analysis of a "Heritage Area"
II. The Benefits of the Creation of a Heritage Area for the German-Texas Hill Country
III. The Potential Danger of the Creation of a Heritage Area

Conclusion

Appendix A: Current Fredericksburg Historic Preservation Ordinance
Appendix B: Temporary Amended Historic Preservation Ordinance
Appendix C: City of Fredericksburg Hotel Occupancy Tax

Bibliography
INTRODUCTION

This thesis is an exercise in utilizing the various tools and techniques involved in the practice of historic preservation planning, as this author has learned the practice in pursuit of a Master of Science Degree in Historic Preservation at the University of Pennsylvania. It is primarily concerned with the formulation of an historic preservation ordinance for the City of Fredericksburg, Texas, under the laws governing municipal historic preservation regulation in the State of Texas and under the requirements for satisfying certified local government standards with such an ordinance set by the Texas Historical Commission (THC). However, the historic preservation ordinance, along with the recommended concomitant and long-term changes to the municipal tax code, signage ordinance, zoning ordinance, building code, and fire safety code, subdivision ordinance, planned unit development regulations, and comprehensive plan of the city, is also concerned with balancing the necessity for adequate levels of protection of the historic, cultural, architectural, and scenic/natural resources of the city with the need to allay the fears and satisfy the needs and desires of the citizens of the community. Thus, this thesis is not merely an academic application of several different preservation planning tools in a theoretical scenario removed from the harshness of reality. Rather, it is a practical exercise in applying and adapting the theory of preservation planning and the rigidity of preservation law to the difficult realities of the current political situation in a small municipality in rural Texas.

The City of Fredericksburg, Texas, offers an excellent opportunity to put theory and methods to the test of reality because of the combination of the need for enhanced preservation regulations and the challenging political opposition to the extension of such regulations which exist at this time in the city’s history. As outlined in the brief historical sketch of Fredericksburg and the current status of its physical and political environment in Chapter One, the city contains
a large number of historic, cultural, and architectural resources recognized as significant at the local, state, and national levels. However, the city government acknowledges that the municipality’s current historic preservation ordinance is simply too weak to withstand the increasing economic pressures being placed upon Fredericksburg’s historic resources. The problem is, how does one formulate an ordinance that substantially enhances the regulations on designated properties and then convince a skeptical and potentially hostile constituency that these regulations are really in their best interest?

Chapter Two offers the solution this author has to the problem by presenting a new ordinance that amends the old one in its entirety. Each part of the chapter contains portions of the amended ordinance proposed for adoption, followed by an analysis and commentary on how the provisions of the ordinance given satisfy Texas preservation law and THC ordinance standards, how they satisfy the preservation needs of Fredericksburg’s significant resources and the major concerns of the citizens, and how it can be shown to the citizens that these provisions are desirable.

Parts II through V of Chapter Two deal primarily with the establishment of the administrative mechanisms of the ordinance (e.g. the Historic Review Board, the City Historic Preservation Officer, and the process for the designation of historic resources). Parts VI through X, on the other hand, are concerned with the regulatory and enforcement aspects of the proposed amended ordinance (e.g. the restrictions imposed under certificate of appropriateness requirements, the prohibition of demolition by neglect, and the establishment of penalties and remedies).

Since local historic preservation regulation does not exist in a vacuum, but is instead connected to and affected by many other aspects of local government law and practice, it is necessary to also propose amendments to Fredericksburg’s other ordinances, codes, and municipal
plans. Chapter Three, Part I, deals with a proposed amendment to the city’s hotel occupancy tax which could, under state tax law, result in the allocation of revenues to support certain aspects of the amended ordinance’s preservation programs in lieu of somewhat higher direct taxation on the citizens of Fredericksburg themselves. Parts II through IV of Chapter Three concern changes to the city signage ordinance, zoning ordinance, building code, and fire safety code, offering methods and recommended courses of action that should be used to bring the regulations and aims of these respective regulations and those of the amended historic preservation ordinance into rough conformity with one another. This conformity, in turn, will allow the regulations to work toward achieving rather than defeating the immediate and long term goals of preservation in Fredericksburg.

Chapter Four focuses on how Fredericksburg’s problems with sprawl directly affect the cause of historic preservation within the city itself and what can be done to combat sprawl and save the immediate areas’ historical landscape and context. Specific, long-term and short-term recommendations are given that involve amendments to the city’s comprehensive plan, subdivision ordinance, and planned unit development regulations, as well as an education campaign on the benefits of easement donation, all of which are tempered by both the prevailing political sentiment against land use regulation and the realities of the limited municipal regulatory powers granted to municipalities in their extraterritorial jurisdictions by state law.

Recommendations for future amendments to the new ordinance proposed in Chapter Two that will be necessary to deal with the anticipated needs and problems of preservation regulation in Fredericksburg in the years to come are presented in Chapter Five. Chapter Six then addresses the potential benefits to Fredericksburg and other communities in the Texas Hill Country that could result from the formation of a heritage area for the communities linked by the Germanic culture and a common history within the Hill Country. However, the last part of the chapter also
issues a stern warning of the threat that would exist to the historic resources of Fredericksburg and the other communities were they to prematurely engage in the promotion of the common heritage area without the highest level of protection for all of their respective, significant resources first in place. Finally, a brief conclusion offers a summary of the major aspects of each previous chapter and closing thoughts on the thesis.

The ideas offered in this thesis are the result of almost an entire year of research, during which time this author conducted interviews with members of Fredericksburg’s Historic Review Board, city government, and local historical organizations, as well as with city employees involved in historic preservation regulation in San Antonio, Austin, and New Braunfels, Texas; Philadelphia, PA; and Washington, D.C.. Input from interviews with employees of the Texas Historical Commission, the Texas Parks and Wildlife Department, the National Trust for Historic Preservation, and several other local, state, and national historic preservation and preservation-related organizations also has been incorporated in this thesis. Information taken from municipal historic preservation ordinances (primarily those of several Texas cities, but also those of cities in other states); Texas and federal historic preservation, land use, and tax laws; and Texas and federal court decisions augmented the ideas received from personal interviews. All of the relevant ideas from these many sources have been put together to formulate a viable mechanism for better protecting the significant historic, cultural, architectural, and scenic/natural resources of Fredericksburg, Texas.
I. A Brief History of Fredericksburg

Fredericksburg, Texas, is a small town of approximately 6,700 inhabitants located northwest of San Antonio and west of Austin in the rugged Pedernales River Valley of an area known as the Texas Hill Country (see the map on page 7). It was founded by Baron Ottfried Hans von Meusebach, the newly appointed leader of the Adelsverein (a partnership of German noblemen who sponsored German emigration to the Republic of Texas), who led a group of German settlers from the crowded first settlement of New Braunfels to establish themselves around Baron’s Creek in April of the year 1846.¹ The new colonial settlement was named "Friederichsburg" in honor of Prince Friederich of Prussia, and each original male settler was given a plot of land in the town itself to go with the agricultural land he was granted in the surrounding area.² Baron von Meusebach signed a peace treaty with the Comanche Nation which dominated the area in March of the following year, thereby allowing the German settlers to concentrate on establishing their economic pursuits and constructing their outlying homesteads and various buildings in the town itself.³ Later, in 1848, Fredericksburg became the county seat of newly created Gillespie County.⁴

² Ibid.
³ Ibid., pp. 54-56.
⁴ Ibid., p. 56.
Although the Pedernales River, Baron’s Creek, and other spring-fed creeks and streams supplied the settlers with an abundance of fresh water, the valley’s rocky land did not produce an overabundance of healthy crops. Thus, many early settlers supplemented their meager harvests of corn and their vegetable gardens by raising goats, sheep, and cattle. Mohair and wool soon became prime agricultural products of the area, which were exported to San Antonio in exchange for manufactured goods. The settlers also discovered that peach trees flourished in the rugged, acid soil, and so peaches helped supplement the settlers’ diets. Peaches were later to become a cash crop for the area around Fredericksburg, once the automobile ended the area’s isolation and connected it with the Texas produce market. However, before the automobile, the ruggedness of the hills and the lack of good roads kept the community relatively separated from the outside world.

With their dominant peasant ethos, most Germans [in the Texas Hill Country] put enormous labor into their farms, but it took a century for most of them to prosper. They remained an isolated, ingrown community, healthy enough in themselves [and] stubbornly self-reliant.

Despite the area’s isolation, Fredericksburg and Gillespie County produced two figures of national importance in the twentieth century. Chester W. Nimitz, Admiral of the U.S. Pacific Fleet during World War II, was born and raised in Fredericksburg, while U.S. President Lyndon Baines Johnson was born and grew up on a ranch in Gillespie County near the little community of Stonewall.

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MAP OF FREDERICKSBURG, TEXAS, AND SURROUNDING AREA

FREDERICKSBURG and SOUTH CENTRAL TEXAS REGION
II. A Brief Description of Fredericksburg’s Historic Built Environment

Fredericksburg’s century of isolation and poverty resulted in the preservation and dominance of the Germanic language and culture in the city well into the twentieth century. These two factors also allowed a large number of Fredericksburg’s original through early twentieth century buildings and structures to survive relatively unchanged from the time of their creations, because of the lack of development pressure and money to expand or modernize these buildings and structures. A surprising number of original "Sunday Houses" of native German fachwerk construction (a half-timbered method of construction using Hill Country limestone blocks to infill and support a post-and-beam structure) survive intact along Fredericksburg’s streets. These "Sunday Houses" were constructed by area ranchers on their town lots as dwelling places while they were in town to shop on Saturdays and then go to church on Sundays. Thus, not only do these "Sunday Houses" exhibit Germanic construction techniques adapted to Texas building materials, but they also serve as visible reminders of important Germanic cultural practices carried out by the early settlers of the community. These houses help to demonstrate as well the historically important role Fredericksburg has played and continues to play as the center of rural agricultural life in the valley.

Many commercial and residential limestone structures with a mixture of Germanic and Victorian architectural elements built from the 1870s through 1890s also exist around the early fachwerk structures. Because of this, one can directly trace the evolution of the German settlers’ gradual adaptations of traditional building techniques to meet the differing climactic needs of Texas and to produce buildings that attempted to reflect the latest popular building styles of the times. A small number of relatively large commercial buildings built in the 1910s and 1920s are interspersed between the predominantly nineteenth century historic commercial buildings along
Main Street's historic central business district as well. Many of these early twentieth century buildings are built out of cast concrete "Basse" blocks made to look like limestone blocks and produced by the local Basse Concrete Company as a cheaper, aesthetically pleasing alternative to the limestone blocks traditionally used to construct buildings in the area. Accordingly, yet another evolution in the built environment of Fredericksburg is preserved in the form of new building materials cast to look like the old, thereby maintaining a visual continuity with the past.

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III. The Problems Caused by Tourism and the Unsuccessful Attempts at Solving These Problems

Fredericksburg remained a relatively small, quiet community for much of the twentieth century, continuing on as the government and commercial center for the ranching and orchard operations in Gillespie County. However, about the time of the Bicentennial of the United States, when Americans began focusing on the varied aspects of their cultural and architectural past, Fredericksburg’s strong Germanic culture, its scenic beauty, and its large collection of well-preserved, historic architectural structures began to attract significant numbers of tourists to the city.8 Active promotion of the city’s quaint Germanic architecture and German festivals, its scenic beauty, and its peaches by the Chamber of Commerce and local businesses helped increase tourism to Fredericksburg, so that today it plays a major role in the overall economy of the city.

Fredericksburg’s charming built and natural environment, its small town appeal, and its links via state highways to Austin and San Antonio have attracted many new residents to the city who are willing to endure the hour-and-a-half commute to San Antonio or the two hour commute to Austin in order to enjoy the city’s high quality of life. The growing tourist industry also is attracting entrepreneurs to the area eager to capitalize on the city’s increasing popularity as a tourist destination. However, the tremendous increases in tourism and the growth the city began to experience in the late 1970s and early 1980s started to take their tolls on the very historic, cultural, and architectural resources that were attracting tourists and new residents to the city in the first place.

8 Karen Sue Oestreich, former member, Fredericksburg Historic Review Board; Office Manager, Sunset Realtors, Fredericksburg, Texas, conversation with author, Fredericksburg, Texas, 29 August 1995.
During the early to mid-1970s, the state designated many of Fredericksburg’s historic cultural and/or architectural resources as Recorded Texas Historic Landmarks. Furthermore, a long, narrow area of the city that parallels Main Street and contains much of the area of the original settlement of the community received designation as an historic district within the National Register of Historic Districts in 1970. Several other significant historic, cultural, and architectural resources in the city but outside the National Register Historic District also received registration on the National Register of Historic Places. Unfortunately, these state and federal designations were powerless to stop private owners of some of the properties registered under these designations from making detrimental alterations to the historic character of these properties. As a result of the detrimental changes being made by some business and residential owners to some of Fredericksburg’s historic properties and the lack of regulations to stop such actions, members of the Gillespie County Historical Society and the Fredericksburg

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9 Sharon Buford, Secretary, Gillespie County Historical Society, conversations with author, Fredericksburg, Texas, 25 & 28 August, 1995.

10 Ibid.

11 Inclusion of a property within historic districts registered on the National Register of Historic Places does not protect the property from demolition, alterations, or additions carried out on the property by individuals or private organizations, as long as they do not receive federal funds or contract with the federal government in order to carry out such change to the property. Nor does Recorded Texas Historic Landmark designation confer protection to a property. Persons wishing to relocate, demolish, or change the exterior appearance of a Recorded Texas Historic Landmark must notify the Texas Historical Commission at least sixty days before the desired change is to take place. Once notified, the Commission may then negotiate for and encourage the preservation of the Landmark, but the Commission is ultimately powerless to stop the change from occurring. Texas Historical Commission, Texas Preservation Handbook for County Historical Commissions (Austin, Texas: Texas Historical Commission, 1994), pp. 40-43.
Heritage Foundation convinced the City Council to enact an historic preservation ordinance for the city.  

The initial historic preservation ordinance met with strong opposition from the citizens of Fredericksburg. The National Park Service’s condemnation of agricultural properties held by several original Adelsverein immigrant families for incorporation into the Lyndon Baines Johnson National Historic Park in the 1970s embittered many Fredericksburg residents against the idea of any form of government regulation of historic private property.  

Citizens objected in particular to the provision that required owners of designated properties to receive permission from the proposed historical commission before they could paint their houses or businesses a different color from what they were when designated. In fact, many citizens viewed the regulations requiring historic commission approval before changes would be allowed to designated properties as direct violations of individuals’ property rights, and they angrily denounced these regulations at the public commentary session. Many citizens also raised strong concerns that the values of their designated properties would significantly decrease because of the "draconian" regulations placed upon them by the proposed ordinance.  

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12 Sharon Buford, Secretary, Gillespie County Historical Society, conversations with author, Fredericksburg, Texas, 25 & 28 August, 1995.

13 Karen Sue Oestreich, former member, Fredericksburg Historic Review Board; Office Manager, Sunset Realtors, Fredericksburg, Texas, conversation with author, Fredericksburg, Texas, 29 August 1995.

14 Jay Weinheimer, former City Attorney, City of Fredericksburg, Texas, conversation with author, Fredericksburg, Texas, 30 August 1995.

15 Karen Sue Oestreich, former member, Fredericksburg Historic Review Board; Office Manager, Sunset Realtors, Fredericksburg, Texas, conversation with author, Fredericksburg, Texas, 29 August 1995.

16 Ibid.
The public outcry against the initial historic preservation ordinance led to a substantial weakening of the regulatory powers granted to the Historic Review Board in the revised ordinance, which was adopted by the City Council in 1987. Under the 1987 ordinance, the Historic Review Board is a purely advisory body, with no power to enforce its recommendations once initial reviews of proposed changes to or demolitions of historic landmarks or buildings or structures within the historic district have been made. An owner of a designated property or his/her representative must simply be present at the hearing on the work proposed to be done to the property in order to obtain a certificate of review from the Historic Review Board. After the hearing on the certificate of review, the owner of the property in question is free to do any detrimental work he/she pleases to his/her designated property, as long as the work conforms to all other applicable regulations.

Thus, the weakness of the present ordinance has allowed many of the city’s historic buildings to be altered in ways which compromise their historic structure or character. Buildings constructed during the 1910s and 1920s and located within Fredericksburg’s only municipally-designated historic district now have "Germanic-looking" architectural details added to them in order to make the businesses inside of them more attractive to the tourists coming to Fredericksburg seeking "quaint" German-Texas architecture. These buildings, because of

17 Ibid.

18 See subsection 12.204(e), p. 12-7, and Section 12.205, pp. 12-8 - 12-9, in Appendix B.

19 See Section 12.205 in Appendix A, pp. 12-8 - 12-9.

20 This singular historic district exists within the same exact boundaries as those of Fredericksburg’s National Register Historic District.

their additional, nonhistorical elements, give tourists and natives alike a false sense of the history and historic development of architecture within the city, all in the name of increased profits from the tourist trade.

Similarly, the inability of the Historic Review Board to even prohibit proposed new construction or relocation of structures within the historic district which intentionally tries to pass itself off as historic has led to the construction of new buildings that detract from the true historic and cultural character of the city's recognized historic area. Log cabins from East Texas and even Tennessee are being brought in and advertised as "historic bed and breakfasts." While these cabins may in fact be old, their presence within the historic district without any signage explaining their relocation and with the use of such advertising again gives tourists and natives alike a false sense of the historical development of the city. Even the building in which Admiral Chester W. Nimitz was born and grew up in is not immune from tarnish by pseudo-historic new construction. The current owner of the property built a two-story bed and breakfast facility directly behind Admiral Nimitz's birthplace that is an almost exact replica of an historic two-story, 1850 limestone house which stands further down on Main Street. The sign which advertises this bed and breakfast pictures both the new, two-story structure and the circa 1866 fachwerk house of Nimitz's birth over the caption "Historic Nimitz Property." Once again, the history and architectural development of Fredericksburg is being grossly distorted by false advertising and fake construction, and the Historic Review Board under the current ordinance is powerless to stop such actions.

22 Karen Sue Oestreich, former member, Fredericksburg Historic Review Board; Office Manager, Sunset Realtors, Fredericksburg, Texas, conversation with author, Fredericksburg, Texas, 29 August 1995.

The lack of municipal designation of any of the substantial number of significant historic, cultural, and architectural resources of the city outside of the National Register Historic District as historic landmarks or as parts of historic districts has allowed the detrimental alteration of these properties to proceed without any form of the public accountability at least offered under the current ordinance. One example of the detrimental alterations allowed because of this lack of designation is seen in the current condition of the Dambach-Besier House, built circa 1867 of native limestone block, on East Main Street, just outside of the boundaries of the city’s only historic district.24 The entire rear wall of the two story structure has been removed so that the recently constructed, overshadowing, three story Sunday House Hotel could be attached to the house from the rear. The Dambach-Besier House now serves as the hotel’s restaurant. A similar travesty has also occurred to the one story fachwerk Mueller-Petmecky House, circa 1846-1850, located on State Highway 87 going toward the Hill Country town of Kerrville. It now serves an office area, as well as a eye-catching, "quaint Germanic" advertisement to passing tourists for the new motel to which it is attached from the rear. Thus, with the town’s steady growth in tourist visitation and the resulting economic attractiveness of starting new tourist-oriented businesses in historic or pseudo-historic buildings, the destruction of Fredericksburg’s historic built environment continues to apace, and the Historic Review Board under the current ordinance is powerless to stop it.

To its credit, the Historic Review Board has used its powers of persuasion, friendship, and neighborly influence, the only powers it is allowed under the ordinance, to dissuade owners from actions that would be detrimental to the characters of their designated properties. In fact, the Board has been quite successful in staving off many significantly destructive actions proposed by native Fredericksburg owners of designated properties. However, members of the Historic

Review Board complain that they have no clout whatsoever with newcomers to Fredericksburg, who have no knowledge of or respect for the history and traditional Germanic architecture of the city. These owners refuse to listen to the members’ pleas not to build their planned commercial buildings, saying that they know what German architecture should look like. The result has been the historically inaccurate and detrimental infill described previously. Thus, as more and more outsiders come into Fredericksburg to live and/or create new tourist-oriented businesses, the risks to Fredericksburg’s significant historic, cultural, and architectural resources greatly increase.

Interestingly, the City Council, which previously has been hesitant to designate properties outside of the current municipal/National Register Historic District for fear of charges of excessive government regulation by the owners, has finally agreed to authorize the strengthening of the city’s historic preservation ordinance through amendment. Evidently, the near demolition of an historic building within Fredericksburg’s historic district made the Council realize the serious threat of detrimental change many of Fredericksburg’s historic resources are facing and the current ordinance’s blatant inability to eliminate such threats. However, Mr. Stan Klein, the Historic Review Board member in charge of drafting these proposals (because of his extensive qualifications through past experience as an employee of the Texas Historical Commission), will be unable to carry out this responsibility at any time in the near future.


26 Ibid.


Consequently, any potential changes to the Fredericksburg historic preservation ordinance are on hold until further notice.
IV. Potential Opposition to Strengthening the Regulatory Power of Fredericksburg’s Historic Preservation Ordinance

Any attempt to strengthen the regulatory power of the current historic preservation ordinance is likely to meet with stiff opposition from the citizens of Fredericksburg, as did the initial ordinance proposed in the mid-1980s. Feelings against government regulation of property rights are still running high among citizens of Fredericksburg, especially in light of recent property rights battles between state and federal government agencies and local citizens. The Environmental Protection Agency’s recent withdrawal of habitat protection regulations for the endangered Golden Cheeked Warbler, a native bird of the Texas Hill Country, is a sweet victory for local citizens in a long and bitter struggle over required practices which were felt would destroy the ranching industry in the area.29

Similarly, area residents recently fought off the routing of a major crude oil pipeline by a private corporation through Gillespie and other Hill Country counties which would have used the State of Texas’ powers of eminent domain to force landowners to allow the pipeline to be laid underneath their prime grazing and orchard lands. Finally, as testimony to the strong feelings against government regulation of private property that are present in Texas in general, Texas recently passed a stringent anti-regulatory takings law. This law requires that many government actions that result in reductions of greater than twenty-five percent of the fair market value of private property shall be deemed a regulatory taking. Fortunately for the cause of historic preservation, zoning regulations were excluded from the takings law.30

29 Jay Weinheimer, former City Attorney, City of Fredericksburg, Texas, conversation with author, Fredericksburg, Texas, 30 August 1995.

30 W. Dwayne Jones, Preservation Planner, Texas Historical Commission, conversation with author, Austin, Texas, 31 August 1995.
Therefore, if the attempt to amend the historic preservation ordinance to strengthen the regulations on designated properties is to be successful, the amended ordinance must be written with many obvious safeguards against the possibility of excessive and economically deprivational restrictions being imposed on historically designated properties. Proponents of the amended ordinance must then be able to use these safeguards included in the thesis to overcome citizen's perceptions that such regulations are excessive government restrictions on private property and therefore violations of private property rights. Lobbyists for the amended ordinance must also be able to convince owners of designated property or property eligible for designation under the amended ordinance that designation and the accompanying restrictions will not decrease the property values, but will probably have the opposite effect. Finally, local preservationists must convince a substantial number of citizens, particularly owners of tourist-oriented businesses, that although the amended ordinance prohibits many actions that might increase tourist patronage of establishments in historic buildings and structures, these prohibitions are designed to protect and preserve the many historic, cultural, and architectural resources that motivate many of the tourists to come to visit Fredericksburg in the first place and that greatly contribute to the high quality of life enjoyed by residents.

Hope for success concerning the endeavor to enact such an amended historic preservation ordinance does exist in light of a poll of Fredericksburg citizens taken as part of the process of creating Fredericksburg's new comprehensive plan. At a public "visioning workshop" held in October of 1995 and concerning the formulation of the comprehensive plan, the citizens in attendance ranked the "history" and the "quality of life" as the fourth and fifth "best things," respectively, that they liked about living in Fredericksburg.31 If the historic preservation

ordinance is amended in such a way that it balances the regulatory provisions necessary to adequately preserve the city’s designated resources with the need to calm the fears and satisfy the desires of residents, and if preservationists can actively promote the balance offered by the proposed amended ordinance and show how the ordinance promotes and protects Fredericksburg’s cherished history and quality of life, then the ordinance has a strong chance at being adopted by Fredericksburg’s City Council.
V. Another Problem with Tourism and Growth - The Dangers of Sprawl

The tremendous increases in tourism and the population growth experienced by Fredericksburg over the last twenty years have been detrimental to both the historic built environment of the city and to the scenic landscape and the traditional agricultural lands which surround the city. Many tourists and new residents to the city are attracted in part by Fredericksburg's rural setting, its famous peach crops, and the scenic beauty of its surrounding hills. However, two of the hills closest to the city are now covered with houses, thereby destroying their scenic beauty and helping to diminish the natural beauty that is part of the high quality of life offered by the city to its residents. Many other residential and commercial subdivisions are springing up or being planned in many places immediately around the city limits, as sprawl increasingly creeps from the edges of the city to eat up more and more traditionally open agricultural land every year.

Historic preservation in Fredericksburg should not be channeled into just working to protect the historic, cultural, and architectural resources within the city limits. It should also strive to preserve and protect the ranch and orchard lands that have always surrounded the city and made it the center of an agricultural community. Fredericksburg preservationists should also work toward preserving the scenic beauty of the rugged hills that isolated and protected Fredericksburg's significant resources for so long. Both the agricultural land and the scenic hills that surround the community greatly influenced the creation of the historic, cultural, and architectural resources of the city. They should therefore be seen together as part of the overall context of the history and development of Fredericksburg, a context that must be preserved at least to some extent for posterity.
In order to accomplish the preservation of the historic context of Fredericksburg's development, preservationists must work to implement some form of long-term growth management strategy for the city. The creation of such a strategy will be a long and complicated battle, given the strong anti-government/pro-property rights feelings of the citizens of the area and the presence of constricting Texas laws concerning municipal regulatory powers over extraterritorial jurisdictions (to be discussed fully in Chapter Seven). Accordingly, short-term strategies must first be implemented, possibly through a combination of somewhat limited land regulations and encouragement of voluntary protection efforts, in order to protect the surrounding historic agricultural and scenic lands until enough local support can be generated to implement a long-term, anti-sprawl growth management plan.
CHAPTER TWO: PROPOSED AMENDMENTS TO THE HISTORIC PRESERVATION ORDINANCE

1. Introduction

The three main goals used to guide the formulation of the amendments proposed to Fredericksburg’s historic preservation ordinance in this chapter are as follows: (1) provide strong enough regulations and enforcement measures to adequately preserve, protect, and enhance the significant historic, cultural, and architectural resources of the city; (2) enable Fredericksburg to qualify for certified local government (CLG) designation from the Texas Historical Commission (THC) through the formulation of an amended ordinance that satisfies the standards for such a designation; and (3) create an ordinance that meets the needs and desires of the citizens of the city, particularly the strong desire for the protection of property rights in written into government land use regulation. Since Fredericksburg’s current historic preservation ordinance is written in a way that would require extensive amendment of its language in order to achieve the stated objectives, it is necessary to amend the ordinance in its entirety and start completely anew.\(^3^2\)

The proposed amended ordinance presented in this chapter has been formulated through the adaptation of provisions from the ordinances and historic preservation plans of both CLG and nonCLG municipalities in Texas and in other states, the inclusion of original ideas of the author, and through adherence to the model preservation ordinance for municipalities written by the THC. Several provisions from Fredericksburg’s current ordinance have also been reinserted into the amended ordinance, and the entire ordinance is written to meet and in some cases exceed the

\(^3^2\) See the current Fredericksburg historic preservation ordinance found in Appendix A.
historic preservation ordinance requirements for municipalities seeking CLG designation as established by the Texas Historical Commission.

Since the purpose of this thesis is to present to the proponents of increased government protection of Fredericksburg's heritage and scenic/natural resource a politically acceptable means of accomplishing these desired regulations, this chapter separates the text of the proposed amended ordinance into manageable parts, in order to allow an analysis and commentary to be presented after each part. The commentaries analyze exactly how the sections contained in the previous part of the ordinance text are intended to function and how these sections meet the levels of regulation required to adequately protect the city's heritage resources. Explanations of how the sections in the previously portion of the text meet or exceed the THC's requirements for CLG designation, and of how they satisfy the fears and desires of the anti-government regulation mentality that is present among many of the city's citizens are also given in the commentaries. Finally, these analyses and commentaries recommend various methods that might be used both to educate the public on the direct and indirect benefits of the sections offered in each part of the text and to convince citizens concerned about excess government regulation of private property rights resulting from the enforcement of the sections presented in the particular portion of the text of the chapter that such will not be the case - all in an attempt to allow the proponents of historic preservation to gain enough popular support for the amended ordinance so that the ordinance will be temporarily enacted for a four year trial period by the City Council.

It should be noted that the separate parts of the text of the ordinance presented in this chapter sometimes contain several sections of the ordinance followed by analysis and commentary, and sometimes contain only one section of the amended ordinance followed by an analysis and commentary. This varying format is used because some of the adjacent sections of the amended ordinance are intended to work together to achieve the same overall purpose, while
other sections are meant to address a single issue or fulfill an individual need. Thus, it is more logical to present commentary on the sections linked together in purpose as a whole, rather than offering separate commentaries on each one of these connected sections.
II. Preamble and Section 12.201

AN ORDINANCE TEMPORARILY AMENDING CHAPTER 12 ARTICLE 12.200 OF THE CODE OF ORDINANCES OF THE CITY OF FREDERICKSBURG, TEXAS (HISTORIC PRESERVATION); TEMPORARILY REPEALING ALL ORDINANCES IN CONFLICT; ESTABLISHING AN EFFECTIVE DATE; AND ESTABLISHING AN EXPIRATION DATE FOR THE TEMPORARY ORDINANCE UNLESS PERMANENTLY ADOPTED BY CITY COUNCIL

WHEREAS, the Constitution of the State of Texas, 1876, expressed the obligation of the government to preserve the evidence of Texas’ historical heritage (Texas Constitution Act XVI. Sections 38, 39, and 45, providing respectively for the Commissioner of Insurance, Statistics, and History; Appropriations for Historical Memorials; and Historical Records, Rolls, and Documents); and

WHEREAS, the first session of the Texas legislature following the adoption of the Constitution of 1876 created the Department of Insurance, Statistics, and History (8 Gammel’s Laws pp. 1055, 1061); and

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

WHEREAS, CH. 211 TEXAS LOCAL GOVERNMENT CODE, Section 211.003 provides that in the case of designated places and areas of historical, cultural, or architectural importance and significance, the governing body of a municipality may regulate the construction, reconstruction, alteration, or razing of buildings and other structures; and

WHEREAS, CH. 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 regulations must

33 San Antonio, Texas, "City of San Antonio Historic Districts and Landmarks Ordinance (No. 64539)," Preamble, p. 1. [Hereafter referred to as "S.A. Ord."]

34 Ibid.

35 Texas Historical Commission, Local Government Assistance Series, Number 1: Guidelines for Drafting Historic Preservation Ordinances and Model Ordinance (Austin, Texas: Texas Historical Commission, 1988), p.7. [Hereafter referred to as THC]

36 Ibid.
be uniformed for each class or kind of building in a district; however, zoning regulations may very from district to district; and

WHEREAS, the court in Connor v. City of University Park, 142 S.W. 2d 706 (Tex.Civ. App.-Dallas 1940, writ ref'd) held that "aesthetic considerations" are legitimate concerns in the regulation of land use years before historic preservation was included through amendment as part of the Municipal Zoning Authority, and the court in City of Dallas v. Crownrich, 506 S.W. 2d, 654 (Tex.Civ.App.-Tyler 1974, writ ref'd n.r.e.) confirmed the legality of municipal historic preservation regulation through zoning laws under the powers granted municipalities in Texas, and the United States Supreme Court in Penn Central Transportation Co. v. City of New York, 438 U.S. 104 (1978) reaffirmed its decisions in Village of Belle Terre v. Boraas, 416 U.S. 1, 9-10 (1974), Young v. American Mini Theaters, Inc., 427 U.S. 50 (1976), and City of New Orleans v. Dukes, 427 U.S. 297 (1976) that State and city enactment of land use regulations designed to enhance the quality of life through the preservation of the heritage and character of a city and its desirable aesthetic features is legal under the Constitution of the United States; and

WHEREAS, the City Council of the City of Fredericksburg recognizes the vital importance that its residents place on the preservation and maintenance of the municipality's unique historical, cultural, and architectural heritage as evidenced by the many historic structures and properties, all of which maintain cultural and neighborhood identity while encouraging tourism and industry, which are significant economic activities and sources of revenue for the municipality and its residents; and

WHEREAS, the City Council recognizes that the requirement of preserving the historical, cultural, and architectural heritage of the municipality is necessary because changes increasingly threaten to destroy buildings, structures, and areas having important historical, cultural, architectural, and community values, which, when damaged, altered, or destroyed, cannot be replaced; and

WHEREAS, it is the intent of the City Council to preserve the historical, cultural, and architectural heritage of the municipality while fully recognizing that fundamental property rights, guaranteed by the Constitution, emphasized by the Congress, and upheld by the Courts, must be protected.

37 Ibid.

38 Adaptation of Fort Worth, Texas, "City of Fort Worth Historic Preservation Ordinance," Preamble, p. 2.

39 Ibid.

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

That Chapter 12, Article 12.200 of the Code of Ordinances of the City of Fredericksburg is hereby temporarily amended in its entirety, pursuant to CH. 211 TEXAS LOCAL GOVERNMENT CODE, and shall henceforth read as follows:

ARTICLE 12.200   HISTORIC PRESERVATION

§ 12.201   Purpose and Intent

The City Council hereby recognizes that the City of Fredericksburg has become nationally and internationally known for its historic, architectural, and cultural resources and its beautiful setting in the Texas Hill Country. Fredericksburg’s distinct qualities have proven increasingly attractive to residents, businesses, and tourists alike.

As a matter of public policy, the protection, enhancement, and perpetuation of landmarks or historic districts of historical, cultural, and architectural merit are necessary to promote the economic, cultural, educational, and general welfare of the public. The City Council recognizes that the City of Fredericksburg 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. The provisions of this historic preservation ordinance are designed to achieve the following goals:

(1) To preserve, protect, and enhance significant sites and structures that represent or reflect distinctive and important elements of the city’s and/or State’s architectural, cultural, social, economic, ethnic, and political history and that impart a distinctive aspect to the City;

(2) To foster civic pride in the accomplishments of the past and strengthen civic pride through historic preservation;

(3) To promote the economic prosperity and welfare of the community by conserving the value of landmark buildings through stabilization, restoration or rehabilitation, and by encouraging the most appropriate use of such property within the city;

41 Adaptations of S.A. Ord., Section 35-421, pp. 3-4, and THC, Section 1, p. 7.

42 Texas Historical Commission guidelines for historic preservation ordinances qualifying for certified local government status allow municipalities to exclude "specific references to archeological resources" in their ordinances unless significant archeological resources exist within the corporate limits of a municipality, compelling such municipalities to address the regulation of archeological resources in their ordinances. THC, Introduction, p. 1.
(4) To protect and enhance Fredericksburg’s attractiveness to visitors and the support and stimulus to the economy thereby provided;

(5) To ensure the harmonious, orderly, and efficient growth and development of the City;

(6) To provide a review process for the appropriate preservation and development of important cultural, architectural, and historic resources; and

(7) To maintain a generally harmonious outward appearance of both historic and modern structures through complementarity of scale, form, proportion, texture, and material.

Analysis and Commentary on Preamble and § 12.201

The Texas Historical Commission, in the model ordinance it provides municipalities in its Local Government Assistance Series, highly recommends the establishment of the legality of a municipal historic preservation ordinance in a preamble to the ordinance. However, no such explanation of the legal justification of Fredericksburg’s historic preservation ordinance exists in the original ordinance. Since one of the main goals of amending the Fredericksburg ordinance is to allow the City to qualify for "certified local government (CLG)" status with the Texas Historical Commission (THC), so that Fredericksburg may enjoy the financial and technical assistance benefits of CLG status, the amendments proposed in this thesis will follow the general requirements outlined in THC’s model ordinance for "municipalities interested in applying for Certified Local Government designation." The proposed ordinance also includes other provisions, in addition to the general THC requirements, which are tailored to the specific physical, social, political, and economic needs and desires of the City and its citizens. These

43 THC, Section 1, p. 7.

44 Ibid., p. 1.
additional provisions are drawn from the historic preservation ordinances of Texas cities and the preservation plans and ordinances of municipalities in other states. It should also be noted that the organization of the proposed ordinance follows the format of the original Fredericksburg historic preservation ordinance.

The preamble to the amended Fredericksburg historic preservation ordinance satisfies THC ordinance requirements by establishing the legality of the ordinance under the Constitution of the State of Texas and under the Texas legislation that enables municipal historic preservation ordinances to become statutory law. The preamble also refers to two significant Texas appellate decisions and decisions of the U.S. Supreme Court that have upheld the legality of municipal historic preservation regulations. The inclusion of these decisions in the preamble is designed to focus the attention of the people of Fredericksburg on the fact that the historic preservation regulations enacted by this ordinance do not conflict with the personal and property rights guaranteed under the constitutions of both Texas and the United States.

Similarly, the preamble contains a statement that implies that the City Council is well aware of the property rights concerns of the citizenry regarding historic preservation regulation. This same statement also implies that the City Council will strive to see that the Historic Review Board not be permitted to carry out actions or create questionable rules that might be perceived as excessive by the local populace. It is hoped that this statement will make the citizens of Fredericksburg realize that there is public accountability in the form of the City Council for the actions taken in the name of the historic preservation ordinance and that it is in the City Council’s best political interest to make sure that their Historic Review Board appointees do not try to overstep their powers through their actions and raise the volatile issue of property rights violations in this community. Thus, the purpose of these highlighted statements in the preamble is to help curb the strong property-rights based objections to the new regulations and powers.
granted in the amended ordinance by giving constitutional, legislative, judicial, and City Council assurances that the ordinance as properly applied does not and will not violate property rights. It is desired that these statements help the ordinance gain public support and deter all unfounded, spiteful legal challenges to the amended ordinance by persons simply angered by what they consider unfair or excessive regulation of their property. The preamble also contains provisions adapted from the preamble of the historic preservation ordinance of the City of San Antonio (a designated Texas CLG) showing the history of the support given historic preservation by the Texas legislature since 1876. This information is added to make the citizens of Fredericksburg aware that the importance of preserving state and local histories has been a recognized obligation and goal at the state level for well over one hundred years.

Finally, the first of two interconnected statements in the preamble acknowledges the importance of Fredericksburg’s historic structures and properties to its citizens’ social, cultural, and economic well-being. The second statement follows the first and firmly states that the regulations enacted in the amended ordinance are imperative to preserving the continued social, cultural, and economic health of the community. The two statements are intended to make the populace realize exactly how precious its historic, cultural, and architectural resources are to the city. These resources give the town its unique and attractive character, thereby enhancing the quality of life within the community and providing a large source of income through tourism. The public education campaign, which should be carried out in order to gain public approval of the ordinance and secure its adoption by the City Council, will convey the message of these two statements to the public and inform the citizenry of how little power the present ordinance has to protect these vital resources. The combination of legal justification of historic preservation regulation and the appeal to community pride and self-interest found in the preamble should help
gain public support for the adoption of and compliance with Fredericksburg’s amended historic preservation ordinance.

In concluding the analysis and commentary on the preamble, it should be noted that the preamble begins with a statement declaring the ordinance to be a temporary amendment of Chapter 12 Article 12.200 of the *Fredericksburg Code of Ordinances*. The amended ordinance is to be offered to the people of Fredericksburg as a set of regulations to be initially enforced on a four year trial basis, in order to help convince the citizens of Fredericksburg that they should put aside their fears of excessive government regulation and give the ordinance a chance to prove its worth to the city within a reasonable amount of time. The temporarily amended ordinance shall expire at the end of the four year period if not permanently enacted by the City Council before its expiration date, thereby allowing the people of the city to be freed from the enhanced regulations provided by the temporary ordinance if it is clear to the City Council that a majority of citizens oppose the continued enforcement of the amended historic preservation ordinance. The amended ordinance’s expiration date and the procedures required for its permanent enactment are contained in Section 12.219 of the ordinance, and a complete analysis and commentary on the legality and advantages of this provision are given in Part X of this chapter.

The "Purpose and Intent" section of the amended ordinance is another provision required under the THC model ordinance, but not found in the current ordinance. This provision is self-explanatory in its aim to guide the city’s Historic Review Board in its implementation of the ordinance. Furthermore, it is also meant to explain to the citizenry that the historic, cultural, and architectural resources present in the city must be preserved in order to provide the community with a healthy sense of its heritage and culture. The "Purpose and Intent" section is also intended to remind people, as did the preamble, that a significant portion of Fredericksburg’s economy stems from the substantial number of tourism-related businesses that cater to the hundreds of
thousands of tourists attracted to the city's well-known historic, architectural, and cultural resources each year. One of the specific goals of the historic preservation ordinance is to protect these resources as a means both to foster continued tourism and to keep a high quality of life in the quaint historic city in order to attract new businesses to the community.\(^45\) In light of the legal justifications and benevolent goals contained in the Preamble and the "Purpose and Intent" section of the proposed ordinance, it is hoped that these two provisions can be used by the proponents of the amended ordinance as significant tools to help generate support for the initial, temporary adoption of the ordinance among the citizens of Fredericksburg. If the supporters of enhanced historic preservation regulation in Fredericksburg are truly successful in their attempts at public education during the campaign to convey the many social and economic benefits the proposed amended ordinance is designed to bestow on the city, then a majority of citizens will call for the temporary adoption of the ordinance and support the efforts of the Historic Review Board out of a sense of civic duty, pride, and self-interest.

Finally, one must note that a significant political concession is made in number seven of the stated goals of the ordinance. The word "color" is intentionally left out of the list of terms adapted for inclusion from the seventh stated goal of the San Antonio Ordinance.\(^46\) The argument that "the city was going to tell the owners of designated property what colors they could and could not use to paint their structures" was one of the main arguments used against the original historic preservation ordinance first proposed for Fredericksburg. The property-rights fervor this argument caused was one of the main reasons why the original ordinance was

\(^{45}\) As Donovan Rypkema states in *The Economics of Historic Preservation*, (Washington, D.C.: National Trust for Historic Preservation, 1994), p. 28, the high quality of life offered by cities through the preservation and utilization of their local historic resources is one of the critical factors business use to determine where to locate or expand.

\(^{46}\) S.A. Ord., Section 35-431, p. 3.
considerably reduced in the powers it granted the Historic Review Board. It is felt that the potential benefits from regulating paint color usage are certainly not worth the risk of again generating political controversy over perceived property-rights violation were paint color regulations made part of a proposed historic preservation ordinance for the city.

47 Karen Oestreich, former original member of the Fredericksburg Historic Review Board, conversation with author, 29 August 1995, Fredericksburg, Texas.
III. Sections 12.202 - 12.203

§ 12.202 Definitions

The following definitions shall apply only to Article 12.200.

ALTERATION: Any construction or change of the exterior of a building, object, site, or structure designated as an historic landmark or located within an historic district. For buildings, objects, sites, and structures, alteration shall include, but is not limited to, the changing of roofing or siding materials; changing, eliminating, or adding doors, door frames, windows, window frames, shutters, fences, railings, porches, balconies, signs, or other ornamentation. Alteration shall not include ordinary maintenance or repair.

BUILDING: A building is a structure created to shelter people or things, such as a house, barn, church, hotel, warehouse, or similar structure, including an historically related complex, such as a courthouse and jail or a house and barn.

CERTIFICATE OF APPROPRIATENESS: A signed and dated document evidencing the approval of the Historic Review Board for work proposed by an applicant.

COMPREHENSIVE PLAN: A document or series of documents prepared by or for the Planning and Zoning Commission setting forth policies for the future of Fredericksburg.

CONSTRUCTION: The act of adding an addition to an existing building or structure or the erection of a new principal or accessory building or structure on a lot or property.

CONTRIBUTING: A building, object, site, or structure located in an historic district that contributes to the district's historic, cultural, or architectural significance through location, design, setting, materials, workmanship, feeling, and association, and that shall be afforded the same considerations as an historic landmark. Such a property is classified as contributing on all city zoning maps and in the design guidelines for the historic district in which it is located.

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48 The following definitions are adaptations of the definitions contained in S.A. Ord., Section 35-422, pp. 4-9, unless otherwise noted.


50 THC, Appendix A, p. 15.

DEMOLITION: An act or process that destroys or razes in whole or in part a site, structure, building, or object, or permanently impairs its structural or historic integrity.\(^{52}\)

DESIGN GUIDELINES: Guidelines that are adopted by the Historic Review Board and are meant to be used to help protect, perpetuate, and enhance the historic, cultural, or architectural character of a building, object, site, or structure.\(^{53}\)

ECONOMIC HARDSHIP: An economic burden imposed upon an owner that is unduly excessive and prevents a realization of a reasonable return upon the value of the property.

ENDANGERED: Threatened by deterioration, damage, or irretrievable, irreplaceable loss due to neglect, disuse, disrepair, instability, lack of financial resources, and/or impending demolition.\(^{54}\)

HISTORIC DISTRICT: An area, urban or rural, defined as an "historic district" by City Council, State, or Federal authority and that may contain within definable geographic boundaries one or more historic landmarks, including their accessory buildings, fences, and other appurtenances, and natural resources having historical or cultural significance, and that may have within its boundaries other buildings or structures, that, while not of such historic, architectural, or cultural significance as to be designated landmarks, nevertheless contribute to the overall visual setting of or characteristics of the historic landmark or landmarks located within the district.

HISTORIC LANDMARK: A building, object, site, or structure that is of value in preserving the historic, cultural, or architectural heritage, or an outstanding example of design or craftsmanship, or a site closely related to an important personage, act, or event in history. Such properties should be preserved and protected from modifications that detract from their historical character or significance.

HISTORIC PRESERVATION: The identification, evaluation, recordation, documentation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, and reconstruction of historic building, structures, sites, or objects, or any combination of the foregoing activities.\(^{55}\)

HISTORIC PRESERVATION PLAN: A document that integrates the various preservation activities in the city and gives them coherence and direction, as well as relates the community's preservation efforts to community development planning as a whole.\(^{56}\)

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53 Ibid., p. 5.

54 Ibid.

55 Ibid., p. 6.

56 Adaption of THC, Appendix A, p. 15.
HISTORIC REVIEW BOARD: The Historic Review Board of the City of Fredericksburg reestablished and continued by this ordinance.

INVENTORY: A systematic listing of cultural, historical, or architectural resources prepared by a city, state, or federal government or a recognized local historic authority, following standards set forth by city, state, and federal regulations for evaluation of cultural properties.

NON-CONTRIBUTING: A building, object, site, or structure that, though located within the boundaries of an historic district, does not contribute to the historic, cultural, or architectural character thereof and that is classified as not contributing on all city zoning maps and in the design guidelines for the historic district in which it is located. Such designation is meant to provide greater latitude for the utilization of the property, but all modifications shall conform to the design guidelines and all regulations of this ordinance unless otherwise exempted.  

OBJECT: An object is a material thing of functional, aesthetic, cultural, or historic value that may be, by nature or design, movable yet related to a specific setting or environment.

ORDINARY MAINTENANCE AND REPAIR: Any work, the purpose and effect of which is to correct any deterioration or decay of or damage to a building, object, site, or structure, or any part thereof, and to restore the same, as nearly as may be practical, to its condition prior to such deterioration, decay, or damage, using the same materials or materials available that are as close as possible to the original. Any such work must comply with all applicable codes and ordinances of the City of Fredericksburg. Ordinary maintenance and repair does not include a change in design, material, or outward appearance other than a change in color; it does include in-kind replacement and repair.

REASONABLE RETURN: A reasonable profit or capital appreciation that may accrue from the use or ownership of a building, object, site, or structure as the result of an investment or labor.

RECONSTRUCTION: The act or process of reassembling, reproducing, or replacing by new construction, the form detail, and appearance of a building, object, or structure and its setting as it appeared at a particular period of time by means of the removal of later work, the replacement of missing earlier work, or the use of original materials.

REHABILITATION: The act or process of returning a building, object, site, or structure to a state of utility through repair, remodeling, or alteration that makes possible an efficient

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58 Ibid., p. 7.

59 Ibid.

60 Ibid.
contemporary use while preserving those portions or features of the building, object, site, or structure that are significant to its historic, architectural, and cultural values.

RELOCATION: Any change of the location of a building, object, or structure in its present setting or to another setting.

RESOURCE: A source or collection of buildings, objects, sites, structures, or areas that exemplify the cultural, social, economic, political, or architectural history of the nation, state, or city.

RESTORATION: The act or process of accurately recovering the form and details of a building, object, site, or structure and its setting as it appeared at a period of time by means of the removal of later work or by the replacement of missing earlier work.

SITE: The location of a significant event, an historic activity, or a structure or group of structures, whether standing, ruined, or vanished, where the location itself maintains historical or cultural value, regardless of the value of any existing structure.61

STABILIZATION: The act or process of applying measures designed to reestablish a weather-resistant enclosure and the structural stability of an unsafe or deteriorated building, object, site, or structure while maintaining the essential form as it exists at present.

STRUCTURE: Anything constructed or erected that requires location on the ground, or is attached to something having location on the ground, including, without limitation, buildings.62

UNUSUAL AND COMPELLING CIRCUMSTANCES: Those uncommon and extremely rare instances, factually detailed, that would warrant the Historic Review Board approval of a certificate of appropriateness application due to the evidence presented.

§ 12.203 Historic Review Board

(a) Reestablishment of Board. There is hereby reestablished and continued the Historic Review Board of the City of Fredericksburg, Texas, herein after called the Board, consisting of seven (7) members appointed by the City Council.63

(b) Qualifications. Each member of the Board shall be

(1) a resident of the City of Fredericksburg, Texas, or

61 Ibid.

62 Ibid., p. 8.

(2) a resident of Gillespie County, Texas.

The Board as a whole shall generally represent the ethnic makeup of the City of Fredericksburg. The City Council shall make appointments that will enable the City of Fredericksburg to obtain and maintain "certified local government" status under the rules of the U.S. Historic Preservation Act of 1966, as amended, and Title 13, Cultural Resources, Part II, Chapter 15, 13 Antiquities Code of Texas 15.6, as amended. The Board shall include at least one (1) representative from each of the following organizations: Gillespie County Historical Society and Fredericksburg Heritage Federation. No fewer than two (2) members of the Board shall reside in and/or own a city-designated historic landmark or a building or structure within a city-designated historic district. Not less than one (1) member of the Board shall have a license, degree, or professional experience in the field of architecture, architectural history, or historic preservation. Not less than one (1) member of the Board shall be a historian. Not less than one (1) shall be a licensed real estate broker. A single member of the Board may meet more than one (1) but not more than two (2) of the residential, organizational membership, and occupational requirements of the overall membership of the Board. All board members, regardless of background, shall have a known and demonstrated interest, competence, or knowledge in historic preservation within the City of Fredericksburg.

(c) Term of Appointment. Each member of the Board shall be appointed for a term of three (3) years, except that of the first Board to be appointed under the amended ordinance, two (2) shall be appointed to serve for two (2) years, and two (2) for one (1) year. The term shall expire on the first day of July of the appropriate year. Any vacancy on the Board shall be filled by the City Council for the remainder of the absent member’s term. Any member of the Board who fails to attend at least seventy-five percent (75%) of all regular meetings of the Board within any twelve (12) month period shall be removed from the Board, unless such failure to attend was the result of illness or other acceptable excuse as determined by the City Council.

(d) Chairman and Vice-Chairman. A majority of the members of the Board shall elect a chairman and vice-chairman from among those members who have served at least one (1) year as Board members. No person shall serve more than two (2) consecutive City Council appointed terms in the same office.

(e) Secretary of the Board. The Secretary of the City of Fredericksburg or his/her representative shall act as Secretary of the Board and shall attend and keep the minutes of all meetings.

64 THC, Section 2, p. 8.


66 Fredericksburg, Texas, Fredericksburg Code of Ordinances, Chapter 9, Article 12.200 Historic Preservation, Section 12.204, p. 12-7. [Hereafter referred to as "F. Ord."]

67 Ibid., pp. 12-6 - 12-7.

(f) **Ex Officio Members.** The following persons, or their designated representatives shall serve as ex officio members:

1. The Building Official of the City of Fredericksburg;
2. The Secretary of the City of Fredericksburg; and
3. The Attorney of the City of Fredericksburg. 69

(g) **Voting Rights.** Ex officio members shall have no right to vote, but shall act in an advisory capacity, participating fully in discussions and assisting the Board in its various functions. 70

(h) **Duties and Functions.** The Board shall be empowered to carry out the following duties and functions:

1. Make recommendations for employment of staff and professional consultants as necessary to carry out the duties of the Board; 71
2. Prepare rules and procedures as necessary to carry out the business of the Board, which shall be ratified by the City Council; 72
3. Adopt criteria for the designation of historic, architectural, and cultural landmarks and the delineation of historic districts, which shall be ratified by the City Council; 73
4. Conduct surveys to identify historically, culturally, and architecturally significant buildings, objects, sites, structures, and areas that exemplify the cultural, social, economic, political, or architectural history of the city or state 74 and to maintain an inventory of all locally designated landmarks and all properties located in historic districts within the city; 75

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71 *THC*, Section 2, p. 8.
74 Adaptation of S.A. Ord., Section 35-423, p. 10.
75 *THC*, Section 2, p. 8.
(5) Investigate and recommend to the City Council the designation of areas having special historic, cultural, or architectural value as historic districts.\(^76\)

(6) Investigate and recommend to the City Council the designation of buildings, objects, sites, structures, or clusters having special historic, cultural, or architectural value as landmarks;\(^77\)

(7) Prepare specific design guidelines for the restoration, rehabilitation, alteration, construction, reconstruction, or relocation of landmarks or buildings, objects, sites, and structures within historic districts;\(^78\)

(8) Prepare guidelines for signage, street furniture, appurtenances, advertising devices, and landscaping for each historic district and for landmarks;\(^79\)

(9) Prepare specific design guidelines for the review of certificate of appropriateness applications for work affecting the exterior appearances of landmarks or buildings, objects, sites, or structures within historic districts;\(^80\)

(10) Hold public hearings and review applications for certificates of appropriateness for construction, reconstruction, alteration, relocation, or demolition affecting designated landmarks, or buildings, objects, sites, or structures within historic districts, and issue or deny certificates of appropriateness for such actions;\(^81\)

(11) Testify before all boards and commissions on any matter affecting historically, culturally, or architecturally significant areas, buildings, objects, sites, structures, clusters, or historic districts;\(^82\)

(12) Review periodically the *Fredericksburg Code of Ordinances* and the *City of Fredericksburg Zoning Ordinance* and recommend to the City Council, the Planning and Zoning Commission, and/or any other city boards, commissions, or agencies any amendments appropriate for the preservation and protection of

\(^{76}\) Adaptation of S.A. Ord., Section 35-423, p. 10.

\(^{77}\) Ibid.

\(^{78}\) Ibid.

\(^{79}\) Ibid.

\(^{80}\) Adaptation of THC, Section 2, p. 9.

\(^{81}\) Adaptation of S.A. Ord., Section 35-423, p. 10.

\(^{82}\) Ibid., p. 11.
landmarks or buildings, objects, sites, and structures within historic districts; 83

(13) Prepare an historic preservation plan for the City which shall:

(13.1) Formulate a program for private and public action which will state the role of various city agencies in the preservation of landmarks and buildings, objects, sites, and structures within historic districts;

(13.2) Make recommendations to the city government concerning the acquisition and use of funds to promote the preservation and/or purchase of landmarks and the preservation of historic districts from federal sources, state sources, foundation sources, and local private sources;

(13.3) Recommend to the proper local agencies incentives to be offered to encourage historic preservation; and

(13.4) Formulate amendments to the Historic Preservation Ordinance necessary to further the stated purpose and intent of said ordinance.

The historic preservation plan shall be presented to the Planning and Zoning Commission, along with a timetable for the adoption of the provisions of the plan, for consideration and recommendation by the Commission to the City Council for inclusion in the comprehensive plan for the City of Fredericksburg. The historic preservation plan shall be updated by the Historic Review Board for consideration for inclusion within every subsequent comprehensive plan commissioned for the City of Fredericksburg; 84

(14) Review all proposed National Register nominations within the city of Fredericksburg upon recommendation of the city’s Historic Preservation Officer; 85

(15) Inform and educate the citizens of Fredericksburg concerning the historical, cultural, and architectural heritage of the city 86 and increase public awareness

83 Ibid.

84 Adaptation of Boerne, Texas, "City of Boerne Ordinance No. 91-05," Section 3, pp. 3-4.

85 Adaptation of S.A. Ord., Section 35-423, p. 11.

86 Ibid.
of historic, cultural, and architectural preservation by developing and participating in public education programs.  

(16) Recommend the acquisition of a landmark or a building, object, site, or structure within an historic district by the city government where its preservation is essential to the purpose of this ordinance and where private preservation is not feasible.

(17) Review and make recommendations concerning proposed tax increment districts and special assessment districts that would affect designated landmarks or historic districts.

(18) Recommend conferral of recognition upon the owners of landmarks or buildings, objects, sites, or structures within historic districts by means of certificates, markers, or plaques.

(19) Create committees from among its membership and delegate to these committees responsibilities to carry out the purposes of this ordinance.

(20) Maintain written minutes which record all actions taken by the Commission and the reasons for taking such actions.

(21) Prepare and submit annually to the City Council a report summarizing the work of the Board during the previous calendar year; and

(22) Revise and adopt, within one (1) year after passage of this ordinance and with the assistance of the Historic Preservation Officer, city legal staff, and the Texas Historical Commission detailed rules of procedure of the conduct of its meetings that are consistent with both Chapter 12, Article 12.200 of the Fredericksburg Code of Ordinances and with the rules of procedure necessary to obtain and maintain "certified local government" status under the provisions of the U.S. Historic Preservation Act of 1966, as amended, and Title 13, Cultural Architecture, and the Texas Historical Commission.
(i) **Meetings of the Board.** The Board shall meet at least once a month at a regularly scheduled time with advance notice posted according to the Texas Open Meetings Act.\(^9\) Additional meetings may be called by the Chairman, or upon written request of three members, or upon notice from the Historic Preservation Officer, the Building Official, or his/her representative that a matter requires urgent consideration of the Board. All meetings of the Board shall be open to the public in accordance with the Texas Open Meetings Act. Minutes of the Board’s proceedings showing the vote shall be filed in the office of the City Historic Preservation Officer and shall be a public record.\(^9\)

(j) **Meetings of Board Committees.** All decisions of committees shall be subject to ratification by the Board at its next regularly scheduled meeting. Minutes of committee proceedings showing the vote shall be filed in office of the Historic Preservation Officer and shall be a public record.\(^9\)

(k) **Quorum.** Five (5) members of the Board shall constitute a quorum, and action taken at a meeting of the Board shall require the affirmative vote of a majority of the members present and voting at such a meeting unless the specific action being taken requires the affirmative vote of a two-thirds (2/3) majority of the members present and voting on the action as specified by certain provisions of this ordinance. A simple majority of the members of a committee shall constitute a quorum, and action taken at a meeting shall require the affirmative vote of a majority of the members present and voting at such a meeting.\(^9\)

(l) **Conflicts of Interest.** No member of the Board shall vote on any matter that materially affects the property, income, or business interest of that member or gives the appearance of a conflict of interest.\(^9\)

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\(^9\) Ibid.


\(^9\) Ibid.


Analysis and Commentary on § 12.202 and 12.203

The definitions listed in an historic preservation ordinance are meant to provide legal descriptions of the key terms used in the ordinance as a means to help those who administer and enforce the ordinance, those regulated by it, and those who have the authority to determine the legality of the ordinance in a court of law to more clearly understand the purpose and intent of the ordinance's provisions. Consequently, Section 12.202 of the temporarily amended ordinance is a critical component of the ordinance, and it contains the legal descriptions of the many important words and terms used in the ordinance. The definitions in Section 12.202 should, however, be self-explanatory.

Section 12.203, as amended, retains many aspects of Section 12.204, "Historic Review Board," in the original ordinance, but these aspects have been reversed in relationship to one another. The amendments add several very important components to the "Historic Review Board" section of the ordinance that are critical to the goal of obtaining and maintaining CLG status for Fredericksburg under THC guidelines. 100

Subsection (a) of § 12.203 reestablishes the Historic Review Board (hereafter referred to as the "Board") as the governmental body in charge of administering and enforcing Fredericksburg's historic preservation ordinance. The amended ordinance leaves the number of members of the Board at seven, since the relatively small population of Fredericksburg and the concomitant small number of people who qualify for Board membership under Subsection (b) of this section realistically limit the number of members to the practical number of seven. A special provision has been added that allows each Board member to satisfy two of the residential,

100 See Appendix A for the order and wording of the "Historic Review Board" section of the current Fredericksburg historic preservation ordinance.
occupational, and organizational membership requirements for the Board's make-up. This provision helps to insure that anyone among the small portion of the population who qualifies as a potential member and is willing to serve, but who meets more than one of the qualifications for membership, will still be able to serve the city on the Board.

The qualifications for membership on the Historic Review Board have been amended in several significant areas. The first is the removal of the requirement that any person living outside of the City of Fredericksburg but within Gillespie County must own "an historic landmark or real property located within an historic district" in order to serve on the Board. The amended ordinance allows any person who lives outside of Fredericksburg but within Gillespie County to qualify for membership provided they meet one of the other requirements stated. It is felt that this change in the qualifications will enable more interested and eligible people to qualify for Board service, thereby allowing more Board membership turnover when necessary and taking pressure off residents of Fredericksburg who might feel that they are locked into service because of their singular qualifications and their residency.

The second change to the ordinance in the qualifications provision is the addition of the requirement that at least one member of the Board be a licensed real estate broker. This requirement is recommended for Board membership by the THC's model ordinance. It is also a good idea for Fredericksburg's Board, because of the huge concern over the protection of property rights in the community and the large role that the real estate business plays in the economy of this rapidly growing city. It is hoped that the presence of a licensed real

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101 F. Ord., Section 12.204, p. 12-7. See Appendix A.

102 THC, Section 2, p. 8.

103 The fact that the real estate business in Fredericksburg is a large and growing segment of the local economy was conveyed with substantial evidence by Karen Oestreich, manager of the local Century 21 real estate office and former original member of the Historic
estate broker on the Board will help steer the Board on a straight and narrow path when it considers issues and actions which, if handled poorly by members because of a collective lack of knowledge in real estate law and finance, might open the Board to charges of excessive property rights regulation and bring unnecessary lawsuits and a lack of community support for preservation to fruition. It is further hoped that the real estate broker on the Board can act as a messenger to the community, conveying to the community in word and assuring the citizens by his or her presence on the Board that the Board does and will respect property rights in its regulation and that historic preservation is and will continue to be of benefit to property values and to business in general in the community.

A third change to the qualifications is that one of the members appointed by the City Council must be an historian, while another must be either an architect, architectural historian, or historic preservationist. In the current Fredericksburg ordinance, it is necessary that one member satisfy only one out of all these qualifications. However, it is felt that having a person knowledgeable in Fredericksburg history and culture as a permanent fixture on the Board is absolutely essential in order to guide the actions of the Board at all times in a manner consistent with and complementary to the city's rich history and collective culture. Furthermore, this change to the qualification also closely follows THC recommendations that one member of the Board be an historian, and another be "an architect, planner, or [a] representative of a design profession."104 The term "historian" is left intentionally vague in both the amended ordinance and the THC model ordinance, in order to allow people who do not have a degree in the subject but who do have an acknowledged expertise in the area to qualify. Thus, making the position of historian a requirement for the Fredericksburg Board also helps the city qualify for

Review Board, conversation with author, 29 August 1995, Fredericksburg, Texas.

104 THC, Section 2, p. 8.
CLG designation. The fourth change to the Board membership qualifications in this section of the ordinance is the additional requirement that members appointed to the Board not only have a known, but also a demonstrated "interest, competence, or knowledge in historic preservation within the City of Fredericksburg." This subtle but important addition in text is also done to conform with THC guidelines in the area of historical commission membership as written in its model ordinance.\textsuperscript{105}

Another addition to the qualifications is the requirement that the City Council must create a Board whose membership generally mirrors the ethnic makeup of the city. This provision is listed as a requirement in the THC's model ordinance for cities desiring CLG designation.\textsuperscript{106} It is also appropriate for growing and changing City of Fredericksburg. Although Fredericksburg is still predominantly made up of caucasians of Germanic descent, the city's population is becoming noticeably more ethnically diversified. The City Council should see to it that the city's minority ethnic groups, particularly the growing Hispanic population, receive representation on the Board in rough proportion to their numbers within the city, so that these ethnic groups can play an important role in preserving the history and culture of their city as well. Such ethnic minority membership on the Board will encourage the preservation of non-German-Texan related historical, architectural, and cultural artifacts and will result in the recognition and celebration of all cultures within the city. It is also hoped that the requirement for ethnic membership on the Board will generate support for the temporarily amended ordinance among the city's minority groups and that the preservation and celebration of minority history and culture will lead to continued support for and involvement in historic preservation activities by Fredericksburg's growing non-Germanic population. The requirement that the City Council "make appointments

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\textsuperscript{105} Ibid.
\textsuperscript{106} Ibid.
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[to the Board] that will enable the City of Fredericksburg to obtain and maintain "certified local government" status is also a newly added provision to the ordinance. This provision, inspired by a similar one in San Antonio's historic preservation ordinance, publicly proclaims the city's recognition of the importance of "certified local government" status to the cause of historic preservation in Fredericksburg and its commitment to first achieving and then maintaining such status. The technical assistance and preservation information that the city will receive from the Texas Historical Commission as a certified local government (once the proposed amended ordinance is permanently enacted) will greatly boost the level of historic preservation expertise in Fredericksburg. This, in turn, will have a tremendous effect on the quality of historic preservation regulation in the city. Special grants given to CLGs by the THC could also further preservation efforts in the city in many significant ways. Thus, it is imperative that the City of Fredericksburg first obtain CLG status - one of the ultimate objectives of this amended ordinance - and then continually strive to meet all of the criteria for continued existence under CLG status. The proper education of the public on the benefits and necessity of CLG status, and the fact that the amended ordinance qualifies Fredericksburg for such status, will help garner both initial and long-term public support for the amended ordinance, especially those individuals anxious to have State and federal financial assistance working toward the improvement of their city.

Among the other amendments to Section 12.203 is the important addition to the original wording of a provision occurs in the subsection dealing with the voting rights of ex officio members of the Board (subsection "g"). The phrase "act in an advisory capacity, participating fully in Board discussions" is added to the original ordinance's wording of this

107 Only after the City Council officially adopts the amended ordinance as the permanent law governing historic preservation in the city can CLG status be conferred upon Fredericksburg by the Texas Historical Commission. W. Dwayne Jones, Preservation Planner, Texas Historical Commission, telephone conversation with author, 05 February 1996.
subsection from a subsection of the San Antonio historic preservation ordinance, in order to offer more guidance as to what is expected of ex officio members of Fredericksburg’s Historic Review Board.\textsuperscript{108}

A new provision regarding the election and terms of the Board Chairman and Vice-chairman requires that these officials be elected from among the members who have served on the Board for at least one year and allows said officials to remain in office for up to two consecutive terms. This new provision is designed to insure that the initial Board, put in place after the many and complex changes to the ordinance are adopted, is led by veteran Board members who have prior experience with historic preservation regulation and who understand the reasoning and necessity behind the new amendments to the ordinance. Furthermore, it guarantees that the Board will always be led by experienced members. It also allows members with high qualifications and demonstrated expertise in preservation and leadership to serve twice as long in the offices of Chairman or Vice-chairman is possible under the current ordinance.

One of the most important changes created by the amendments to the city’s present ordinance is the expansion of the duties and functions of the Board to include many new powers and responsibilities, the exercise of which is absolutely crucial to the cause of establishing effective historic preservation regulation in Fredericksburg. As examined extensively in Chapter One, the Historic Review Board’ lack of power under the current ordinance has allowed many of the city’s historic buildings to be altered in ways that compromise their historic structures or characters. This lack of power has also allowed the construction of new buildings that detract from the historic and cultural character of the city’s only historic district. The continued growth of Fredericksburg’s tourist industry and population poses ever increasing threats to the city’s historic, cultural, and architectural resources, especially since many of the new tourist-oriented

\textsuperscript{108} S.A. Ord., Section 35-423, p. 12.
business are being opened by new residents of the city. These newcomers are less likely to be talked out of their anti-preservation plans for their buildings by the persuasion and suggestions of the Historic Review Board, because they do not feel personal ties to the history and culture of Fredericksburg. Nor are they subject to the peer pressure of old friends and neighbors to "do the right thing for the community" by respecting the traditional, familiar character of their historically, culturally, or architecturally significant buildings. Thus, it is imperative for the social, cultural, and economic health of the city that the Historic Review Board be given the new powers and directives offered by Section 12.203 of the amended ordinance.

The important duties, functions, and powers given to the Board under numbers three through ten of Subsection (h) are aimed at endowing the Board with enough oversight and control to stop the continuous destruction of the physical fabric and character of the city’s historic, cultural, and architectural resources. In provisions three through six of Subsection (h), the Board is specifically empowered to identify and inventory both designated and potential landmarks and historic districts and to recommend to the City Council the designation of nominated landmarks and districts that meet the criteria for designation adopted by the Board. The identification, inventory, and recommendation of landmarks and historic districts for designation are the first major steps necessary to allow the Board to protect the large number of important resources outside of the city’s historic district that are currently endangered by the threat of demolition, alteration, or unsympathetic new construction. It is hoped specifically and prominently placing these powers and duties in the "Duties and Functions" subsection of Section 12.203 will strongly encourage the Board to quickly and more aggressively pursue the designation of the many significant and endangered resources outside of the current historic district than has the Review

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109 Stan Klein, original and current member of the Fredericksburg Historic Review Board, conversation with author, 28 August 1995, Fredericksburg, Texas.
Board under the current ordinance.\textsuperscript{110} It is also hoped that the City Council, with its evident interest in better protecting the historic resources of Fredericksburg shown through its authorization for the formulation of new amendments to the ordinance, will be much more receptive to the idea of additional designations than it has been in the past.\textsuperscript{111}

Numbers seven through ten of Subsection (h) allow for the significant expansion of the powers of review granted the Historic Review Board under the current ordinance. At the present time, the Board’s recommendations upon review of a project are purely advisory. Fredericksburg’s Building Official is instructed to issue a certificate of review to the applicant within three days after receiving the recommendation of the Board, regardless of whether the recommendation is for or against allowing a project to proceed.\textsuperscript{112} Thus, all the current review process allows the Board is an opportunity to persuade an owner or his/her agent (the person who usually attends the Board meeting when the owner’s application is up for review) to abandon or modify plans that will lead to the loss of historic, cultural, or architectural character or fabric, and to suggest alternative, preservation conscious methods to accomplish the same goal(s).\textsuperscript{113} The applicants and/or their agents are under no obligation whatsoever to follow the recommendations of the Board, since they will receive a certificate of review no matter what

\textsuperscript{110} See Section 12.207 of Fredericksburg’s current ordinance in Appendix A, p. 12-9.

\textsuperscript{111} According to Mr. Stan Klein, the City Council, has been hesitant to designate properties outside of the current municipal/National Register Historic District for fear of charges of excessive government regulation by the owners. Stan Klein, AIA, member, Fredericksburg Historic Review Board, conversation with author, Fredericksburg, Texas, 28 August 1995.

\textsuperscript{112} See the current Fredericksburg historic preservation ordinance in Appendix A, Section 12.205, Subsection (h).

\textsuperscript{113} Stan Klein, original and current member of Fredericksburg’s Historic Review Board, conversation with author, 28 August 1995, Fredericksburg, Texas.
they intend to do to their designated structure as long as they go through the motions required for receiving the certificate from the Building Official.

This ultimate lack of power to stop harmful additions, alterations, new construction, or demolition affecting designated landmarks and historic districts has made the Board and the historic preservation ordinance ineffectual, especially as more and more outsiders come into Fredericksburg to live and establish new businesses. Numbers seven through ten of subsection (h) give the Historic Review Board the authorization it needs to administer the considerably stronger, new regulatory powers it receives in Sections 12.209 of the amended ordinance concerning certificates of appropriateness. These four provisions of subsection (h) also grant the Board the power it must have to develop guidelines that will guide plans for changes affecting landmarks and historic districts in a manner consistent with the ordinance’s new criteria for certificate of appropriateness application reviews.114 The new powers and the new guidelines authorized in this portion of Subsection (h) thereby accomplish another objective of the amendments to the ordinance: to give actual regulatory power over designated landmarks and historic districts to the Board, so that the Board, acting under the directives of the amended ordinance, can stem the tide of destructive change that has been growing and will continue to grow if left unchecked by the purely advisory and increasingly ineffectual powers of the present ordinance.

An extremely significant omission exists in the powers and duties given to the Board in provision (10) of subsection (h) in that the Board is not allowed to hold public hearings and review applications for certificates of appropriateness concerning properties which are under

114 See Section 12.209 in Appendix B for the specific regulations concerning the issuance of certificates of appropriateness that are to be enforced by the Board.
consideration (nominated) for designation. *City of Dallas v. Crownrich*\(^{115}\) specifically upheld the power of Texas municipalities to review and approve or deny permits affecting property nominated for landmark and historic designation, and the provision in the San Antonio ordinance from which number (10) was adapted gives San Antonio’s Board of Review these powers of review and approval or denial over nominated property.\(^{116}\) Indeed, such powers are extremely desirable and should ideally be invested in an historical commission in order to prevent unsympathetic owners of nominated property from carrying out destructive changes to their properties that they know will not be approved by any respectable historical commission before their property actually comes under the commission’s regulation.

However, although it is legally feasible and certainly desirable to invest Fredericksburg’s Historic Review Board with such powers of review, it is not politically expedient to do so at the present time. It would be difficult to convince a significant portion of Fredericksburg’s population that it is not excessive regulation to allow properties which are only nominated for, but not guaranteed landmark or historic district designation, to be regulated by a government board while their designations awaits approval. Judging from the property rights-based fight that erupted over the approval of the first drafts of Fredericksburg’s current preservation ordinance and the citizens’ known distrust of government regulation or intervention in individuals’ affairs, a substantial segment of the voters would view such powers of review over nominated properties as an unconstitutional usurpation of guaranteed individual property rights. It will be hard enough to convince the citizenry that the regulations on *designated* property enacted by the ordinance are not only absolutely necessary, but are also completely legal under State and federal laws and

\(^{115}\) 506 S.W.2d, 654 (Tex.Civ.App. - Tyler 1974, writ ref’d n.r.e.).

\(^{116}\) S.A. Ord., Section 35-423, p. 10.
constitutions, without adding the difficult task of convincing them that regulations on nominated property are also completely legal and constitutional.

Although there is a risk that some of Fredericksburg’s historic, architectural, and cultural resources may be lost if the Board is not granted powers to review nominated properties, the loss of a much greater number of the same resources is guaranteed if the public does not approve the regulations over designated properties granted the Board by this amended ordinance. Thus, the powers of review over nominated properties are omitted in order to give the amended ordinance, with its more immediately vital regulations over designated properties, a better chance of adoption by the City Council. It is, however, strongly recommended that the powers of review over nomination be adopted through a future amendment once the current fervor over property rights dies down and the citizenry become more comfortable with the level of regulation enacted under the amended ordinance proposed in this thesis. This power of review is not required under the THC’s guidelines for municipalities wishing to qualify for certified local government status with their preservation ordinances, so its absence will not hurt Fredericksburg’s chances for obtaining designation as a CLG.

Other necessary political concessions exist in Subsection (h) in the form of required City Council ratification of the rules and procedures governing the Board’s conduct of business (in number (2)) and the criteria for the designation of landmarks and historic districts (in number (3)). These ratification requirements, required by the THC’s model ordinance, assure the citizens of Fredericksburg that there will be opportunity for public review and comment of the rules and procedures of the Board and the criteria for landmark and historic district designation at

\[11^7\] See Part IV of Chapter Five for a more detailed discussion of this recommended amendment to the ordinance once the ordinance is permanently adapted.

\[11^8\] THC, Section 7, p.11.
upcoming public meetings of the City Council. In this way, both the citizenry and the members of the City Council know that there is a mechanism for public accountability in place regarding the operations of the Board and the designation of landmarks and historic districts and that this mechanism prevents the passage of rules and guidelines that would be considered too excessive and overly regulatory by a majority of the conservative population. These ratification provisions can be presented to the public as a selling point for the adoption of the amended ordinance, since they are a built-in means of public oversight that help guarantee that the regulations enacted under the amended ordinance will not illegally encroach on property rights or lead to excessive government regulation of individuals' actions.

Number (13) of Subsection (h) delegates to the Board the extremely important duty of having an historic preservation plan prepared for the city as part of every comprehensive plan created for Fredericksburg. The formulation and updating of historic preservation plans for municipalities is highly recommended by the THC in its ordinance formulation guidelines, since preservation plans allow specific preservation goals and objectives to be formulated and officially adopted as guidelines for the work of elected officials and preservation commission members. Such a plan for Fredericksburg is absolutely necessary to help make sure that future city actions not only do not lead to the loss of any of the city's valuable historic, cultural, and architectural resources, but also actively promote the cause of historic preservation within the city in every way possible. Provisions (13.1), (13.2), and (13.3) allow the Board to specify the role each city agency should play in the future promotion of historic preservation concerns, while provision (13.4) allows the Board to formulate and submit for adoption amendments to the ordinance that are essential to furthering the intent and purpose of the ordinance. Provision

119 Ibid., Section 2, p. 8.

120 Ibid., p. 6.
(13.4) is absolutely crucial to the ability of the Board to formulate and adopt the amendments suggested as necessary for future inclusion in the ordinance in Chapter Five.

The fact that Number (13) requires that the historic preservation plan be adopted as part of every comprehensive plan done for the City of Fredericksburg is significant for two reasons. First, Texas Local Government Code requires municipalities to formulate and adopt zoning regulations in accordance with a comprehensive plan. Then, including an historic preservation plan for Fredericksburg in every comprehensive plan created for the city greatly increases the chances that preservation goals and guidelines outlined in the plan will be taken seriously by agencies of the city government. The second reason is that Fredericksburg did implement the recommendation for the creation of a municipal historic preservation ordinance to oversee a newly created historic district found in the comprehensive plan formulated for Fredericksburg in 1985. Thus, it appears that Fredericksburg is taking seriously the recommendations for action outlined in its comprehensive plans seriously. For these two reasons, it is essential that the preservation plans formulated for Fredericksburg under the authority of the Board be adopted as part of each comprehensive plan developed for the city.

The duties and powers granted the Board in numbers (11) and (12) of Subsection (h) of the amended ordinance greatly expand the Board's current ability to recommend to the Planning and Zoning Commission and the City Council the adoption of policies "that may further the city's preservation effort." Numbers (11) and (12) enable the Board to actively pursue the


elimination of city regulations and policies outside of its immediate control that work against the cause of preservation in the Fredericksburg and the stated purpose and intent of the city's amended historic preservation ordinance. As has often been the case in cities throughout the nation, municipal zoning regulations and fire and building codes that are uncoordinated with historic preservation regulations can allow private individuals and even city agencies to evade the provisions of historic preservation ordinances, thereby severely undermining the effectiveness of preservation regulations and eroding the morale of preservationists in these municipalities. Numbers (11) and (12) seek to help the Board avoid such an unfortunate scenario in Fredericksburg by allowing the Board to actively work toward the coordination of all relevant city regulations and policies, so that these policies and regulations are at least benign and, better, beneficial to the cause of historic preservation within the city. Provision number (11) allows the Board as a whole to recommend at public meetings or hearings the rejection of proposed regulations or policies which would be detrimental to preservation efforts within the city. Both provisions (11) and (12) also enhance the Board's ability to influence the city's comprehensive plan in such a way that recommendations for future amendments to city policies and regulations that will better serve the implementation of the historic preservation plan can be formulated and publicly endorsed for adoption as part of the latest comprehensive plan for the city.

Another important oversight duty given to the Board is found in number (17) of Subsection (h). Among the special assessment districts that could affect designated landmarks or historic districts in the city were they created is a business improvement district (BID). Although Fredericksburg's main commercial district does not need the services of a BID at this time of economic prosperity, a time may come when local merchants and business people desire to create a BID to help draw customers back into the old commercial area. Since a significant

124 See Chapter Three.
portion of the city's present commercial district lies within Fredericksburg's only current historic district, it is extremely important that the Board be given an opportunity to review the functions of any proposed BID. The Board could then recommend ways to make the BID's operational practices and procedures completely compatible with and even complimentary to the city's historic preservation regulations. This is just one example of the potential need for the oversight given the Board in number (17) as Fredericksburg continues to grow and change.

Two of the provisions that better enable the Board to accomplish its oversight and preservation planning duties are numbers (1) and (19) of Subsection (h). Number (1) allows the Board to recommend the employment of professional historic preservation planning consultants. Consultants could be used to carry out much of the work of formulating the various guidelines needed by the Board, to help prepare the required historic preservation plan for the city, and to advise the Board on whether to support or seek the amendment of current or proposed regulations, policies, or special assessment/tax increment districts that are or may be harmful to the cause of preservation in the city. The ability to recommend the employment of professional preservation consultants when needed is an absolutely necessity for the Board, as it is for any historic preservation commission of a small city like Fredericksburg. This is because the Board, like many of these commissions, simply does not have enough members with the time and/or the professional qualifications necessary to formulate all aspects of design guidelines, prepare an entire preservation plan, or conduct a thorough investigation of the city's current zoning regulations.

Provision number (19), however, allows the Board to create committees, so that those members with the most experience or expertise in a given area of concern (e.g. the process of formulating a municipal preservation plan) can guide the work of hired consultants performing services in that area of concern. The committees can then present the finished products created
by the committees and/or the consultants to the Board for adoption with explanations as to why it is necessary or expedient to do certain things in certain ways. The formulation of special committees, whether they be to guide the work of consultants or not, will allow the Board to accomplish its duties and functions much more easily and efficiently than if the entire Board had to be involved in every step of each action necessary to fulfill the requirements of the ordinance.

The continued growth of the city and the many new functions and duties required of the Board under the amended ordinance simply necessitate that the Board be able to break up its work load into manageable parts for committees to accomplish. The use of committees will not only be beneficial to the members of the Board by streamlining the workload and the decisionmaking process, it will also benefit historic preservation regulation in the community if the Board is always able to respond quickly and efficiently to the needs of the city and the citizens it regulates.

The employment of a qualified person to act as city historic preservation officer referred to in number (1) will also help make the duties of the Board and the enforcement of the ordinance easier, since the creation of the position of an historic preservation officer for the city plays an extremely crucial part in the accomplishment of one of the major goal of the amendments to the ordinance: to greatly enhance and strengthen the regulations and expertise being applied to the municipal efforts at historic preservation in Fredericksburg. However, an explanation of the duties and functions of the office of Historic Preservation Officer created in Section 12.204 to follow is reserved for the commentary on Section 12.204 found in the next part of this chapter.

Although it is unnecessary to comment on most of the rest of the more self-explanatory duties and functions invested in the Board in Subsection (h), it is important to emphasize the potential public support for the amended ordinance the actions of the Board under numbers (15) and (18) could garner. Number (15) follows the requirements of the THC’s model ordinance by making it one of the duties of the Board to educate the public on the extremely important role
historic preservation plays on the social, cultural, and economic well being of the City of Fredericksburg and its citizens. The success of such education efforts is crucial to the endeavor to gain enough public support for the amended ordinance, so that it may be made permanent by a public vote of the City Council at the end of its four year trial period.

Provision number (18), allowing the Board to publicly recognize good preservation efforts, is also a provision required by the THC model ordinance, and is designed to engender acceptance of the ordinance among the citizens of Fredericksburg. It is hoped that the creation and administration of this system of recognition will encourage all owners of designated property, whether they initially support the cause of historic preservation or not, to recognize the importance of their designated properties to the community and work toward the further preservation of their individual properties and the continued advancement of the cause of preservation within the community as a whole. Furthermore, it is hoped that the positive press generated by the recognition of these owners will serve as to teach the public of the importance of historic preservation to Fredericksburg and thereby garner more crucial support for both the vote to permanently enact the amended ordinance and the many decades under the regulations of the ordinance to follow its permanent adoption.

Subsections (i) and (j) of §12.203 again insure public accountability for the actions of the Board under Texas law, thereby helping to assure the citizens of Fredericksburg that they may monitor the decisions and actions of the Board and publicly testify against or protest any actions or decisions which they feel are overly excessive or unrequired. Once again it is hoped that the

125 THC, Section 2, p. 9.

126 The four year trial period for the amended ordinance is a key part of the provisions of the ordinance designed to enable it to gain sufficient initial public acceptance to assure its temporary enactment on a trial basis by the City Council. This provision is written into the amended ordinance in Section 12.219 and commented on in Part X of this chapter.
requirement of open meetings and public records will be a selling point to the regulation-wary citizens of Fredericksburg in public education campaigns aimed at gaining support for the adoption of the amended ordinance. Finally, Subsection (l)’s conflict of interest clause for members of the Board is essential to help guarantee that no member of the Board profits in any way from his/her position of enforcing government historic preservation regulation on the people of Fredericksburg. Were a member to profit from his/her position on the Board at the public’s expense, the repercussions would erode both public faith in the abilities of the Board and public trust in historic preservation regulation in general. Such an unethical action would also probably lead to the defeat of the amended ordinance at the end of its four year trial period.
§ 12.204 CITY HISTORIC PRESERVATION OFFICER

The City Council shall, upon recommendation by the Historic Review Board and the City Building Official, appoint a qualified individual to serve as City Historic Preservation Officer. The Historic Preservation Officer shall administer this historic preservation ordinance and shall advise the Historic Review Board on each application that shall come before the Board. This person shall have expertise in historic preservation or architectural history as well as other qualifications necessary to serve as a City Inspector under the City Building Official. 127

In addition to serving as representative of the Board, the City Historic Preservation Officer has responsibility for coordinating the city’s preservation activities with those of state and federal agencies and with local, state, and national preservation organizations in the private sector. 128

The City Historic Preservation Officer shall recommend to the Board buildings, objects, sites, structures, and districts for designation as landmarks or historic districts in accordance with the criteria established by this ordinance. 129

The City Historic Preservation Officer may also recommend to the Board buildings, objects, sites, structures, and districts for nomination to the National Register of Historic Places. Such recommendations shall be guided by the criteria established in the National Historic Preservation Act of 1966, as amended. 130

In addition to completing the duties and functions of City Historic Preservation Officer, the individual hired as the City Historic Preservation Officer shall carry out the duties of a City Building Inspector on a part time basis under the direction of the City Building Official. However, the duties of City Historic Preservation Officer shall control the time, energy, and loyalty of the appointed individual above his/her duties as part time Building Inspector. In order to avoid a conflict of interest, the individual hired as the City Historic Preservation Officer shall not issue permits, certificates of appropriateness, or violations or stop-work orders as both the City Historic Preservation Officer and a Building Inspector on the same work project for the same owner or applicant.

129 Ibid., pp. 13-14.
130 Ibid., p. 14.
The creation of the office of City Historic Preservation Officer not only is a requirement of a municipality seeking to obtain CLG status with an approved historic preservation ordinance, but also is absolutely necessary to insure that the duties and functions required of the Board by Section 12.203 of the amended ordinance will be accomplished and that all of the regulations of the amended ordinance will be enforced. In fact, the office of City Historic Preservation Officer is the heart of the administration and the enforcement of the amended historic preservation regulations.

Under Fredericksburg’s current ordinance, the Building Official acts in the capacity of the Historic Preservation Officer, having the authority to decide which applications for certificates of review are approved (with the concurrence of the Chairman or Vice-chairman of the Board) and which should go before the Board for approval. The potential for error in reviewing and approving applications for certificates of review is significant, since the Building Official and perhaps the Chairman or Vice-chairman lack the expertise necessary in some cases to determine whether or not a new structure, a method of ordinary repair or maintenance, or a change, alteration, restoration, or removal of an exterior architectural feature will in fact irrevocably alter the historic, cultural, or architectural character of a designated resource.

The requirements under the amended ordinance that the City Historic Preservation Officer have “expertise” in historic preservation or architectural history and that the Chairman and Vice-chairman of the Board each have at least one year of experience on the Board are designed to

131 See Section 12.205 of Fredericksburg’s current historic preservation ordinance in Appendix A.

132 See Section 12.205 of the current ordinance in Appendix A.
lesson the potential for error in decisions approving certificates of appropriateness for ordinary maintenance and repair projects. However, even with the expertise required of the City Historic Preservation Officer, no single individual is allowed to make decisions concerning whether or not a proposed action will alter the character of a designated property under the amended ordinance. The risk for error or bias is simply too great.

A City Historic Preservation officer is also needed to provide the levels of administration and enforcement required under the amended ordinance. The greatly expanded powers of regulation, the new duties and functions given the Board, and the potential for a significant expansion in the number of properties in the city designated under the ordinance all require a level of administration and enforcement above and beyond the time and expertise that can realistically be provided by the reestablished Board and the Building Official. The timely processing of certificates of appropriateness applications simply will not be achieved if the number of designated properties increases and each application must await processing by an already overworked Building Official, whose primary loyalty and allocation of time is not to the administration of the ordinance in the first place. Such a backlog of applications and its resulting inconvenience certainly will not endear the ordinance to owners of designated properties, especially owners of designated properties used for business. In fact, these owners will come to hate the ordinance’s regulation, begin to seek ways of escaping compliance with it, and actively work for the termination of the ordinance when it comes up for the City Council’s vote after four years. Owners of businesses may even file lawsuits against the city if its failure to administer the preservation regulations in a timely manner causes them a loss of business.

133 See Section 12.209 in Appendix B for a description of the duties of the City Historic Preservation Officer in regard to the review and approval or denial of applications for certificates of appropriateness.
A designated City Historic Preservation Officer (CHPO) with expertise in historic preservation or architectural history is, therefore, needed to handle the day-to-day administration of the ordinance in place of the Building Official. The expertise required of the CHPO will also give the Board confidence in his/her abilities and judgements, so that its members will feel well assured that the CHPO is capable of helping them carry out many of the expanded duties and functions of the Board (such as the processing of certificate of appropriateness applications which require a Board hearing, carrying out the actual "leg work" of inventorying historic properties in the city, and recommending properties for designation) which the members simply do not have the time as volunteers to carry out. The Board will, however, still maintain complete oversight and responsibility for the administration of the ordinance.

Furthermore, the appointment of a qualified CHPO will help the city obtain CLG designation by the Texas Historical Commission. The CHPO will give the Board and the city government in general someone to act as a liaison to the THC and actively seek the financial and technical assistance offered CLGs by the THC as well. The appointed CHPO also can solicit additional technical and financial assistance from Preservation Texas, Inc., and other local, state, and federal agencies and preservation organizations as needed by the Board.

Finally, the establishment of the office of City Historic Preservation Officer is critical to the enforcement of the expanded regulations in the amended ordinance. Under the current ordinance, "property city officials, or their duly authorized representatives" are given the responsibility of enforcing the regulations of the ordinance. Thus, no specific city official is actually responsible for enforcement, although the term "property city officials" and the fact

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134 Preservation Texas, Inc. is the statewide nonprofit historic preservation organization for Texas.

that the Building Official is responsible for receiving and reviewing applications for certificates of review would seem to at least imply that the City Building Official is the most likely candidate to enforce the ordinance. Unfortunately, even if the Building Official were officially charged with the responsibility of enforcing the ordinance, his/her lack of knowledge or training in historic preservation in general or architectural history in particular means that the potential is there for him/her to miss a subtle, illegal addition or alteration to a designated historic property. The continued growth of the city has also greatly increased the work load of the Building Official, so that, were he and future Building Officials officially charged with the duty of enforcing the amended ordinance, they would find it difficult to set aside the time to adequately perform the duty. This would especially be the case if many more properties were designated as historic under the temporarily amended ordinance.

The appointment of a qualified CHPO who is specifically designated to enforce the amended ordinance\(^ {136} \) will give the Board a person who not only has the time and expertise to periodically inspect designated properties for compliance with the ordinance, but who also will pursue the imposition of penalties on those who violate the ordinance. The stipulation that the CHPO also fulfill the duties of a building inspector on a part-time basis under the direction of the City Building Official will give the CHPO even more opportunity to examine building projects being carried out on designated landmarks or within historic districts for compliance with the amended ordinance’s regulations. Furthermore, the conflict of interest clause in Section 12.204, which prohibits the CHPO from issuing permits, certificates of appropriateness, or violations or stop-work orders as both the City Historic Preservation Officer and a Building Inspector on the same work project, will also insure that all city codes and ordinances will be

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\(^{136}\) See subsection 12.209.5 and Section 12.216 of the amended ordinance in Appendix B.
strictly and properly enforced. The CHPO will be prevented from allowing his/her sympathy for a particular preservation project to cloud his/her judgement concerning the level of safety of the desired project or tempt him/her to be lax in the application of the city's building and safety codes upon inspection, and vice versa. The fact that the CHPO can fulfill the city's recognized immediate need for another building inspector working on a at least a part-time basis\textsuperscript{137} will hopefully make city officials more receptive to the idea of creating an office of City Historic Preservation Officer, especially if his/her salary can be paid in part out of fees charged for certificate of appropriateness review by the Board.\textsuperscript{138} The part-time arrangement should also make the Council more supportive of the adoption of the amended ordinance in general.

In closing, it must be noted that the term "expertise," in reference to the requirement that the person appointed CHPO "shall have expertise in historic preservation or architectural history," is an intentionally vague term. It is meant to allow a local citizen who obviously has extensive knowledge and experience in historic preservation but who does not have a degree in the field (such as a former Chairman or Vice-chairman of the Board) to qualify for the office. In fact, it is meant to encourage qualifying local citizens to apply for the position, since, in Fredericksburg, as in any other small town, people feel more comfortable with a person they know or whose family name they recognize. A long-time citizen CHPO also will be more understanding of and responsive to the special needs and concerns of local citizens to a greater degree than a CHPO who moves in from another town or state, at least at initially. A local

\textsuperscript{137} According to the City Secretary, there is acknowledgement among city officials of the need for another city inspector to work on at least a part-time basis. Shelley Britton, City Secretary, City of Fredericksburg, Texas, conversation with author, 4 January 1996, Fredericksburg, Texas.

\textsuperscript{138} See Chapter Five.
CHPO will therefore help generate more crucial support for and cooperation with the amended ordinance's regulations among the citizenry than could an outsider.

Of course, it is admittedly hard to be an expert in architectural history without a degree in the subject, and it is doubtful that many citizens of Fredericksburg hold such a degree or have such extensive knowledge in the field of architecture to qualify as an expert in architectural history. Because of this fact and the importance of having a CHPO who is a bona fide expert in historic preservation or architectural history, the Board should not be discouraged from actively recruiting someone from another municipality or state to accept the position.
§ 12.205 Criteria and Process for Recommending the Designation of Historic Landmarks and Historic Districts

§ 12.205.1 Criteria for the Designation of Historic Landmarks and Historic Districts

A historic landmark or district may be designated if it:

(a) Possesses value as a visible example or reminder of the history or cultural heritage of the community, county, state, or nation;

(b) Is the site of a significant local, county, state, or national event in history;

(c) Is an archaeological site that reveals information about the history or prehistory of the area;\(^{140}\)

(d) Is identified with a person or persons who significantly contributed to the development of the community, county, state, or nation;

(e) Is identified as the work of a master builder, designer, or architect whose individual work has influenced the development of the community, county, state, or nation;

(f) Embodies distinguishing characteristics of an architectural style valuable for the study of a period, type, method of construction, or use of indigenous materials;

(g) Possesses historical, architectural, or cultural character as a particularly fine or unique example of a utilitarian structure, including, but not limited to, barns or other agricultural outbuildings, stables, bridges, gas stations, and other commercial structures;

\(^{139}\) The components of this section are adaptations of S.A. Ord., Section 35.430.1, pp. 19-20, unless otherwise noted.

\(^{140}\) This provision is written to comply with THC ordinance requirements for CLG status, THC, p. 11, but is not similar in any way, shape, or fashion to any provision concerning archaeology found in THC guidelines, the San Antonio ordinance, or any other ordinance referred to as a primary source in this thesis.
(h) Is a unique location or possesses singular physical characteristics representing an established and familiar visual feature of a neighborhood, community, or the city.\footnote{141}

(i) Represents a resource, whether natural or man-made, that greatly contributes to the character or image of a defined neighborhood or community area.

(j) Possesses historical, architectural, or cultural integrity of location, design, materials, and workmanship;

(k) Embodies character as a geographically definable area possessing a significant concentration, linkage, or continuity of historically, architecturally, or culturally significant sites, buildings, objects, or structures united by past events or aesthetically by plan or physical development; and

(l) Possesses character as an established and geographically definable neighborhood, united by culture, architectural style, or physical plan and development.

\textit{Additional Criteria for the designation of historic districts:} Before a proposed historic district may be recommended to the Board for designation by the City Historic Preservation Officer, documentary evidence must be obtained which proves that at least fifty-one percent (51\%) of the owners of property located within the boundaries of the proposed historic district concur with the recommendation for the designation of the proposed historic district.\footnote{142}

\section*{\section*{§ 12.205.2 Process for Recommending the Designation of Historic Landmarks and Historic Districts}}

Requests for designation shall be made on a form obtained from the City Historic Preservation Officer. Completed request forms shall be returned to the Office of the City Historic Preservation Officer for processing. The City Historic Preservation Officer shall recommend to the Board buildings, objects, sites, structures, and districts for designation as landmarks or historic districts in accordance with the criteria established in § 12.205.1 of this ordinance. Approved recommendations for landmark or historic district designations are then made by the Board to the City Council through the Planning and Zoning Commission. In the event the Board does not recommend an applicant’s request for designation of a resource, the applicant may petition the Planning and Zoning Commission for a hearing at the next scheduled meeting of the Planning and Zoning Commission.\footnote{143}

\footnotesize{\textsuperscript{141} Adaptation of F. Ord., Section 12.203, p. 12-6 and S.A. Ord., Section 35-430.1, p. 19.}

\footnotesize{\textsuperscript{142} Adaptation of Fort Worth, Texas, "City of Fort Worth Historic Preservation Ordinance," Subdivision B(4), p.11.}

\footnotesize{\textsuperscript{143} \textit{Ibid.}, pp. 18-19.}
§ 12.206 Designation of Historic Landmarks and Historic Districts

The City Council may designate by ordinance certain areas in the City of Fredericksburg as historic districts and certain places, buildings, objects, sites, structures, or clusters as historic landmarks.\(^{144}\) The following provisions pertaining to the designation of historic landmarks and historic districts constitute a part of the comprehensive zoning plan of the City of Fredericksburg.\(^{145}\)

§ 12.206.1 Historic Landmarks

(a) Property owners of proposed historic landmarks shall be sent written notice by certified mail, return receipt requested, informing them that their properties have been recommended for designation, stating the reasons for recommendation, and indicating the date, time, and place of the public hearing of the Board to consider the recommended designation. Such notice shall be sent at least thirty (30) days prior to the public hearing of the Board and shall be sent to both the registered property owners’ last known address as it appears in the Official Public Records of Real Property of Gillespie County and the street addresses of the properties recommended for designation.\(^{146}\) At the Board’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.\(^{147}\)

(b) Upon recommendation of designation by a two-thirds (2/3) vote of the Board, the proposed historic landmark designation shall be submitted to the Planning and Zoning Commission within thirty (30) days from the date of the formal submittal of the designation request by the Board. The Planning and Zoning Commission shall give public notice and conduct its hearing on the proposed designation within forty-five (45) days of the receipt of such recommendation from the Board. 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 Fredericksburg. The Planning and Zoning Commission shall make its recommendation to the City Council within forty-five (45) days subsequent to the hearing on the proposed designation.\(^{148}\)

(c) The City Council shall schedule a hearing on the Planning and Zoning Commission’s recommendation to be held within forty-five (45) days of receipt of the recommendation of the

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\(^{145}\) Adaptation of THC, p. 9.


\(^{147}\) Adaptation of THC, p. 9.

\(^{148}\) Ibid., pp. 9-10.
Planning and Zoning Commission. The City Council shall give public notice, follow the publication procedure, hold its public hearing, and make its determination on the proposed designation in the same manner and within the same time limit as provided in the general zoning ordinance of the City of Fredericksburg.149

(d) Upon designation of a building, object, site, or structure as an historic landmark by the affirmative majority vote of the City Council, the City Council shall cause the designation to be recorded in the Official Public Records of Real Property of Gillespie County, the tax records of the City of Fredericksburg, and the Gillespie Appraisal District as well as the official zoning maps of the City of Fredericksburg.150 Such designation shall be in addition to any other zoning district designation established in the zoning ordinance. All zoning maps shall reflect the historic landmark by the letter "H" as a suffix to the use designated.151 The City Secretary shall send written notice of the fact of designation by certified mail, return receipt requested, to the owner(s) of the designated landmark within ten (10) days after the designation of the landmark by the City Council.152

§ 12.206.2 Historic Districts

(a) All owners of property within a proposed historic district shall be sent written notice by certified mail, return receipt requested, informing them that their properties have been recommended for designation, stating the reasons for recommendation, and indicating the date, time, and place of the public hearing of the Board to consider the recommended designation. Such notice shall be sent at least thirty (30) days prior to the public hearing of the Board and shall be sent to both the registered property owners' last known addresses as they appear in the Official Public Records of Real Property of Gillespie County and the street addresses of the properties recommended for designation. Notice of the proposed designation of an historic district shall be published in a newspaper having general circulation within the city at least (30) days prior to the public hearing of the Board to consider the recommended designation and shall indicate the date, time, and place of the said public hearing of the Board.153 At the Board'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.154

149 Ibid., p. 10.

150 Adaptation from THC, p. 10.


154 Adaptation of THC, p. 10.
(b) Upon recommendation of designation by a two-thirds (2/3) vote of the Board, the proposed historic district designation shall be submitted to the Planning and Zoning Commission within thirty (30) days from the date of the formal submittal of the designation request. The Planning and Zoning Commission shall give public notice and conduct its hearing on the proposed designation within forty-five (45) days of the receipt of such recommendation from the Board. 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 Fredericksburg. The Planning and Zoning Commission shall make its recommendation to the City Council within forty-five (45) days subsequent to the hearing on the proposed designation.155

(c) The City Council shall schedule a hearing on the Planning and Zoning Commission’s recommendation to be held within forty-five (45) days of receipt of the recommendation of the Planning and Zoning Commission. The City Council shall give public notice, follow the publication procedure, hold its public hearing, and make its determination on the proposed designation in the same manner and within the same time limit as provided in the general zoning ordinance of the City of Fredericksburg.156

(d) Upon designation of an historic district by the majority vote of the City Council, the City Council shall cause the designation to be recorded in the Official Public Records of Real Property of Gillespie County, the tax records of the City of Fredericksburg, and the Gillespie Appraisal District as well as the official zoning maps of the City of Fredericksburg.157 Such designation shall be in addition to any other zoning district designation established in the zoning ordinance. All zoning maps shall reflect the historic district by the letters "HD-C" as a prefix to the use designated for the properties within the historic district determined to be contributing to the general character of the historic district by the nominating document completed for process of nominating the historic district and by the letters "HD-NC" as a prefix to the use designation for the properties within the historic district determined to be non-contributing to the general character of the historic district by the nominating document completed for process of nominating the historic district.158 The City Secretary shall send written notice of the fact of designation by certified mail, return receipt requested, to the owners of all the properties located within the designated historic district within ten (10) days after the designation of the historic district by the City Council.159

155 Ibid.
156 Ibid.
157 Ibid.
§ 12.207 Uses of Property Designated Historic

Nothing contained in this ordinance or in the designation of property as being an historic landmark or an historic district shall affect the present legal use of property. Use classifications as to all such property shall continue to be governed by the zoning ordinance of the City of Fredericksburg and the procedures therein established. In no case, however, shall any use be permitted that requires the demolition, relocation, or alteration of historic landmarks or of any buildings or structures in an historic district so as to adversely affect the character of the district or historic landmark, except upon compliance with the terms of this ordinance.

No provision herein shall be construed as prohibiting a property owner from continuing to use property for a nonconforming use as that term is defined in the City of Fredericksburg Zoning Ordinance, § 5.100.160

§ 12.208 Removal of Designation

Upon recommendation of the Board based upon new and compelling evidence and negative evaluation according to the same criteria and following the same procedures set forth herein for designation, a designation made under § 12.205 may be removed by the City Council following the recommendation of the Board.161

Analysis and Commentary on § 12.205, 12.206, 12.207, and 12.208

Section 12.205 expands the criteria used to designate historic districts and landmarks under Section 12.203 of the current ordinance162 in order to allow the criteria to meet the standards set by the Texas Historical Commission’s model ordinance for local governments seeking CLG status.163 One of the primary THC criteria requirements missing from the current ordinance is the ability to designate any resource which "possesses significance

160 Ibid., Section 35-426, p. 17.
161 Ibid., Section 35-427, p. 18.
162 See Appendix A.
163 THC, Section 6, pp. 10-11.
in...archeology.\textsuperscript{164} As mentioned in the Preamble and Section 12.201 of this chapter, the THC's \textit{Guidelines for Drafting Historic Preservation Ordinances and Model Ordinances} allows local governments to exclude specific references to archaeological resources in their ordinance if archaeological sites are not part of the inventory of the area's historical or cultural resources.\textsuperscript{165} However, the THC requires local governments seeking CLG status to at least include archaeological sites within the criteria for resources eligible for designation in order to satisfy federal regulations under the criteria established by the National Register of Historic Places.

Sections 12.205.1(e) and (f) are also included in the amended ordinance to satisfy THC requirements that resources that embody the "distinctive characteristics of a type, period, or method of construction" or which represent the "work of a master designer, builder, or craftsman" also be eligible for designation.\textsuperscript{166} Sections 12.205.1(g), (j), and (k) provide criteria above and beyond that required by the THC. Section 12.205.1(g) allows for and encourages the designation of utilitarian resources, which are often overlooked or considered unimportant to the history or culture of a municipality or to the advancement of architecture or engineering in the local area. The large number of early barns and other agricultural outbuildings that have survived intact as the city has grown up around them should be considered as important to the history, culture, and architecture of the community as are the architecturally elaborate commercial buildings in the city's main business district. Finally, Section 12.205.1(g) and (h) provide more specific definitions as to what constitutes an historic district as a cohesive,

\textsuperscript{164} \textit{Ibid.}, p. 11.
\textsuperscript{165} \textit{Ibid.}, p. 1.
\textsuperscript{166} THC, Section 6, p. 11.
Another criterion which is not listed as a THC requirement is the criterion that fifty-one percent of the owners of property within the boundaries of a proposed historic district concur with the recommendation that the proposed area be designated an historic district. The certified local government cities of Fort Worth and San Antonio both have similar owner approval requirements for historic district nominations in their respective ordinances, so it is clear that this is a criterion that will not exclude Fredericksburg from CLG designation under THC requirements. Furthermore, it is politically expedient to include this criterion, so that the amended ordinance will have a better chance of being initially adopted and then permanently enacted by the City Council after four years in place on a trial basis.

The fifty-one percent concurrence provision will help ease citizens' fears that historic district designation will be forced upon them by a Board of ideological-minded individuals bent on the regulation of large areas of private property, regardless of established democratic processes or the property-rights concerns of the property owners who will be affected. With the inclusion of this provision, the people of Fredericksburg will see that they have a choice as to whether or not they wish to accept historic district designation. They will know that they may in fact reject historic district regulation if a majority of owners is not convinced that the district is in their best interest and that of the city and/or that the regulation accompanying designation is harsh and undesirable. Thus, it is hoped that this democratically-based, majority rule provision, which must be satisfied even before an historic district is recommended to the Board for designation, will help create a stronger support for the adoption of the amended ordinance among people currently concerned about excessive government regulation and the protection of property rights.

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167 See Appendix A.
The requirement that an historic district must have received the support of a majority of the district's property owners to have been designated an historic district is also potentially beneficial to the Board. Such a democratic majority-based decision will help the Board justify the inclusion and necessary regulation of non-contributing properties within designated historic districts to the owners of these non-contributing properties. Of course, this owner consent provision puts a burden on the City Historic Preservation Officer, the Board, and its citizen allies to educate the owners of the properties within the proposed historic district about the necessity and value of historic preservation regulation. This is as it should be, though. All agencies of historic preservation regulation should be required to at least attempt to educate people on the personal and societal benefits offered by historic preservation before these agencies require people to submit to regulation and cooperate with such regulation.

The CHPO, the Board, and its citizen allies should also attempt to educate individual owners of resources recommended for landmark designation about the personal and communal value of historic preservation, although in the case of historic landmarks, the amended ordinance does not require that owner consent be obtained before a resource can be recommended or approved for landmark designation. The lack of consent of an individual property owner should not prevent the preservation and protection of a resource that is significant to the history or representative of the architecture or culture of an area, that has been a physical part of the community probably long before the birth of the present unconsenting owner, and that will probably be a physical component of the community long after the death of the present owner. Thus, the advancement of the general welfare of a community through historic preservation should not be inhibited by or considered subordinate to the desires of individuals. Owner consent

See the definition of "NON-CONTRIBUTING" in Section 12.202 of the amended ordinance in Appendix B.
for the designation of historic landmarks is not required under the Texas and U.S. constitutions, 169 and the THC’s model ordinance does not require such a consent provision to be included in the ordinances of certified local governments.

Furthermore, it is legal under Texas law to require majority consent for the designation of historic districts but not to require individual owner consent for the designation of historic landmarks. Fort Worth, which is a certified local government under THC standards, has an historic preservation ordinance that does not require owner consent for the designation of historic landmarks, but does require the consent of a majority of landowners before an historic district may be designated. Thus, the presence of one form of owner consent and the absence of another form within the amended ordinance will still allow Fredericksburg to qualify for CLG status.

It is arguable that the requirement of majority-based owner consent for historic district designation in the absence of a requirement of owner consent for historic landmark designation is unjust and inconsistent, and indeed it may be. However, the conservative politics of the situation in Fredericksburg dictates that, in order to gain enough support for first the initial adoption of the ordinance by the City Council and then the designation of any potential historic district under the regulations of the amended ordinance, the ordinance must cater to the ingrained and expected political practice of allowing decisions that affect a large number of people to be decided by the majority vote of those people affected in a fair and democratic process. It is hoped that, even without an owner consent provision provided under the criteria for the designation of historic landmarks, the many requirements in place in Section 12.206 that must be fulfilled before a proposed landmark is designated will assure the citizens of Fredericksburg that the landmark designation process is extremely democratic, entirely open to public scrutiny, and thereby fair to all parties involved.

169 THC, Section 6, p. 11.
Indeed, the process required to secure the designations of both historic districts and historic landmarks in Section 12.206 is filled with checks against undesired regulation through designation by the Board. Many of these "checks" go beyond the basic requirements of the THC's model ordinance to insure both the opportunity for public objection to designation and full public accountability for the act of designation. The requirement that written notification of recommended designation be mailed to two different addresses within a given time period in subsections 12.206.1(a) and 12.206.2(a) and the newspaper publication requirement in Section 12.206.2(a) significantly exceed the similar THC requirement that an owner of a property recommended for designation simply "shall be notified prior to the Commission hearing on recommended designation." These additional provisions are in place to assure the citizens of Fredericksburg that every possible effort will be made to make sure that owners of property recommended for designation receive notification of the fact that their property has been recommended within a time period well in advance of the public hearing on the recommendation. Such advanced notification, in turn, will allow them to prepare a case against the recommendation (either individually or collectively in the case of historic district designations) if they so desire.

Furthermore, since the Board must hold a public hearing under Texas law in order to decide to recommend or reject a resource for designation, any property owner or group of property owners has a right under the law to publicly protest the designation of his/her or their property and to try and persuade the members of the Board to vote against recommending his/her or their property for designation. The fact that a vote of two-thirds of the Board is required before the Board may recommend the designation of any resource to the Planning and Zoning Commission should also help placate citizens who might feel that the hearing on the recommendation of a designation is simply a legal formality which results in the automatic

170 THC, Section 4, pp. 9-10.
approval of all recommendations regardless of public testimony. It will not be an easy task for two-thirds of the members of the Board, who are publicly held accountable to their friends and neighbors for their actions by the means of a public hearing, to vote in favor of recommendation in the face of strong, public objection by the owner(s) of property recommended for designation unless the members truly believe it is in the best interest of the community to do so. This fact should be also be pointed out to the community through the education campaign to gain support for the temporary adoption of the amended ordinance as a reason for citizen support of the temporary adoption.

Thus, the two-thirds vote provision actually favors property owners who do not wish their property to be designated. In fact, the requirement is especially designed as a check to provide individual property owners whose property has been recommended without their consent for designation as historic landmarks more than adequate due process for the designation of their property under the law, thereby helping to protect them against excessive government abuse of the power to designate and regulate property under the historic preservation ordinance.

The two-thirds vote goes beyond the simple majority vote required by the THC’s model ordinance for Board recommendation for designation. However, the presence of a similar voting requirement for landmark designation recommendation in San Antonio’s ordinance indicates that such a requirement will not jeopardize Fredericksburg’s chances of being designated a certified local government by the THC.

The amended ordinance does utilize two other due process protections required by the THC model ordinance as further checks against excessive Board action. Both subsections 12.206.1 and 12.206.2 require that resources recommended for designation by the Board be

171 Ibid., pp. 9-10.
approved by both the Planning and Zoning Commission and the City Council at separate public meetings before such resources may in fact be designated and regulated. These additional requirements for designation assure property owners that they have two additional opportunities to publicly plead their cases against the designations of their properties before two government bodies which have the power to halt the Board’s drive for the designation of their properties. In the case of the City Council hearing, property owners opposing the designation of their properties know they have strong clout with members of the Council, who directly depend on the votes of constituents to be reelected to office. Thus, here again it should be obvious to the citizens of Fredericksburg who may be worried about granting excessive designation powers to the Board through the amended ordinance that the requirements for additional public approval for designations beyond the Board’s decision at its public hearing make it necessary for the Board, the CHPO, and their preservation allies to have a very strong case prepared explaining the public necessity for particular landmark designations. Such a strong case preparation will be needed in order to counter the heavy weight a nonconsenting property owner will carry with the members of the Planning and Zoning Commission and particularly with the members of the City Council.

Two other provisions designed to allay the fears of citizens worried about excessive government regulation and the protection of property rights are Sections 12.207 and 12.208. Although not a part of the THC’s requirements for ordinances, Section 12.207 is included to assure the people of Fredericksburg that historic landmark or historic district designation legally cannot and therefore will not affect the legal use of designated property, even if such property is legally nonconforming under present zoning usage regulations. Accordingly, historic designation will not violate any property rights under federal or Texas law concerning excessive government regulation of the usage of private property.
The ability of the City Council to remove a designation as outlined in Section 12.208 is also not a required provision under THC ordinance guidelines. However, such a provision is useful in any ordinance in order to allow properties that no longer qualify for designation, due to a destructive act of God or the willful destruction of man, to be removed from government preservation regulation. This provision is designed to provide legal assurance to the owners of designated properties that they will not be held continually, legally responsible for the protection and preservation of designated properties that have lost their historical, cultural, or architectural significance through no fault of the owners themselves. The provision is also meant to give psychological assurance to the citizens of Fredericksburg that designations are not necessarily permanent.

It is hoped that the many provisions limiting the power and authority of the Historic Review Board that are included in Sections 12.205 through 12.208 and that have been commented on extensively in this part of the chapter can be used by the proponents of the amended ordinance to help convince the citizens of Fredericksburg to at least support the temporary adoption of the amended ordinance for a trial period of four years. Pro-preservationist forces in the city should call to the public’s attention the fact that many of the requirements for the designation of historic landmarks and historic districts, as well as the sections protecting the continued usage of designated properties and allowing for the removal of designations, exceed Texas Historical Commission requirements for preservation ordinances. This fact will demonstrate to the government regulation-wary citizens of the city that the proposed amended ordinance has been meticulously written to specifically guard against the undemocratic imposition of excessive government regulation on anyone and against the violation of anyone’s individual property rights. It is also hoped that once the amended ordinance is adopted for its four year trial period, the citizens of Fredericksburg will witness first-hand that the ordinance provides a highly democratic
process for designating properties as historic, complete with an elaborate system of due process that is designed to check any excessive or capricious action of the Board or the CHPO. Witnessing the actual process should help convert many skeptics who refused to support the temporary enactment of the ordinance and cause them to support the permanent adoption of the amended ordinance when it comes before the City Council for a vote.

In fact, Section 12.205.2 is in place in part to encourage public participation in the process of designating the many important historic, cultural, and architectural resources in the City of Fredericksburg that have not been designated under the current ordinance. This section is designed to go beyond minimum THC ordinance requirements and specifically outline the initial process that must be followed in order to place a recommendation for designation before the Board - an outline of a process it would seem should be an important requirement of any city preservation ordinance deserving of CLG status, especially since the process allows and encourages citizen participation in historic preservation regulation. It is hoped that by allowing anyone to submit a form requesting designation, both local preservation organizations and ordinary citizens will not only be encouraged to submit designation requests, but will also be recruited by the CHPO and/or the Board to help in the process to designate significant resources within the community. An appeals process is even incorporated into the section to allow those local organizations or individual citizens who are adamant about the importance of designating a particular resource to appeal a denial of recommendation for designation by the Board to the Planning and Zoning Commission.

The many concessions to the political situation in Fredericksburg made in the ordinance in Sections 12.201 through 12.208, combined with the provision in Section 12.219 that allows the temporary amended ordinance to expire in four years unless permanently adopted by the City Council, are the primary means by which it is hoped the fears of some of the citizens concerning
excess government regulation and property rights violations can be overcome to allow the ordinance to be temporarily enacted by the City Council on a four year trial basis. Although some significant political concessions also exist in the following sections of the ordinance, it is these sections that are intended to provide many strong, additional regulations which are necessary to the cause of historic preservation in Fredericksburg but which are missing from the city's current, weak ordinance. Thus, once the Board is able to complete the long and trying process of securing designation from the City Council, strict new regulations will come into existence on the designated properties that should be adamantly enforced.
§ 12.209 Certificates of Appropriateness

No person shall carry out any construction, reconstruction, alteration, installation, maintenance, repair, restoration, rehabilitation, demolition, or relocation of any historic landmark or any property within a historic district, nor shall any person add, remove, or make any material change in the light fixtures, signs, sidewalks, fences, steps, paving, 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 an historic district without first obtaining a certificate of appropriateness for any such action from the Historic Review Board or a permit to carry out work deemed ordinary repair and maintenance, which excuses an applicant from obtaining a certificate of appropriateness, from the City Historic Preservation Officer.173

§ 12.209.1 Criteria for Approval of a Certificate of Appropriateness

In considering an application for a certificate of appropriateness, the City Historic Preservation Officer (hereafter referred to as the "Officer") and the Board shall be aware of the importance of finding a way to meet the current needs of the property owner. The Officer and the Board shall also recognize the importance of approving plans that are economically reasonable for the property owner to carry out.174

The design guidelines authorized in § 12.203(h)(9) and adopted by the Historic Review Board, Article 3.1000 Signs, as temporarily amended,175 and, where applicable, the following from The Secretary of the Interior’s Standards for the Rehabilitation of Historic Buildings, shall guide the Officer and the Board in its considerations of applications for certificates of appropriateness.

(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.


175 Fredericksburg, Texas, Fredericksburg Code of Ordinances, Chapter 3, pp. 3-56 - 3-64. The temporary amendment needed to allow Article 3.1000 to conform to the regulations of the amended historic preservation ordinance are discussed in Chapter Three.
(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, that seek to create a false set of development (such as adding conjectural features or architectural elements from other structures and properties), and that seek to create an earlier appearance shall be discouraged.\footnote{Adaptation of Fort Worth, Texas, "City of Fort Worth Historic Preservation Ordinance," Subdivision D, p. 31, and THC, Section 8, p. 11.}

(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 that 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, 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 archaeological resources affected by, or adjacent to, any project.

(i) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural, or cultural material, and such design is compatible with the size, scale, material, and character of the property, neighborhood, or environment.

(j) Wherever 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.\footnote{THC, Section 8, pp. 11-12.}

Copies of the design guidelines adopted by the Board and \textit{The Secretary of the Interior's Standards} shall be kept at the office of the City Historic Preservation Officer and shall made available to the property owners of historic landmarks or within historic districts.\footnote{Adaptation of \textit{THC}, Section 8, p. 11, except where otherwise noted.}

§ 12.209.2 Certificate of Appropriateness Application Procedure

(a) Prior to the commencement of any work requiring a certificate of appropriateness the owner shall file a complete application for such a certificate with the City Historic Preservation Officer. All applicants are \textit{strongly encouraged} to first talk to the Officer about the work planned for any designated resource, so that the Officer may advise the owner on which criteria the owner should follow regarding the information to be included within the application. Applications for the approval of all work not related to ordinary maintenance and repair shall contain the following:\footnote{The following provisions are adaptations from \textit{THC}, Section 9, p. 12, unless otherwise noted.}

(1) The name, address, and telephone number of the owner(s) of the property for which the application is being made;

(2) A detailed description of the proposed work;

(3) The intended starting date and completion date of the proposed work;\footnote{Adaptation of F. Ord., Section 12.205, p. 12-8.}

(4) Historic photographs of the property to be affected, if available;

(5) Elevation drawings of the proposed changes, if available;

(6) Samples of the materials to be used;

(7) If the proposal includes signs or lettering, a scale drawing showing the type of lettering to be used, all dimensions, a description of materials to be used, the method of illumination (if any, and a plan showing the sign's location on the property;

(8) Any other information which the City Historic Preservation Officer or the Board may deem necessary in order to visualize the proposed work.

\footnote{}
Applications for the approval of all work intended to carry out only ordinary maintenance, and repair shall also include all of the previous information, with the exception of numbers (5) and (7).

Applications shall not be accepted until the application is determined by the Officer to be complete and correct. Nor shall applications which are not in compliance with the city building code, restrictions, or other city ordinances be accepted. They shall instead be returned to the applicant for compliance.\(^1\)

(b) The City Historic Preservation Officer shall determine which applications for certificates of appropriateness are in fact for work strictly involving ordinary maintenance and repair. Those activities which constitute ordinary maintenance and repair include but are not restricted to:

1. Maintenance in the form of surface cleaning using a nonabrasive cleaning method which will in no way harm the material(s) being cleaned;
2. Repainting;
3. Repair using the same material and design as the original;
4. Reroofing, using the same type of material;
5. Repair of sidewalks and driveways using the same type of materials.\(^2\)

If the City Historic Preservation Officer does determine that the application for the certificate of appropriateness is in fact for work strictly involving ordinary maintenance and repair and that, using the guidelines required in § 12.209.2, the maintenance and repair work proposed will not harm or alter the exterior appearance or the historic, cultural, or architectural character of the designated resource, then the Officer shall within seven (7) days of receiving the application recommend the excuse of the applicant from any further obligation of receiving a certificate of appropriateness from the Board and shall forward a copy of the application and his/her signed permit for the work with a recommendation for excuse to the Chairman of the Board or the Vice-Chairman of the Board if the Chairman is unavailable. The Chairman or Vice-chairman of the Board shall within three (3) business days either approve the Officer’s recommendation and sign off on the permit to allow the ordinary maintenance and repair or schedule the decision to be considered by the Board at its next regularly scheduled meeting. If the Chairman or Vice-Chairman does not take any action within three (3) business days, it shall be deemed that such person has approved the Officer’s decision, and the Officer’s signed permit allowing the


\(^2\) Numbers (2) - (5) are adaptations of S.A. Ord., Section 35-434.3, p. 31. Number (1) is entirely of the author’s own contrivance.
maintenance and repair work to be carried out shall suffice to excuse the applicant from receiving a certificate of appropriateness for the work.\footnote{183}

No work involving ordinary maintenance and repair shall be carried out on any historic landmark or on any property within an historic district without a permit specifically allowing such work signed by the City Historic Preservation Officer as well as by the Chairman or Vice-Chairman of the Board (if possible) in lieu of a certificate of appropriateness. No building permit shall be issued for the proposed ordinary maintenance and repair (if required) unless the applicant first receives a permit from the Officer authorizing the ordinary maintenance and repair work. Furthermore, the permit required for ordinary maintenance and repair 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 Fredericksburg.\footnote{184}

(c) The City Historic Preservation Officer shall submit all completed applications for certificates of appropriateness which he/she determines are not for the completion of ordinary maintenance and repair to the Board for review.\footnote{185}

(d) The Board shall review the application at a regularly scheduled meeting within sixty (60) days from the date the completed application is received by the City Historic Preservation Officer. An opportunity will be provided for the applicant to be heard during the review of the application at the Board meeting. The Commission shall approve, deny, or approve with modifications the application within forty-five (45) days after the review meeting.\footnote{186} In the event the Board does not act within ninety (90) days of the receipt of the application by the City Historic Preservation Officer or fails to approve, deny, or approve with modifications the application within forty-five (45) days after the review meeting, the application shall be deemed approved by the Board.\footnote{187} A certificate of appropriateness shall be issued by the City Historic Preservation Officer, acting as the representative of the Board, showing the filing date and the failure to take action on the application within ninety (90) or within forty-five (45) days after the review meeting.\footnote{188}

(e) The applicant may withdraw the application on or before the day of the Board’s review of the application and may resubmit it at a later time if additional time is required for the preparation of information or for research requested by the Board. Such withdrawal by the applicant shall


\footnote{184} Adaptation of THC, Section 9, p. 12.

\footnote{185} Adaptation of S.A. Ord., Section 35-431, pp. 22-23.

\footnote{186} Adaptation of THC, Section 9, p. 12.

\footnote{187} Ibid., and Adaptation of S.A. Ord., Section 35-431, p. 23.

\footnote{188} Adaptation of S.A. Ord., Section 35-431, p. 23.
release the Board of its obligation to make a decision on the application. Upon resubmission of the application, the Board shall again review the application at a regularly scheduled meeting within sixty (60) days from the date of the refiling of such an application with the City Historic Preservation Officer.\(^{189}\)

\[(f)\] The Board may delay the hearing on an application for thirty (30) days or until the next scheduled meeting of the Board, whichever is shorter, if the Board feels additional information is absolutely necessary and required in order to evaluate an application in a fair manner. Such a delay of shall suspend the forty-five (45) day time period during which the Board must deny, approve, or approve with conditions the application until a complete hearing is held on the application at the next meeting at which it has been rescheduled for a hearing.\(^{190}\)

\[(g)\] All decisions of the Board shall be in writing. The Board’s decision shall state its findings pertaining to the approval, denial, or modification of the application. A denial may indicate what changes in the proposed actions would meet the conditions for protecting the distinctive character of the landmark or historic district. A copy shall be sent to the applicant by registered mail. Additional copies shall be filed as part of the public record on that property and distributed to the Office of the City Historic Preservation Officer and all appropriate city departments, commissions, and agencies.\(^{191}\)

\[(h)\] An applicant for a certificate of appropriateness dissatisfied with the action of the Board relating to the issuance or denial of a certificate of appropriateness 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 to the appellant, follow publication procedure, and hold a hearing in the same manner as provided in the *City of Fredericksburg Zoning Ordinance*. The appellant shall have the right to attend the hearing and the right to be heard as to his/her reasons for filing the appeal. In making its decision, the City Council shall consider the same criteria for the approval of a certificate of appropriateness as did the Board, established in § 12.209.2 of this ordinance; the written report of the Board pertaining to the denial of the certificate to the applicant; and any other matters presented at the hearing on the appeal. If the City Council approves the application, it shall direct the Board to issue a certificate of appropriateness for the work requested to the applicant. If the Board disapproves the application, it shall direct the Board not to issue a certificate of application to the applicant.\(^{192}\)

\[(i)\] No building, demolition, or signage permit shall be issued for any of the work requiring a certificate of appropriateness until a certificate of appropriateness has *first* been issued by the Board. The certificate of appropriateness required by this ordinance shall be in addition to and

\[\text{\textsuperscript{189}}\] *Ibid.\
\[\text{\textsuperscript{192}}\] *Ibid.*
not in lieu of any type of building, demolition, or signage permit that may be required by any other ordinance of the City of Fredericksburg. 193

§ 12.209.3 Certificate of Appropriateness Requirements for Demolitions

A permit for the demolition of an historic landmark or property within an historic district, including secondary buildings and landscape features, shall not be granted by the Building Official or an other city official, without the issuance of a certificate of appropriateness by the Board, as provided for in § 12.209, Subsections 12.209.1 and 12.209.2, of this ordinance.194 Applications for certificates of appropriateness for demolitions of properties designated "non-contributing" within an historic district shall be subject to the criteria for approval and application procedures as outlined in § 12.209, Subsections 12.209.1 and 12.209.2. However, since the demolition of a historic landmark or a property designated as "contributing" within an historic district constitutes an irreplaceable loss to the quality and character of the City of Fredericksburg, requirements in addition to those listed in § 12.209, Subsections 12.209.1 and 12.209.2, are to be met in cases of applications for certificates of appropriateness for demolitions for historic landmarks and properties designated as "contributing" within historic districts.195

Whenever an application for a certificate of appropriateness for the demolition of an historic landmark or a property designated "contributing" within an historic district, which is complete according to the requirements in Subsection 12.209.2(a), is submitted to the City Historic Preservation Officer, the Officer shall submit the application to the Board for review. However, the Board shall not hold a public hearing to review the application for sixty (60) days from the date the application is received by the City Historic Preservation Officer. This time period is intended to permit the City Historic Preservation Officer to discuss the proposed demolition informally with the property owner, other city officials, and local preservation organizations, to see if an alternative to demolition can be found before a formal consideration of the application by the Board. The City Historic Preservation Officer shall prepare a report to the Board analyzing alternatives to demolition, and request from other city departments, commissions, or agencies information necessary for the preparation of this report.196

If within this sixty (60) day period any one of the following four events shall occur, the Board may defer hearing the application for six months, and it shall be considered to have been withdrawn by the applicant during such six-month period: (1) the owner shall enter into a binding contract for the sale of the property; (2) approved arrangements shall be made for the structure to be moved to an approved new location; (3) loans or grants from public or private resources have been secured which eliminate the need for demolition; or (4) building code modifications or changes in applicable zoning ordinance provision, including variances, have been

193 Adaptation of THC, Section 9, p. 12.
secured which eliminate the need for demolition. But if within the sixty (60) day period none of the four events summarized above shall have occurred, the Board shall schedule a hearing of the application following the expiration of the sixty (60) day period to be held within sixty days of the expiration date of the first sixty (60) day period required for negotiations with the City Historic Preservation Officer. The application will then be subject to the application procedures required in Subsections 12.209.2(d)-(i), with the date of the expiration of the sixty (60) day period required for negotiations with the City Historic Preservation Officer replacing the initial date the City Historic Preservation Officer received the application and with modifications to Subsections (f), and to the Criteria for Approval required in Subsection 12.209.1. After the expiration of the initial sixty (60) day negotiation period without the occurrence of any one of the four events summarized above, the City Historic Preservation Officer shall also request the Building Official to prepare a report on the state of repair and structural stability of the building or structure for which an application to demolish has been filed. This report shall be presented to the City Historic Preservation Officer prior to the date of the Board’s hearing on the demolition permit application, and it shall become part of the administrative record on the application.

In Subsection 12.209(f), the Board may delay the hearing on an application for the demolition of an historic landmark or a property designated as "contributing" within an historic district for thirty (30) days in order to assure itself that one of the four possibilities summarized above which the City Historic Preservation Officer endeavored to make occur has not in fact become a possibility in regards to eliminating the need for the demolition of the property in question given the additional time since the conclusion of initial negotiations. The presence of such a possibility is information which is absolutely necessary and required in order to evaluate an application in a fair manner. Such a delay of shall suspend the forty-five (45) day time period during which the Board must deny, approve, or approve with conditions the application until a complete hearing is held on the application at the next meeting at which it has been rescheduled for a hearing.

§ 12.209.4 Refiling of Applications for Certificates of Appropriateness

When an application for a certificate of appropriateness is denied by the Historic Review Board, or the City Council on appeal, no new application of like nature shall be accepted by the City Historic Preservation Officer or scheduled for a hearing by the Board for a period of twelve (12) months following the date of denial. However, upon receipt of a written request by the original


198 Adaptation of S.A. Ord., Section 35-436.7, p. 43.

199 Adaptation of Fort Worth, Texas, "City of Fort Worth Historic Preservation Ordinance," Subdivision D, p. 29.

applicant describing substantially changed conditions since the prior consideration of the application to justify an earlier consideration of the application, the Board may waive the mandatory delay period and authorize the acceptance of a new application.201

§ 12.209.5 Enforcement of Work Performed Pursuant to a Certificate of Appropriateness

All work performed pursuant to a Certificate of Appropriateness shall conform to the work approved of or approved of with modifications by the Board in granting the certificate of appropriateness and to all other requirements included herein. It shall be the duty of the City Historic Preservation Officer to periodically inspect any such work to assure compliance. If work is found that is not performed in accordance with the certificate of appropriateness issued, or upon notification of such fact by the Board and verification by the Building Official, the Building Official shall issue a stop-work order, and all work shall immediately cease. No further work shall be undertaken on a project while a stop-work order is in effect, and the person(s) found to be responsible for the violation of the work approved or approved with modifications in the certificate of appropriateness granted shall be subject to the penalties and remedies available under § 12.217 of this ordinance.202

§ 12.210 Economic Hardship Application Procedure203

(a) After receiving written notification from the Board of the denial of certificate of appropriateness, an applicant may commence the hardship process. No building, demolition, or signage permit shall be issued unless the Board makes a finding that a hardship exists for the applicant.

(b) When a claim of economic hardship is made based on the effect of this ordinance, the owner must prove by clear and convincing evidence that:

(1) The property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;

(2) 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

(3) Efforts to find a purchaser interested in acquiring the property and preserving it have failed;

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201 Adaptation of Fort Worth, Texas, "City of Fort Worth Historic Preservation Ordinance," Subdivision D, p. 35.

202 Ibid.

203 Adaptation of THC, Section 11, p. 13, unless otherwise noted.
The applicant shall submit all materials deemed sufficient by the applicant to satisfy the previous three requirements, along with the applicant’s name, address, and telephone number, to the City Historic Preservation Officer, who shall in turn submit the application to the Board for review;

(c) The applicant shall consult in good faith with the Board, 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 Board.

(d) The Board shall hold a public hearing on the application within sixty (60) days from the date the application for an economic hardship waiver is received by the City Historic Preservation Officer. An opportunity will be provided for the applicant to be heard during the review of the application at the Board meeting. Following the hearing, the Board has thirty (30) days in which to acknowledge the existence of an economic hardship and grant a certificate of appropriateness for the work originally requested or to deny the existence of an economic hardship and reaffirm its decision to deny the original application for a certificate of appropriateness. In the event that the Board does not act within ninety (90) days of the receipt of the application, a certificate of appropriateness shall be issued by the City Historic Preservation Officer, acting as the representative of the Board, acknowledging the existence of an economic hardship, showing the filing date, and showing the failure to take action on the application within ninety (90) days after the review meeting;

(e) All decisions of the Board shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the City Historic Preservation Officer and the City Secretary for public inspection. The Board’s decision shall state the reasons for granting or denying the economic hardship application for a certificate of appropriateness;

(f) An applicant for a certificate of appropriateness dissatisfied with the action of the Board relating to the issuance or denial of a certificate of appropriateness after a hearing on the applicant’s economic hardship application shall have the right to appeal to the City Council within thirty (30) days after the receipt of notification of such action. The City Council shall give notice to the appellant, follow publication procedure, and hold a hearing in the same manner as provided in the City of Fredericksburg Zoning Ordinance. The appellant shall have the right to attend the hearing and to be heard as to his/her reasons for filing the appeal. In making its decision, the City Council shall consider the written report of the Board pertaining to the issuance or denial of the hardship application for the certificate to the applicant. If the City Council approves the application, it shall direct the Board to issue a certificate of appropriateness for the work requested to the applicant. The Board shall then comply with the ruling of the City Council and issue the certificate of appropriateness to the applicant.\footnote{Adaptation of S.A. Ord., Section 35-431, p. 24., and of THC, Section 11, p. 13.}
§ 12.211 Unusual and Compelling Circumstances Application Procedures for the Approval of a Certificate of Appropriateness for the Demolition or Removal of an Historic Landmark or a Property Designated "Contributing" Within an Historic District

(a) When an applicant for a certificate of appropriateness for the demolition or removal of an historic landmark or a property designated as "contributing" within an historic district fails to prove an unreasonable economic hardship under the application procedure allowed in § 12.210, the applicant may provide the City Historic Preservation Officer additional information which may show unusual and compelling circumstances in order to receive a certificate of appropriateness for the proposed demolition or removal. The City Historic Preservation Officer shall submit the information (the application) to the Board for review;

(b) The Board shall hold a public hearing on the application within sixty (60) days from the date the application is received by the City Historic Preservation Officer. An opportunity will be provided for the applicant to be heard during the review of the application at the Board meeting. Following the hearing, the Board has thirty (30) days in which to acknowledge the existence of unusual and compelling circumstances and grant a certificate of appropriateness for the work originally requested or to deny the existence of unusual and compelling circumstances and reaffirm its decision to deny the original application for a certificate of appropriateness. In the event that the Board does not act within ninety (90) days of the receipt of the application, a certificate of appropriateness shall be issued by the City Historic Preservation Officer, acting as the representative of the Board, acknowledging the existence of unusual and compelling circumstances, showing the filing date, and showing the failure to take action on the application within ninety (90) days after the review meeting;

(c) The Board, using its best judgement, shall determine whether unusual and compelling circumstances exist and whether or not existing circumstances should override the need to protect the historic, cultural, or architectural significance from demolition by means of a denial of a certificate of appropriateness. In making its judgement, the Board shall be guided by the criteria set forth in § 12.209, Subsection 12.209.1, and by the following additional considerations:205

1. The historic or architectural significance of the building, object, site, or structure;

2. The importance of the building, object, site, or structure to the integrity of an historic district (if applicable) or area;

3. The difficulty or the impossibility of reproducing such a building, object, site, or structure because of its design, texture, material, detail, or unique location;

4. Whether the building, object, site, or structure is one of the last remaining examples of its kind in the neighborhood, the county, or the region;

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205 (c) is an adaptation of S.A. Ord., Section 35-436.2, pp. 38-39, unless otherwise noted.
(5) Whether there are definite plans for the reuse of the property if the proposed demolition is carried out, and what effect such plans will have on the architectural, cultural, historical, social, or environmental character of the surrounding area as well as the economic impact of the new development;

(6) Whether reasonable measures can be taken to save the building, object, site, or structure from further deterioration, collapse, arson, vandalism, or neglect (here the Board may refer to the report completed by the Building Official on the state of repair and structural stability of the building or structure for which the application to demolish was initially filed, which is part of the administrative record on the original application for the certificate of appropriateness to demolish).  

(d) All decisions of the Board shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the City Historic Preservation Officer and the City Secretary for public inspection. The Board’s decision shall state the reasons for granting or denying the unusual and compelling circumstances application for a certificate of appropriateness;

(e) An applicant for a certificate of appropriateness dissatisfied with the action of the Board relating to the issuance or denial of a certificate of appropriateness after a hearing on the applicant’s unusual and compelling circumstances application shall have the right to appeal to the City Council within thirty (30) days after the receipt of notification of such action. The City Council shall give notice to the appellant, follow publication procedure, and hold a hearing in the same manner as provided in the City of Fredericksburg Zoning Ordinance. The appellant shall have the right to attend the hearing and the right to be heard as to his/her reasons for filing the appeal. In making its decision, the City Council shall consider the written report of the Board pertaining to the issuance or denial of the unusual and compelling circumstances application for the certificate to the applicant. If the City Council approves the application, it shall direct the Board to issue a certificate of appropriateness for the work requested to the applicant. If the Board disapproves the application, it shall direct the Board not to issue a certificate of application to the applicant.

§ 12.212 Requirements Following the Issuance of a Certificate of Appropriateness for the Demolition or Removal of an Historic Landmark or a Property Designated as "Contributing" within an Historic District

(a) The owner(s) of a property who have been granted a certificate of appropriateness for the demolition or relocation of an historic landmark or a property designated as "contributing" within an historic district shall assist in and cooperate fully with the efforts of the City Historic

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208 Adaptation of S.A. Ord., Section 35-436.9, pp. 44-45.
Preservation Officer to gain as much knowledge as needed or possible about the particular building, object or structure and to fully document the property before the building, structure, or object is relocated or demolished.

(b) Following the demolition or removal of an historic landmark or of a property designated "contributing" within an historic district, the owner or other person having legal custody and control thereof shall:

(1) remove all traces of previous construction, including the foundation;

(2) grade, level, sod, and seed the lot to prevent erosion and improve drainage; and

(3) repair at his/her own expense any damage to public rights-of-way, including sidewalks, curbs, and streets that may have occurred in the course of removing the building, object, or structure and its appurtenances.

Analysis and Commentary on § 12.209, 12.210, 12.211, and 12.212

Sections 12.209 - 12.211 are truly the heart of the historic preservation regulation proposed for Fredericksburg in the amended ordinance. In fact, the regulations in these sections are designed to give the Historic Review Board the power and authority it needs to arrest and reverse the many instances of the loss of the character of designated properties within the city's only historic district that have occurred because of the Board's purely advisory nature under the current ordinance and its lack of authority to enforce any of its "recommendations" on the owners of designated properties once they or their representatives have attended a mandatory hearing reviewing their intended actions. Furthermore, the new powers of regulation given the Board through the certificate of appropriateness requirements of the amended ordinance, along with the expanded and more heavily emphasized mandate in the amended ordinance that the Board

209 See Chapter One for a full discussion on the detrimental effects to the significant historic, cultural, and architectural resources the Board's lack of power has caused and will continue to cause as the city continues to grow. See Appendix A, Sections 12.205 and 12.206, for the "Certificate of Review" process required under the current Fredericksburg historic preservation ordinance.
and the City Historic Preservation Officer seek to designate more landmarks and historic districts, allow the city to extend a high level of protection to the many unprotected but eligible historic resources located outside of the present historic district.

There are three key regulations written into the amended ordinance that give the Historic Review Board the authority it needs to truly protect the significant historic, cultural, and architectural resources of Fredericksburg. The first is that none of the work listed which requires an application for a certificate of appropriateness can legally be carried out without first securing a certificate of appropriateness for the work from the Board or securing a permit for ordinary maintenance and repair from the City Historic Preservation Officer which excuses the applicant from obtaining a certificate of appropriateness. The second is that no building, demolition, or signage permit may be issued for any of the work requiring a certificate of appropriateness until a certificate of appropriateness has first been issued by the Board. The third key regulation is that the City Historic Preservation Officer is given the authority to periodically inspect the work authorized with certificates of appropriateness. If he/she finds work being conducted in violation of the terms of a certificate of appropriateness or without the necessary authorization given by a certificate of appropriateness, he/she may stop the work in question and pursue the imposition of the civil and criminal penalties and remedies allowed by Section 12.217 of the ordinance. With the inclusion of these provisions in the amended ordinance, the Historic Review Board will no longer be forced to try and persuade, cajole, apply peer pressure, or negotiate with people to get them to abandon a project that will be destructive or detrimental to the character of a designated resource as the only recourse available to it if its

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210 Section 12.209.
211 Subsection 12.209.2(i).
212 Subsection 12.209.5.
members are to at least attempt to carry out their mission of protecting the heritage resources of Fredericksburg. Instead, the Board is able to strictly prohibit any and all actions that would destroy or forever alter the significant historic, cultural, and architectural resources of the city,\(^{213}\) which in fact must be protected to advance the social welfare of the community and help further stimulate the continued economic and population growth so reliant on the attraction of the city’s unique historic, cultural, and architectural heritage. Such powers of prohibition and enforcement must be granted in this or any other proposed amended ordinance for the City of Fredericksburg if historic preservation regulation is to be at all effective in protecting and promoting the historic, cultural, and architectural resources that are so critical to the city’s prosperity in the present and in the future.

Of course, the sections of the amended ordinance included in this part of the chapter are like all the other sections of the ordinance in that they were written both to meet the historic preservation ordinance requirements established by the THC for local governments desiring to become designated certified local governments, and to cater the particular physical, social, economic, and political realities of the City of Fredericksburg and its citizens. One of the most significant amendments to the original ordinance are the provisions authorizing the City Historic Preservation Officer to receive all applications for certificates of appropriateness, but only authorizing the Officer to determine and make judgements on applications concerning work involving ordinary maintenance and repair, which must then be approved by the Chairman or Vice-chairman of the Board before a permit for the work may be issued.\(^{214}\) All other applications must be submitted to the Board by the CHPO for formal reviews by the Board at

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\(^{213}\) Except in cases where the presence of economic hardship or unusual and compelling circumstances require that the Board permit detrimental or destructive actions under the requirements of Sections 12.210 and 12.211, respectively.

\(^{214}\) See subsection 12.209.2(a), (b), and (c) in Appendix B.
public hearings, although the CHPO is authorized to determine the completeness of all applications and require that additional information be submitted with the applications if necessary.\(^{215}\)

These amended procedures of application concerning the duties of the CHPO are significant for two very important reasons. The first is that allowing the CHPO to determine the state of completion of all applications will help the application process run more smoothly and efficiently, thereby making the process more acceptable for the citizens being regulated by the ordinance. The THC model ordinance for CLG status does not specifically require or prohibit the city historic preservation officer from first receiving the applications for certificates of appropriateness.\(^{216}\) However, both the San Antonio and Fort Worth ordinances require that all applications be given to the cities' historic preservation officers, in part to allow someone with expertise to determine whether or not the applications are complete and what other information might be necessary in order for the cities' historic review commissions to make an informed decision on the applications.\(^{217}\) It is felt that having the City Historic Preservation Officer of Fredericksburg carry out this same function is the best method of handling the submission of applications to the Board, since the CHPO may expedite the process by returning all incomplete applications and using his/her expertise to determine what further information might be needed by the Board to make its determinations on the applications. By doing so, the CHPO will enable less of the valuable time of the volunteer members of the Board to be wasted on returning incomplete applications or suspending the hearings on applications until more needed information

\(^{215}\) See subsection 12.209.2(c) in Appendix B.

\(^{216}\) THC, Section 9, p. 12.

is gathered for the application. The carrying out of this responsibility will also help applicants to be more satisfied with the progress of their applications through the required process than they might be without the services of the CHPO.

Although the Building Official is currently charged with this duty under the present ordinance, the tremendous amount of work expected of this official in performing his primary duties as the City Inspector and his lack of expertise in the area of historic preservation or architectural history means that he is less likely to be able to anticipate what additional informational the Board might or would need in reviewing particular applications. Thus, it is imperative for the sake of keeping the application process as quick, easy, and satisfying as possible that the expertise of the City Historic Preservation Officer be put to use to provide the most efficient and expedient means of conducting the certificate of appropriateness application process. This is, of course, yet another argument to be added to those justifying the establishment of the office of City Historic Preservation Officer in the analysis and commentary on Section 12.204 presented in this chapter.

The second and most important significance of the amended certificate of appropriateness application procedures being written as they are is that this amended section helps bring the certificate of application procedures into compliance with THC ordinance requirements for CLG status. The authorization given the Building Official to approve applications (with the agreement of the Chairman or Vice-chairman of the Board) which, in his/her opinion, involve "alteration, change, restoration or removal of any exterior architectural feature of a building or structure which does not involve significant changes in the architectural or historic value, style, general design or appearance..." under Section 12.205 of the current ordinance is not authorized by the THC's the model ordinance. Nor is any similar authorization given to the historic preservation
officers or any other city officials of San Antonio or Fort Worth under either one of these certified local government’s ordinances.218

In fact, such authorization is not allowed with good reason. Requiring the Board to review and decide upon all applications not concerning ordinary maintenance and repair allows for more public accountability in the decision-making process, since public hearings are required before any decisions can be made by the Board. This public process assures property owners that they may argue their case in front of the members of the Board and others in attendance at the public hearing in order to possibly increase their chances of approval. Citizens will feel that they are empowered to help make decisions that affect them and their prosperity, rather than having them feel powerless and alienated from the regulation enforcement system that is designed to serve them and protect their property values. Such public due process simply makes good legal sense. It also offers the opportunity to foster among citizens a better understanding of the open, public decision-making process required by law in the amended historic preservation ordinance and of the protections offered the significant historic, cultural, and architectural resource under the historic preservation ordinance.

The requirement that the Board review and decide upon all applications not concerning ordinary maintenance and repair also reduces the possibility of allowing work that would be detrimental to or destructive of the historically, culturally, or architecturally significant character of designated resources to be approved. Enough has been said in the analysis and commentary on Section 12.204 in this chapter about the possibility for error that exists under the current ordinance’s certificate of review procedures, since these procedures allow the Building Official, a person who lacks experience in the realm of historic preservation and/or knowledge of architectural history, and the Chairman or Vice-chairman of the Board (who might also lack a

218 See Appendix A.
necessary level of experience or knowledge) to decide which actions will not be detrimental to or destructive of designated properties. The new requirement that certificate of appropriateness applications other than those involving ordinary maintenance and repair be reviewed by the Board also serves notice to the friends and foes of historic preservation in Fredericksburg alike that the old potentials for corruption have been all but banished. No longer will it be potentially possible to have someone who is unfamiliar with the reasons behind the methods involved in historic preservation regulation or who is apathetic or even unsympathetic toward the cause of preservation (i.e. the City Building Official) to approve an application for work that is detrimental to the character of a designated property out of friendship and/or sympathy for the applicant. The amended qualifications of Board members and the amended requirements for the makeup of the Board found in Section 12.203(b), combined with the fact that the Board as a whole must review and decide on every nonmaintenance and repair related application, also greatly reduce the possibility of error described above. The chance of error is further reduced by the fact that the CHPO is required to use his/her expertise in historic preservation and/or architectural history to advise the Board in its decisions.\textsuperscript{219} Therefore, this provision of the amended ordinance is absolutely essential if Fredericksburg is to truly be able to protect and preserve its historic, cultural, and architectural resources for decades to come.

This requirement of Board review does potentially increase the work load for the volunteer members of the Board, but such a work increase is more than made up for by the additional protections offered the city's designated resources by the requirement. Thus, the requirement that all applications for certificates of appropriateness other than those for work involving ordinary repairs and maintenance be reviewed by the Board is one of the most important amendments to the ordinance, since it lessens the possibility of error, makes the

\textsuperscript{219} See Section 12.204 in Appendix B.
certificate of appropriateness process more publicly accountable, and brings the ordinance into compliance with THC ordinance requirements for CLG status. Along with fulfilling the ordinance requirements for CLG status, Section 12.209 also is written to cater to the particular physical, social, and economic needs and the political realities of the City of Fredericksburg and its citizens. One of the provisions that goes beyond the minimum THC requirements for ordinances, but that is placed within the amended ordinance to satisfy the need and realities of the situation in Fredericksburg, is the wording of the first paragraph of subsection 12.209.1's "Criteria for Approval of a Certificate of Appropriateness." This paragraph is meant to help reassure the citizens of Fredericksburg who might worry that the amended ordinance will allow the CHPO and the Board to deny owners the ability to make any changes on their designated property or require extremely costly methods to be used if any such change is to be allowed. The wording pledges that the Board and the CHPO will always hold the necessity of meeting the needs of regulated property owners as one of its most important missions. It also pledges that they will strive to make sure that the work required by a certificate of appropriateness approved or approved with modifications by the Board is not economically prohibitive to the finances of the applicant, but is adequate enough to protect the physical character of the designated property. It is hoped that this initial paragraph will help diffuse charges that the amended ordinance will allow excessive and costly regulation of private property and, thereby, help win over the confidence and support of older and/or poorer owners of property that is or might be eligible for designated.

Another provision included in the ordinance is the right granted to dissatisfied property owners (applicants) in Subsection 12.209.2(h) to appeal the issuance or denial of a certificate of appropriateness to the City Council. This provision should help combat the notion that the amended ordinance’s regulations will deny owners the ability to make any changes to their
designated property or require extremely costly methods to be used if any such change is to be allowed. The inclusion of this right of appeal is mandatory under THC ordinance requirements, and it is designed to protect owners from excessive and unjust certificate of application requirements or denials with the overriding authority of a more politically responsive and objective government body in the form of the City Council. Thus, the ability to challenge the power and authority of the Historic Review Board through appeal at a public City Council hearing should help assure citizens of Fredericksburg wary of excessive government regulation under the ordinance that it is highly possible to reverse any excessive use or abuse of power which the Board initiates through the certificate of appropriateness procedures.

Two important sections are included in the ordinance to also help win additional support from skeptical citizens, who fear that the amended ordinance will allow excessive and costly regulation of private property: Section 12.210 and Section 12.211. The economic hardship application procedure outlined in Section 12.210 is a procedure required in all ordinances that are designed to meet THC guidelines for CLG status. Of course, this provision is also politically beneficial to the effort to have the public accept adoption of the ordinance on both a four year trial basis and later on a permanent basis. This is because Section 12.210 assures citizens that even if the action of the Board on a certificate of appropriateness is economically detrimental to a property owner, that owner can and will be able to reverse the Board’s action if he/she can prove that the Board’s action results in an actual economic hardship.

In fact, the economic hardship application provided in Section 12.210 is designed to help insure that the protective measures given the Board through the certificate of application requirements cannot be used to the extent that they prevent the realization of a reasonable economic return on any designated property. It is hoped that this provision will help the amended

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220 THC, Section 9, p. 12.
ordinance gain at least some support from citizens afraid that enhanced historic preservation regulations will cause excessive regulation of private property and the legally questionable loss of some property rights. It is also hoped that this provision will both prevent disgruntled citizens who are not granted a certificate of appropriateness initially or on appeal and who do receive a favorable ruling in their application for economic hardship from filing a regulatory takings case against the city. This section should also help ensure that the city will have a good chance at winning regulatory takings suits filed by a disgruntled applicants.

The other important section, Section 12.211, is another provision in the ordinance that goes above and beyond the ordinance requirements in order to insure that an owner is able to exercise the right to the viable use of his/her property. It grants the ability to apply for a certificate of appropriateness for a demolition or removal based on the existence of unusual and compelling circumstances as a means to make sure that every possible basis for the need for the demolition or removal of a designated structure, object, or building may be examined and ruled upon by the Board after the denial of a certificate of appropriateness and a lack of finding of economic hardship as justification for such action.221

The need for this section has been shown in the recent case of Flores v. City of Boerne.222 St. Peter the Apostle Catholic Church brought the lawsuit against the City of Boerne, Texas, after it was denied permission by the city’s Historic Landmarks Commission to demolish its existing sanctuary and build a new church building to accommodate its growing congregation. The criteria used by the Commission to make decisions on certificates of appropriateness would not permit the Commission to sanction the loss of the church’s prominent

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221 See the definition of "UNUSUAL AND COMPELLING CIRCUMSTANCES" found in Section 12.202 of the temporary, amended ordinance in Appendix B.

222 1195 U.S. Dist. LEXIS 3675.
and familiar facade (the only part of the building actually located within Boerne’s historic district). Nor could St. Peter the Apostle have proven economic hardship, even if such a provision were to exist in Boerne’s historic preservation ordinance (which does not meet THC requirements for CLG designation). It was only after Archbishop Patrick Flores filed the lawsuit against the City of Boerne on behalf of St. Peter the Apostle that both sides began to examine a compromise construction plan that would have kept the primary facade but allowed the demolition of the rest of the church and enabled a large sanctuary to be attached to the facade (a plan which the Historic Landmarks Commission eventually rejected in favor of requiring the church to keep the entire historic structure).

Section 12.211 is designed to specifically avoid the need for lawsuits, particularly takings suits, to be filled by owners who have legitimate needs for the demolitions or removals of designated resources, but whose needs may not be recognized under the application of the amended ordinance’s normal certificate of appropriateness criteria or the procedure for proving economic hardship. It is hoped that this section will provide an additional vehicle for compromise between the Board and disgruntled property owners, so that both the recognized needs of owners of designated properties and the need to protect the Fredericksburg’s significant resources can be met through the granting of removal or only partial demolition of designated resources. It is hoped as well that this provision will act as a political asset toward gaining the support of citizens for the adoption of the amended ordinances, since it may give owners of designated property and the citizens of Fredericksburg alike the correct feeling that the amended historic preservation ordinance is truly meant to provide for and be subservient to the needs of the people of the city, even if such legitimate needs contradict with the need for historic preservation. Furthermore, the inclusion of this section in the ordinance should assure the people
of the community that certain regulations and rulings of the Board which are in fact detrimental to the needs and liberties of owners of designated properties can and will be overturned.

Thus, both Sections 12.210 and 12.211 provide politically favorable checks against the power of the Historic Review Board to impose excessive or draconian requirements on property owners irrespective of their economic or other vital needs. These sections also provide necessary legal protection for the City of Fredericksburg against takings and other lawsuits in its exercise and enforcement of the amended preservation ordinance - legal protections that are absolutely necessary in this litigious age and particularly necessary in this community where feelings against government regulation run high. Yet, most importantly, these two sections help meet the particular needs of the people the ordinance is supposed to serve and protect them from unnecessary and unlawful economic hardships or unusual and compelling detrimental circumstances caused by the implementation of the amended ordinances' protective regulations.

The procedure for applying for certificates of appropriateness for demolitions provided by subsection 12.209.3 is also intended to help owners of designated landmarks and properties designated "contributing" within historic districts avoid unnecessary expenses in terms of time and money if they desire to demolish their designated properties. This procedure is also meant to help discourage all but the absolutely essential demolitions of Fredericksburg's historical, cultural, and architectural resources. The provision for informal negotiations between demolition applicants and the City Historic Preservation Officer and the provision allowing the Board to delay the hearings on such applications are designed to make it clear to applicants that only owners who have an absolute need for the demolition of their landmark or "contributing" property will have a chance at obtaining a certificate of appropriateness for demolition. Such demolition approvals will only be granted after the legitimate dismissal of the options of having the building, object, or structure be bought by others, relocated, receive financing that would
eliminate the need for demolition, or receive zoning or building code changes which would eliminate the need for demolition. All other applicants need not waste their energy and their money on filing such applications, since they will have little chance of receiving approval from the Board based on the criteria used for the review of such applications given in subsection 12.209.1. Although these provisions are not specifically required or mentioned within the section on certificates of appropriateness for demolitions found in THC's model ordinance, similar provisions found in Section 35-436.7 of the City of San Antonio's historic preservation ordinance establish the fact that these requirements are in fact legal and acceptable by the THC for CLG designation.

Fredericksburg does not have much need for such stringent anti-demolition provisions at the moment. The city's designated resources could be adequately protected currently by the simple adoption of the certificate of appropriateness for demolition procedures found in the Texas Historical Commissions model ordinance, which simply state that no demolition permit for the demolition of a designated landmark or of property within an historic district will be granted without having the owner(s) of said property complete the regular certificate of appropriateness application procedures and receive approval for the demolition from the historic review board or commission. The fact that much of the city's tourists are attracted to Fredericksburg and to its many tourist-oriented business by the renown of its unique architectural and cultural resources means that businesses people are more likely to try and acquire historic and/or Germanic-looking buildings and structures rather than tear them down. The true danger currently lies in having owners of designated historic buildings and structures which do not contain


224 pp. 42-43.

elements of German-Texas architecture add false elements to their buildings to create such missing elements. Business owners may even be tempted to demolish their buildings or structures in order to create new ones which attempt to copy existing buildings from the 1840s through 1880s or evoke a similar Germanic feel as a way to attract more tourist business.

While Section 12.209.3 is meant to prevent the more likely demolitions of significant buildings, objects, and structures from the early to mid-twentieth century, this section is, more importantly, also designed to provide protection to all of Fredericksburg's designated resources against future economic downswings or changes in the nature of Fredericksburg's appeal to the tourist market. A weakening of the state or national economy could significantly reduce the income Fredericksburg receives from tourist visits, thereby putting economic pressure on the owners of designated resources to demolish these resources and find more lucrative ways of using their property. The creation of other, more lucrative tourist attractions might also greatly diminish the profitable use of designated buildings and structures as businesses, while increasing the value of the sites occupied by these buildings as parking lots or fast-food restaurants. The neighboring Adelsverein community of New Braunfels, Texas, lost a large portion of the area of the city's original settlement and a significant amount of its nineteenth and early twentieth century buildings as a result of the development of huge water parks and outlet malls in the city.

The many additional requirements written into the amended ordinance for the approval of a certificate of appropriateness for the demolition of landmarks or "contributing" properties within historic districts are placed in the amended ordinance now, so that any future changes that have the potential to generate significant losses to the overall number of Fredericksburg's designated landmarks and "contributing" properties under the simple demolition application procedures required by the THC can be thwarted from the outset. This will allow the city to avoid the risk of losing many important resources while precious time is both used to draft an amendment
offering more stringent requirements for the issuance of certificates of appropriateness for demolitions and then further taken up during the process of gaining approval for the requisite amendment to the ordinance.

One of the most critical aspects involved in protecting Fredericksburg’s significant heritage resources is the enforcement of compliance with the Board’s approval, denial, or approval with modifications of applications for certificates of appropriateness, particularly compliance with the exact methods and materials approved for use by the Board in granting approval or approval with modifications for specific work. The inability of Fredericksburg’s Historic Review Board to in any way enforce its recommendations upon review of work intended to be carried out on buildings, objects, sites, or structures within the city’s one historic district under the present ordinance, and the resulting detrimental changes to the character of Fredericksburg’s historic district, are the main reasons why the City Council has authorized the ordinance to be amended and the main reasons why these amendments to the ordinance have been written. The ordinance as amended provides two different methods to insure that protections offered designated resources through the certificate of appropriateness requirements can and hopefully will be enforced. The first is the inclusion of highly significant statements found in Subsections 12.209.2(b) and (i) that prohibit the issuance of any building, demolition, or signage permits for any work requiring a certificate of appropriateness or a permit for ordinary maintenance and repair unless an applicant for any of these three types of permits has first received a certificate of appropriateness from the Board or a permit from the CHPO. 226 It is hoped that the inclusion of these legal requirements in the ordinance, combined with the markings of designated properties on the Official Public Records of Real Property of Gillespie County, the tax records of the city and the Gillespie Appraisal District, and the zoning maps of

226 See Section 12.209 in Appendix B.
the City of Fredericksburg required in subsections 12.206.1(d) and 12.206.2(d), will prevent the illegal granting of building, demolition, and signage permits to the owners of designated properties.\textsuperscript{227} Of course, these legal requirements also allow for the prosecution of all cases of violations and the imposition of the penalties and remedies allowed by the ordinance in Section 12.217 upon conviction.

The second method of enforcement of the certificate of appropriateness requirements is granted in the subsection 12.209.5. This subsection authorizes the City Historic Preservation Officer to periodically inspect the work granted approval by the issuance of a certificate of appropriateness for exact compliance with the work specifically approved under the certificate. It is hoped that the threat of inspection shall compel all applicants and/or their contractors to strictly comply with the completion of the work as it was approved by the Board. However, the power to have a stop-work order issued by the Building Official on any work being conducted in violation of a certificate of appropriateness, combined with the ability to apply the penalties and remedies available under Section 12.217 of the amended ordinance against the perpetrators of such illegal actions, helps insure that Fredericksburg's precious, designated resources can and will be protected. Furthermore, these methods of enforcement help guarantee that the rulings of the Historic Review Board can and will no longer be ignored by the owners of designated property who must present their required applications before this newly empowered regulatory body.

While it is not necessary to comment on the rest of the rather self-explanatory sections and subsections contained in this chapter, the unusual nature of the certificate of appropriateness application requirement for work involving ordinary maintenance and repair in subsections 12.209.2(a) and (b) should be noted. The provision in subsection 12.209.2(a) that requires

\textsuperscript{227} See Sections 12.209 and 12.206, respectively, in Appendix B.
owners of designated properties to apply for certificates of appropriateness for work involving only ordinary maintenance and repairs, along with all the requirements of subsection 12.209.2(b) are a unique combination in regard to common certificate of appropriateness application procedures found in Texas historic preservation ordinances. Nothing quite similar to this approach to regulating ordinary maintenance and repair work on designated resources is found in the THC model ordinance, the San Antonio or Fort Worth ordinances, or any other CLG or nonCLG-qualifying Texas ordinances studied for this thesis. However, the amended ordinance does combine an adaptation of the permit process for ordinary maintenance and repair work approval carried out by the historic preservation officers of the certified local governments of San Antonio\textsuperscript{228} and Fort Worth\textsuperscript{229} with the current Fredericksburg ordinance requirement that applicants submit certificate of review applications for all forms of work, with the Building Official given the power and responsibility to decide what work constitutes ordinary maintenance and repair.\textsuperscript{230} Since these provisions are adaptations of maintenance and repair permit requirements and procedures already approved by the THC in the San Antonio and Fort Worth ordinances, and since the THC guidelines do allow for all but “extreme deviations” from the content of the sections given in the model ordinance for CLG status, the certificate of appropriateness requirements and procedures for work involving ordinary maintenance and repair written in the amended ordinance should not prohibit Fredericksburg from receiving certified government status from the Texas Historical Commission.\textsuperscript{231}

\textsuperscript{228} Subsection 35-434.3, p. 31.

\textsuperscript{229} Subdivision D, p. 26.

\textsuperscript{230} See subsection 12.205(d) in Appendix A.

\textsuperscript{231} THC, p. 1.
It is hoped that by deliberately adapting the old, familiar method of the certificate of review application requirements for ordinary maintenance and repair work into the amended ordinances’ certificate of appropriateness requirements, the confusion or unintentional noncompliance that might occur among designated property owners were a new method of regulating ordinary maintenance and repair can be avoided. It is also hoped that the air of familiarity maintained in the requirements for approval of ordinary maintenance and repair in the amended ordinance will give the owners of designated property within Fredericksburg’s only current historic district yet another incentive, although slight, to support the adoption of the amended ordinance for a trial, four year term. Fortunately, the requirements for complete applications for certificate of appropriateness for ordinary maintenance and repair work in subsection 12.209.2(a) did not have to be greatly expanded from those required under Fredericksburg’s current ordinance in order to satisfactorily meet the requirements for certificate of appropriateness applications found in the THC model ordinance. Thus, the advantage of familiarity is kept in this aspect of the certificate of appropriateness for ordinary maintenance and repair as well.

Finally, it should be noted that most Texas CLG and nonCLG municipalities’ historic preservation ordinances list additional criteria for their historical commissions’ use in evaluating certificate of appropriateness applications that are more specific to the physical characteristics of their municipalities’ respective significant resources than those given in the Secretary of the Interior’s Standards. However, such a practice is intentionally avoided in the criteria for use in evaluating certificate of appropriateness applications under subsection 12.209.1 of the temporarily amended ordinance. It is felt that the first members of Fredericksburg’s Historic Review Board

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232 See subsection 12.205(d) in Appendix A.

233 THC, Section 9, p.12.
to be installed under the temporarily enacted, amended ordinance should be the ones to adopt guidelines that are specific to the physical characteristics of the city’s significant resources and to social, political, and economic needs of its citizens, since they are much more qualified to make such location-specific judgments than is the author of these amendments. Consequently, the ordinance follows the recommendation of the model THC ordinance by requiring that the Board formulate, adopt, and apply guidelines that are more location-specific than, but in conformity with, the Secretary of Interior’s Standards and that are to be used as additional criteria for the approval of certificates of appropriateness.234

Subsection 12.209.1 also requires the Board to use the guidelines for sign design and placement found in Fredericksburg’s signage ordinance (Article 3.1000).235 However, the key phrase in subsection 12.209.1 in regard to signage regulation in historic districts and on historic landmark properties is "as amended." Under subsection 3.1007(f) of the current ordinance, only signs located in Fredericksburg’s single, municipally designated historic district fall within the jurisdiction of the Historic Review Board.236 In order to resolve the conflicts between the two ordinances, the signage ordinance must also be temporarily amended to allow all signs in all designated historic districts and on all historically landmarked properties to come under the certificate of appropriateness regulations found in Section 12.209 of the temporarily amended historic preservation ordinance. A discussion of the temporary amendment to the signage ordinance proposed for this purpose is found in Chapter Three.

234 THC, Section 8, p. 11.

235 Fredericksburg, Texas, Fredericksburg Code of Ordinances, Chapter 3, pp. 3-56 - 3-64.

236 Ibid., p. 3-64.
§ 12.213 Prevention of Demolition by Neglect

(a) All historic landmarks and all buildings, objects, sites, and structures within historic districts, whether occupied or not, shall be preserved against decay and deterioration and kept free from certain structural defects by the owner thereof or such other person(s) who may have legal custody and control thereof. The owner or other person(s) having such legal custody, in keeping with city’s minimum housing standards, shall repair such building, object, site, or structure if it is found to have any of the following defects:

(1) A deterioration or inadequate foundation. Defective or deteriorated flooring or floor supports or flooring or floor supports of insufficient size to carry imposed loads with safety;

(2) Members of walls, partitions, or other vertical supports that split, lean, list, or buckle due to defective material or deterioration. Members of walls, partitions, or other vertical supports that are of insufficient size to carry imposed loads with safety;

(3) Members of ceilings, roofs, ceiling and roof supports, or other horizontal members which sag, split, or buckle due to defective materials or deterioration. Members of ceilings, roofs, ceiling and roof supports, or other horizontal members that are of insufficient size to carry imposed loads with safety;

(4) Fireplaces or chimneys which list, bulge, or settle due to defective material or deterioration. Fireplaces or chimneys which are of insufficient size or strength to carry imposed with safety;

(5) Deterioration or ineffective waterproofing of exterior walls, roofs, foundations, or floors, including broken windows or doors. Defective protection or lack of weather protection for exterior wall coverings, including lack of paint or weathering due to lack of paint or other protective covering. Any fault or defect in the building which renders same structurally unsafe or not properly watertight;


238 The follow are adaptations of S.A. Ord., Section 35-436.8, pp. 43-44, unless otherwise noted.
(6) Deterioration of any other feature so as to create a hazardous condition which could lead to the claim that demolition is necessary for the public safety.239

In addition, the owner or other person(s) having legal custody and control of an historic landmark or a building, site, object, or structure located within an historic district shall keep all property, including vacant property, clear of all weeds, fallen trees or limbs, debris, abandoned vehicles, and all other refuse.240

(b) The Board, on its own initiative, shall file a petition with the Building Official requesting that he/she proceed under the City of Fredericksburg’s minimum housing and structural safety standards to require correction of defects or repairs to any structure covered by subsection (a) above so that such structure shall be preserved and protected in accordance with the purpose of this ordinance.241

(c) If any historic landmark or any building, object, or structure within an historic district shall have to be demolished as a public safety hazard and the owner(s) shall have received two or more notices from a city inspector of building neglect in violation of this and any other city ordinance, no application for a certificate of appropriateness for a project on the property may be considered for a period of two years from the date of the demolition of the historic landmark or building, object, or structure within the historic district. Additionally, no permit for a curb cut needed for the operation of a surface parking lot shall be granted by any city office during this period.242

§ 12.214 Public Safety Hazards and Emergency Securing Measures243

No building, object, or structure designated a landmark or located within an historic district may be demolished in whole or in part as a hazard to public safety until the City Historic Preservation officer has been notified by the Building Official that an order for such demolition is being prepared, and the Board has had an opportunity to discuss with the Building Official and any and all other municipal officials involved the feasibility of emergency measures to secure the unsafe structure in such a manner as to preclude the possibility of injury to the public.

After emergency measures are undertaken, the City Historic Preservation Officer shall meet with the Building Official and any and all other municipal officials involved wishing to issue the order for demolition to review the condition of the structure and the development of plans for its

239 Adaptation of THC, Section 14, p. 14.
240 Adaptation of S.A. Ord., Section 35-436.8, p. 44.
241 Ibid.
242 Ibid.
rehabilitation. If within one (1) month the City Historic Preservation Officer, after consultation with the owner(s) of the property and the municipal legal staff, makes a report acceptable to the Board on the feasibility of a successful rehabilitation of the building, object, or structure, the Board shall make a recommendation to the Building Official that the demolition permit be rescinded on the condition that the owner(s) of the property complete the planned rehabilitation so that the building, object or structure complies with all applicable public safety standards. If, however, after one (1) month no feasible scheme for the further protection of the building, object, or structure has been developed in cooperation with the owner(s) of the property, the Board shall make a recommendation to the Building Official for an order of demolition.

§ 12.215 Procedure for Requesting Public Ownership or Control of Designated Properties

If the Board finds that a historic landmark or a property located within an historic district cannot be preserved and is in danger of being lost under the certificate of appropriateness procedures set forth in Sections 12.209, 12.210, and 12.211, the Board shall recommend to the City Council that the endangered designated property be acquired by a gift, devise, or purchase by funds donated or granted by individuals, public groups, state agencies, or federal agencies.244

Analysis and Commentary on § 12.213, 12.214, and 12.215

The provisions against demolition by neglect of designated buildings, objects, and structures provided in Section 12.213 goes beyond the basic requirements for a section prohibiting demolition by neglect written in the THC model ordinance by granting the Board a mechanism in subsection (b) to prevent continued demolition by neglect from being allowed on designated properties.245 Section 12.213 also builds upon basic THC ordinance requirements by providing in subsection (c) for the application of stiff penalties against repeat offenders of the prohibition against demolition of designated properties by neglect when these owners’ continual

244 Adaptation of Boerne, Texas, "City of Boerne Ordinance No. 91-05," Section 8, p. 10.

245 THC, Section 14, pp. 13-14.
neglect results in the demolition of their designated building, object, or structure as a public safety hazard.\textsuperscript{246} 

Along with Fredericksburg's stringent additional requirements for receiving a certificate of appropriateness for demolition provided in subsection 12.209.3, Fredericksburg currently does not have much need for such an enhanced prohibition against demolition by neglect. Touring the entire city, one finds very few buildings, objects, or structures, both old and new, that are being allowed to deteriorate through neglect. Perhaps this is because of the stereotypical penchant for neatness in the Germanic culture as it has manifested itself in the Texas Hill Country. Furthermore, as mentioned in the analysis and commentary on subsection 12.209.3 in Part VI of this chapter, the fact that many of the city's tourists are attracted to Fredericksburg and to its numerous tourist-oriented businesses by the renown of its unique architectural and cultural resources means that business people, at least, are not likely to allow their tourist-attracting historic buildings or structures to become seriously neglected unless they are in somewhat severe financial difficulty. Section 12.213 is written to more effectively and firmly deal with the occasional cases of demolition by neglect that may occur under current conditions in Fredericksburg than the suggested demolition by neglect provision in the THC model ordinance. More importantly, however, this section is also designed to provide a high level of continual protection to all of Fredericksburg's designated buildings, objects, and structures in order to counter any unforeseen changes in Fredericksburg's future. The economic downswings or changes in the nature of Fredericksburg's appeal to the tourist market described in the commentary on subsection 12.209.3 might cause an upswing in the number of owners who wish

\textsuperscript{246} Ibid.
to intentionally demolish their designated properties through neglect.\textsuperscript{247} Having the additional provisions of subsections 12.213(b) and (c) in place were any such significant and unforeseen changes to take place in Fredericksburg will help discourage owners from actually carrying out the demolition of their designated properties through intentional neglect. The addition of these two provisions into the amended ordinance at this time will also allow the city to avoid the risk of losing several important resources were only the THC's relatively weak provisions against demolition by neglect in place in the ordinance, while the Board waits for the more forceful provisions of subsections 12.213(b) and (c) to be drafted and then approved for amendment to the ordinance.

There is also little current need for Section 12.214 of the amended ordinance, for the very same reasons explained for the lack of much need for the requirements of Section 12.213 in Fredericksburg at this time. However, the provisions of Section 12.214 are designed to enhance those of Section 12.213. Section 12.214 is meant to prevent owners of designated properties who have not been able to receive a certificate of appropriateness for demolition by any other means provided by the amended ordinance, from destroying one of Fredericksburg's significant resources by intentionally making their property a public safety hazard that must be condemned and demolished according to the law. The provisions of Section 12.214 provide for the possibility of saving all condemned designated properties that can be stabilized and secured from demolition through extensive rehabilitation. The section also provides the ability to delay the demolition of such properties, so that the CHPO and other city officials can gather evidence against the owner of the property to formally charge him/her with violations of the preservation ordinance and seek the imposition of the penalties and remedies provided in all three subsections

\textsuperscript{247} Please see the commentary on subsection 12.209.3 in Part VI for a more detailed description of such possible changes and the dangers these possible changes hold for Fredericksburg's designated properties.
of Section 12.217. The remedy allowed under subsection (a)(1) of Section 12.217 should force the owner(s) of such property to agree to carry out the necessary rehabilitation of their deteriorated property, thereby allowing the Board to recommend that the demolition order on such property be rescinded and enabling the property itself be restored to at least some semblance of its former appearance pursuant to Section 12.214.

Significantly, the provisions contained in Section 12.214 are not found in any form in the THC’s model ordinance for local governments wishing to qualify for CLG status. However, the incorporation of these extremely important and useful provisions into the amended ordinance should not jeopardize Fredericksburg’s chances of receiving CLG designation, since these provisions are an adaptation of similar provisions found in the preservation ordinance of the certified local government of San Antonio.248

Section 12.215 is another section of the amended preservation ordinance not found within the model ordinance recommended by the THC. It is designed to help the Board prevent the destruction of Fredericksburg’s significant historic, cultural, and architectural resources. It is also written in such a way as to be a political asset rather than a political liability in the fight to have the amended ordinance adopted on both the four year trial basis and then on a permanent basis by the City Council. The fact that this section does not provide for the expenditure of public funds on the acquisition of endangered designated property should help assure the citizens of Fredericksburg that precious government funds, which people may feel should rightfully be spent on many other more pressing community needs, will not be continually spent on public acquisition of private property. This fact helps further assure people that the city taxes citizens

248 Section 35-436.10, p. 45.
of Fredericksburg are required to pay will not be raised solely to support the cause of acquiring all endangered designated property for public use and enjoyment.249

249 The amendment to the Fredericksburg Tax Code proposed in Chapter Three concerns the allocation of a percentage of the city's Hotel Occupancy Tax, a tax from which citizens of Fredericksburg are exempt.
VIII. Sections 12.216 - 12.217

§ 12.216 Applicability and Enforcement of the Ordinance in its Entirety

§ 12.216.1 Applicability

The provisions of this ordinance shall apply to all places, objects, sites, structures, or property within the current municipal limits of the City of Fredericksburg that are privately owned and owned by the City of Fredericksburg.250

§ 12.216.2 Enforcement of the Ordinance in its Entirety

(a) Responsibilities of the City Historic Preservation Officer

Along with the enforcement of work performed pursuant to a certificate of appropriateness provided in subsection 12.209.5 of this ordinance, the City Historic Preservation Officer shall be responsible for conducting periodic exterior inspections of all historic landmarks and all property within every historic district, so that every property designated under this ordinance shall be inspected at least once per year, in order to promote compliance with all provisions of this historic preservation ordinance and swiftly remedy all violations of the provisions of this ordinance. All violations not covered in subsection 12.209.5 of this ordinance shall be reported by the City Historic Preservation Officer to the City Attorney, and the person(s) found to be responsible for the violation(s) shall be subject to the penalties and remedies available under § 12.217 of this ordinance.251

(b) Responsibilities of the City Attorney

It shall be the duty of the Attorney of the City of Fredericksburg to legally pursue the conviction of all alleged violators of the provisions of this historic preservation ordinance to the full extent necessary and possible in a court of competent jurisdiction pursuant to the penalties and remedies available under § 12.217 of this ordinance.252


§ 12.217 Penalties and Remedies

(a) Civil.

(1) Any person, firm, or corporation who constructs, reconstructs, alters, restores, renovates, relocates, stabilizes, repairs, or demolishes any building, object, site, or structure in violation of this ordinance shall be required to restore the building, object, site, or structure to its appearance or setting prior to the violation. An action to enforce this provision shall be brought by the City of Fredericksburg. This civil remedy shall be in addition to, and not in lieu of, any criminal prosecution and penalty. 253

(2) If demolition or removal of an historic landmark or of any building, object, site, or structure located within an historic district occurs without a certificate of appropriateness for such action, then any permits on subject property will be denied for a period of three (3) years. In addition, the applicant shall not be entitled to have issued to him/her/it by any city office a permit allowing any curb cuts on subject property for a period of three (3) years from and after the date of such demolition or removal. Nor shall a parking lot for vehicles be operated on the site for a period of three (3) years from and after the date of such demolition or removal. The owner(s) of the site shall also 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 Board through the City Historic Preservation Officer shall cause to be filed a verified notice thereof in the Official Public Records of Real Property of Gillespie County, the tax records of the City of Fredericksburg, and the records of the Gillespie Appraisal District, and a temporary mark, “D/RPEN” (standing for Demolition/Removal Penalty), shall be placed on the subject property in the official zoning maps of the City of Fredericksburg for a period of three (3) years. Such restrictions shall then be binding on future owners of the property. The restrictions imposed shall be in addition to any fines imposed pursuant to the criminal penalties listed in subsection (b) below and the cumulative remedies listed in subsection (c) below.

(b) Criminal 254

Any persons, firm, or corporation violating any provision of this ordinance shall be guilty of a misdemeanor, and each shall be deemed guilty of a separate violation for each day during which any violation hereof is committed. Upon conviction, each violation shall be punishable by a fine not to exceed one thousand dollars ($1,000.00). 255

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255 Adaptation of S.A. Ord., Section 35-437, p. 46.
(c) **Cumulative Remedies**

The provisions of this Section shall apply in addition to other enforcement procedures or penalties which are available and applicable under the violation(s) of any and all other city ordinances.  

**Analysis and Commentary on § 12.216 and 12.217**

Sections 12.216 and 12.217 are intended to give additional “teeth” to the ordinance beyond that provided by the current Fredericksburg ordinance or the "Penalties" section found in the THC's model ordinance. Subsection 12.216.2 of Section 12.216 does so by specifically charging the City Historic Preservation Officer and the City Attorney with the responsibility of enforcing the ordinance in its entirety. As such, Section 12.216 avoids the nebulous wording of the current violations and penalties section of the Fredericksburg ordinance, which charges "property city officials, or their duly authorized representatives" to enforce the ordinance by applying various remedies and penalties. This charge gives the responsibility of enforcement to many different possible city officials and, therefore, to no one in specific, allowing the responsibility to be passed along and lost in the shuffle while owners of designated property get away with not even complying with the simple certificate of review requirements found in Section 12.205 of the current ordinance.

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257 See Section 12.209 in Appendix A.

258 THC, Section 15, p. 14.

259 Section 12.209, p. 12-10.

260 pp. 12-8 - 12-9.
Significantly, subsection 12.216.1 extends the applicability of the provisions of the ordinance to all properties owned by the City of Fredericksburg, thereby enabling the Historic Review Board to designate and regulate any properties owned by the city that might be significant for historic, cultural, and architectural reasons. This provision serves warning to city officials and employees that they will not be allowed to get away with any form of detrimental change to publicly owned, historically designated properties, simply because of the status of these properties as public or the status of these people as city employees or trustees. The fact that the city itself is not exempt from the regulations of the amended ordinance will hopefully generate more of a willingness of on the part of owners of designated private property to support the adoption of the amended ordinance and to later comply with the requirements of the ordinance, since they know that all owners of designated properties are to be treated in an equitable manner. Subsection 12.216.1 also enables the Historic Review Board to force the city government to avoid hypocrisy and lead by example in conforming to the aims and regulations of the city’s amended historic preservation ordinance.

Section 12.217 provides much more specific, comprehensive, and stiffer penalties and remedies than those provided by Section 12.205 of the current ordinance or the "Penalties" section of the THC model ordinance.261 Significantly, subsection 12.217(b) raises the criminal fine to be imposed for each convicted violation from the paltry $200.00 maximum allowed under Section 12.209 of the current ordinance to the maximum sum of $1,000.00 per each violation. This increase makes the fine equal to the maximum fine allowed for each

261 THC, Section 15, ("Penalties"), p. 14, states simply, "Failure to comply with any of the provisions of this ordinance shall be deemed a violation and the violator shall be liable for a misdemeanor charge, and be subject to a fine of not less than_____ nor more than _____ for each day the violation continues." Thus, no specific officials are charged with enforcement of the ordinance are recommended for listing other than those charged with the enforcement of the certificate of appropriateness compliance in Section 12, p. 13, and no other penalties other than criminal penalties are recommended.
violation of the *City of Fredericksburg Zoning Ordinance*,\(^{262}\) which is the guideline the THC model ordinance suggests be followed in determining the maximum amount allowable for a violation of an historic preservation ordinance.\(^{263}\)

The authorization given to the CHPO to inspect all designated properties for compliance with the ordinance in subsection 12.216.2(a), the implied warning given in subsection 12.216.2(b) that all aspects of the ordinance will be legally enforced, and the stiff civil and criminal remedies granted in Section 12.217 are all designed to give the Historic Review Board the means it will need to coerce and enforce compliance with the enhanced regulations of the amended ordinance. While the authorization given to the CHPO to carry out annual external inspections of all designated properties in subsection 12.216.2(a) could raise objections among the citizens of Fredericksburg who are fearful that the ordinance allows for excessive government regulation of private property, it is felt that this external inspection requirement is absolutely essential if all of Fredericksburg's designated resources are to be equally and adequately protected from harmful change. The fines and remedies imposed upon violators uncovered by the first year of inspections can also serve as a warning to all owners of designated properties that the amended ordinance will not be as equally lax or unenforceable on those who chose to ignore the city's historic preservation regulations as was the first weak ordinance, thereby helping to further increase general compliance with the amended ordinance among the citizens of the city.

It is true that neither the THC model ordinance nor the preservation ordinances of CLG and nonCLG status Texas municipalities studied in the preparation for this thesis contain any such annual inspection authorization as the one given in Section 12.217(a). However, this


\(^{263}\) *THC*, Section 15, p. 14.
authorization is a natural extension of the specific inspection authorization given designated officials to enforce compliance with the work allowed by certificates of appropriateness in the THC’s model ordinance\textsuperscript{264} and the ordinance of the certified local government of Fort Worth.\textsuperscript{265} It is also very similar to the powers of inspection given other Texas and other states’ municipal officials to enforce compliance with municipal health, safety, and fire codes.\textsuperscript{266} These facts should be told to the citizens of Fredericksburg during the public education campaign to help gain support for the adoption of the amended ordinance, in order to assure them that this authorization of external inspection is not any more excessive than the health, building, and fire code compliance inspections they have grown used to under other city ordinances. Citizens should also be assured that the fact that the authorization allows only \textit{exterior} inspections of designated property means that the inspections should involve as little inconvenience to the owner as does a meter reading by a city employee. In this way it is hoped that the potential distrust and dissatisfaction which the inspection authorization granted in subsection 12.217(a) might cause among citizens of Fredericksburg upon their initial reading of the proposed amended ordinance can be greatly defused, so that this essential enforcement provision will not jeopardize the chances of the adoption of the amended ordinance by the City Council.

\textsuperscript{264} Ibid., Section 12, p.13.

\textsuperscript{265} Subdivision D, p. 35.

\textsuperscript{266} Thus, the inspection authorization given the CHPO in subsection 12.217(a) should not jeopardize Fredericksburg’s ability to receive certified local government status from the THC.
I X. Section 12.218

§ 12.218 Severability

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable, and, if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation of any such unconstitutional phrase, clause, sentence, paragraph, or section.267

Analysis and Commentary on § 12.218

Surprisingly, the THC model ordinance for local governments wishing to qualify for CLG status does not contain or even recommend the inclusion of a severability clause within a municipal ordinance. However, such a provision is absolutely essential to insure that some level of historic preservation regulation may be maintained in this litigious age and in a state where anti-takings legislation has recently been passed to appease high feelings of excessive government regulation amongst its citizens.268 Indeed, the certified local governments of San Antonio and Fort Worth both found it legally expedient to include such provisions in their respective preservation ordinances, in light of the legal and political ramifications of the current Texas mindset against perceived excessive government regulation of private property.


268 This stringent anti-regulatory takings law requires that many government actions which result in reductions of greater than twenty-five percent of the fair market value of private property shall be deemed a regulatory taking. Fortunately for the cause of historic preservation, zoning regulations are excluded from the takings law. W. Dwayne Jones, Preservation Planner, Texas Historical Commission, conversation with author, Austin, Texas, 31 August 1995.
Section 12.218 is especially necessary in Fredericksburg's ordinance, given the relatively high level of feeling against government regulation of private property that is prevalent in the city, so that city officials, Board members, and City Council members will be able to continue to exercise and enforce all provisions of the temporarily amended ordinance with confidence in the face of threatened or actual lawsuits brought against the city. Furthermore, Section 12.218 guarantees that all other regulations in the amended ordinance can and will be enforced in the unlikely event that a provision or section of the ordinance were to be struck down as unconstitutional. This provision insures that the historic, architectural, and cultural resources of the city will continue to receive the highest level of protection possible while the unconstitutional portion of the amended ordinance is rewritten to comply with the constitution and is then added to the ordinance through amendment.
X. Section 12.219

§ 12.219 Expiration Date and Provisions for the Permanent Adoption of this Temporary Amended Ordinance

(a) This ordinance, temporarily amending in its entirety Article 12.200 Historic Preservation of the Fredericksburg Code of Ordinances, shall expire thirty (30) days after the exact day that marks the fourth anniversary of the enaction of this temporary amended historic preservation ordinance by the City Council, on (month) (day), 20__, unless this temporary ordinance is permanently enacted as an amendment in its entirety of Article 12.200 Historic Preservation of the Fredericksburg Code of Ordinances upon the vote of the City Council at a public hearing specifically held to evaluate the performance of and community satisfaction with this ordinance. Said public hearing shall give the citizens of Fredericksburg, interested parties, and technical experts the opportunity to present testimony in favor or against the permanent enaction of this ordinance by the City Council. The City Council shall give public notice of the hearing, follow publication procedure, hold its public hearing, and make its determination in the same manner as provided in the general zoning ordinance of the City of Fredericksburg. Said public hearing shall be held within thirty (30) days of the exact day which marks the fourth anniversary of the enaction of this temporary ordinance by the City Council.

(b) If this temporary, amended ordinance is allowed to expire upon the vote of City Council, the original Article 12.200 Historic Preservation of the Fredericksburg Code of Ordinances amended by this ordinance shall reapply in its entirety and be enforced as the law controlling historic preservation in the City of Fredericksburg immediately upon the expiration of this temporary, amended ordinance.

(c) Upon the expiration of this temporary, amended ordinance and the reaplication of the original Article 12.200, those persons serving as members of the Historic Review Board under the requirements of § 12.203 of this temporary, amended ordinance shall continue to serve until the expiration of their present terms and shall then be replaced, if necessary, by persons fulfilling the requirements of § 12.204(c) of the original Article 12.200. However, the office of City Historic Preservation Officer shall immediately be abolished, and the Building Official shall resume his/her role in assisting the Historic Review Board as established by the original Article 12.200.

(d) All properties designated as historic landmarks or located within historic districts designated under § 12.205 of this temporary, amended ordinance shall remain designated properties under and subject to the provisions of the original Article 12.200 unless a property’s designation is repealed by the City Council because of a lack of conformance to the criteria for designation established in § 12.204(a)(2) or § 12.204(b)(2) of the original Article 12.200.


270 Ibid.
Section 12.219 is designed to be the primary selling point of the relatively strong, new level of historic preservation regulation the citizens of Fredericksburg are being asked to accept with the initial adoption of the amended ordinance by the City Council, since it requires the temporary ordinance to expire if, after a public debate, the City Council finds no merit in permanently adopting the amended ordinance. This author does not know of the past or present inclusion of a provision similar to Section 12.219 in any other municipal historic preservation ordinance in Texas. However, the adoption of temporary amendments to a municipal ordinance by the City Council of a home rule municipality is legal under the Constitution of the State of Texas and under the powers granted to home rule municipalities by the laws of the State of Texas, an opinion confirmed by Werner Faschnitz, Assistant City Attorney of the City of San Antonio, Texas. Mr. Faschnitz also believes that the creation of a temporary historic preservation ordinance for Fredericksburg is legal under the powers granted to the City of Fredericksburg by the "Fredericksburg Charter," as long as the temporary ordinance contains an expiration date and provides for the immediate replacement of the expired, temporary ordinance with the original ordinance the temporary ordinance is designed to supersede. Section 12.219 satisfies these legal requirements. It also provides an adequate amount of time to enable the citizens of Fredericksburg to formulate educated conclusions on the merits and faults

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272 Telephone conversation with author, 29 March 1996.


274 Telephone conversation with author, 29 March 1996.
of the temporary, amended historic preservation ordinance and on whether or not they wish the amended ordinance to remain the law governing historic preservation in the city.

Furthermore, the four year trial period authorized by Section 12.219 should be a short enough period of enforcement to make the temporary adoption of the ordinance acceptable to a large majority of people. Preservationists should be able to convince many citizens who are skeptical of assurances that the amended ordinance will not hurt business interests in the city, cause a drop in property values, or allow excessive and costly regulation of private property that a four year period is not only an adequate amount of time to determine if such undesirable things will actually result from the enforcement of the ordinance, but is also a short enough time to allow for the reversal of such negative results without significant harm to those temporarily affected.

Unfortunately, the temporary nature of the amended historic preservation ordinance will not allow Fredericksburg to receive CLG designation and the technical and financial benefits that accompany CLG status. Only after the City Council officially adopts the amended ordinance as the permanent law governing historic preservation in the city can CLG status be conferred upon Fredericksburg by the Texas Historical Commission. However, the four year trial period established in Section 12.209 should be enough time to allow the many other positive results of historic preservation regulation generated by the amended ordinance - benefits such as increases in the property values of designated properties or within historic districts, noticeable and directly linked increases in heritage tourism, and an increase in civic pride to name but a few -

\[275\] W. Dwayne Jones, Preservation Planner, Texas Historical Commission, telephone conversation with author, 05 February 1996.

to become readily apparent to both friend and foe of preservation alike, thereby greatly increasing
the amended ordinance’s chances of being adopted on a permanent basis. The trial period will
also place added pressure upon the Board and the City Historic Preservation Officer to both make
the exercise and enforcement of the ordinance as benign as possible within the legal limits of the
ordinance and to educate as many of the citizens as possible on the value of protecting and
preserving the history of the community and the cultural and architectural legacies of the city’s
collective past. This is as it should be, though, since from an purely ethical standpoint, those
who wish to use government regulation to impose supposed socially beneficial requirements upon
a skeptical public should have to successfully convince a majority of those to be regulated that
the desired restrictions will result in much more good then harm to individuals and to the
community as a whole.

The provision found in subsection 12.219(a) requiring that a public hearing be
"specifically held to evaluate the performance of and community satisfaction with the ordinance"
is also intended to be a major selling point of the ordinance to all citizens of Fredericksburg. The
subsection assures both the friends and foes of historic preservation in Fredericksburg that they
will be able to organize support for their respective views on whether or not the historic
preservation should be permanently adopted and then present their views on the subject to the
City Council at a meeting intentionally designed to allow the Council to receive a sense of the
prevalent opinion of the community before it make its final decision by vote on the matter. Thus,
both sides will be given equal opportunity to apply the political pressure of making their voices
be heard and their numbers of supporters be seen in order to remind the members of the City
Council that they will be held accountable for their respective votes on this issue when they are
up for reelection. This opportunity, in turn, will help assure all the people of Fredericksburg that
the opinion held by the dominant number of citizens concerning the permanent adoption of the
amended ordinance will almost certainly determine the outcome of the vote taken by the Council regarding this matter, thereby allowing the decision to reflect the simple majority rule of the community. Since neither the proponents or opponents of the temporary, amended ordinance could ask for a more fair and open method of deciding the ultimate fate of the amended ordinance than that offered by Section 12.219, almost everyone should hopefully be persuaded to support the adoption of the temporary, amended ordinance by the City Council and allow the people of Fredericksburg to make up their own minds by the end of its four years of enforcement.

One final note. It may be argued that the possibility of the expiration of the amended ordinance will influence the Historic Review Board and the CHPO to not be active in designating new landmarks and historic districts and to be overly lenient in dealing with applications for certificates of appropriateness and violations of the provisions of the temporary, amended ordinance, all in the hopes of placating the desires of enough citizens to insure the permanent passage of the ordinance. However, it is doubtful that such would be the case. Both the majority of the City Council members and all of the members of the current Historic Review Board interviewed for this thesis agree that stronger regulations are needed in the ordinance in order to adequately protect Fredericksburg's significant historic, architectural, and cultural resources from the threat of destruction posed by the city's continual growth in tourist visitation and population. The temporarily amended ordinance provides the level of protection needed and desired by these concerned citizens of Fredericksburg. Furthermore the CHPO and every member of the Historic Review Board should each have demonstrated a commitment to and/or a level of expertise in the cause of historic preservation in order to be appointed to their respective positions under the requirements of the temporarily amended ordinance. Thus, both the members of the Board and the CHPO will be compelled by a love of their community and its heritage and/or by

277 See subsection 12.203(b) and § 12.204 in Appendix B.
professional historic preservation ethics to actively apply all possible provisions of the enhanced ordinance against the real or potential destruction of both designated resources and all resources eligible for designation.

Even if it appears that a majority of the public will not support the permanent adoption of the amended ordinance, the CHPO and Board will still not be daunted in their task to designate the historic resources of Fredericksburg. This is because subsection 12.219(d) allows the designations made under the temporary, amended ordinance to remain in effect under the jurisdiction of the original Article 12.200. If the amended ordinance is not permanently adopted, subsection 12.219(d) assures the members of the Board and the CHPO that there will at least be an opportunity for public scrutiny of proposed changes to designated properties in the form of the public certificate of review hearing required under Section 12.205 of the original Article 12.200.278 This hearing will allow the friends of preservation in Fredericksburg, galvanized by the fight to initially adopt and then permanently enact the amended ordinance, to publicly protest any proposed detrimental changes to a property and apply community pressure to the applicants to make the intended alterations much more benign. Although such public protest might not have the desired affect in some cases, at least the amended ordinance’s emphasis on designating more resources279 and the provision in the amended ordinance allowing those properties designated under its jurisdiction to remain in effect under the original Article 12.200 will have resulted in making more owners of the city’s heritage resources publicly accountable for their actions and open to persuasion against harming the segment of Fredericksburg’s heritage they own. Thus, the critical situation of the heritage resources in Fredericksburg simply does not allow the CHPO or any conscientious member of the Historic Review Board to give anything

278 See Appendix A.

279 See subsection 12.203(h) in Appendix B.
less than their best efforts in attempting to utilize, administer, and enforce the temporary, amended ordinance, and subsection 12.219(d) will help encourage the Board and CHPO to actively designate Fredericksburg's significant properties by making them realize that such designations will not be made in vain.
XI. Conclusion

The proposed, amended ordinance presented in this chapter is relatively lengthy for an historic preservation ordinance governing a city the size of Fredericksburg. However, the many sections that go above and beyond the basic requirements for CLG status established by the THC and that make the ordinance so long are absolutely necessary. This is because these sections either satisfy the specific regulatory needs of the current situation in the city or allay the fears of the citizens, thereby making the adoption of the amended ordinance more politically acceptable to the City Council. Unfortunately, Fredericksburg’s relatively small population and tax base and the resulting lack of expert staff the city may hire to help administer and enforce municipal historic preservation regulations prevent the inclusion of other, more complicated and time-consuming (from an administrative standpoint) provisions found in San Antonio and Fort Worth’s respective ordinances that would further increase the protection of the city’s many heritage resources and offer greater means to prevent the excessive regulation of private property under the amended ordinance. These additional provisions include the establishment of different categories (or levels) of regulation on designated properties based on the relative significance of properties, as well as an expanded version of the qualifications for economic hardship recognition as a means to receive approval for desired demolitions or removals of historically designated structures.

The amended ordinance proposed in this chapter is also written in much detail in order to firmly establish all the legal powers and authorities expressly granted to the Historic Review Board, the City Historic Preservation Officer, and other municipal officials involved in administrating and enforcing the ordinance. This has been done following the example of the lengthy, highly detailed ordinances of the certified local governments of Fort Worth and San
Antonio. The detailed language of these cities’ respective ordinances has served to help dissuade citizens from filing frivolous lawsuits against these cities concerning the preservation regulations enforced through these ordinances.280

It is hoped that a similar level of detail in the proposed, amended historic preservation ordinance for Fredericksburg will not only help members of the community think twice before challenging the regulations of the ordinance in court, but will also help the city defend itself in legal suits filed against the municipality’s enforcement of the ordinance. The high level of explicit detail has also been included in the proposed ordinance to satisfy the penchant for exactitude prevalent to this day among the descendants of the original German settlers of the Hill Country, thereby hopefully allowing no doubt among the supporters of the ordinance about the regulatory powers of the ordinance and, therefore, no disconcerting surprises concerning the administration and enforcement of the ordinance once it is temporarily enacted by the City Council.281 Thus, the amended ordinance, as explained by the accompanying commentary presented in this chapter, offers a viable means to satisfy the regulations needed to adequately protect the city’s heritage resources, meet THC requirements for CLG status, alleviate the fears of community members concerning excessive restrictions on private property, and help protect the city from needless, spiteful lawsuits by members of the community determined to forever

280 This statement is based upon the author’s experiences as a summer intern in the Historic Preservation Office of the City of San Antonio and upon the high praise given the language and content of the Fort Worth historic preservation ordinance by W. Dwayne Jones, Preservation Planner, Texas Historical Commission, conversation with author, Austin, Texas, 31 August 1995.

281 The statement concerning the mindset for detail among the German-Texans of the community may seem stereotypical in nature. However, it is made based upon the personal experience of this author, both as a German-Texan and as a frequent visitor to the City of Fredericksburg and other Hill Country communities.
oppose historic preservation regulation and embittered by the passage of the temporary, amended ordinance.
CHAPTER THREE: RECOMMENDATIONS FOR NECESSARY AMENDMENTS TO THE CITY'S TAX CODE, SIGNAGE ORDINANCE, ZONING ORDINANCE, BUILDING CODE, AND FIRE SAFETY CODE

In order for the stated purpose and intent of the amended historic preservation ordinance to be achieved once it is temporarily and then, hopefully, permanently adopted, it will be necessary to amend both the city tax code and signage ordinance, change certain zoning designations and restrictions on property within the city, and adopt a city building code and fire code that increase the feasibility of the rehabilitation and adaptive reuse of certain designated buildings and structures within the city. Provisions in the Texas Tax Code allow for the City of Fredericksburg Hotel Occupancy Tax to be amended in a way that allows much of the revenue generated from the tax to be allocated toward paying for some of the city’s expenditures for the administration and enforcement of the temporarily amended preservation ordinance. Subsection 12.209.1 of the amended historic preservation ordinance requires the Historic Review Board to use "Article 3.1000 Signs, [of the Fredericksburg Code of Ordinances] as amended," as a guide to follow in making decisions on applications for certificates of appropriateness concerning signage in historic districts or on property designated as an historic landmark. Consequently, a temporary amendment to Article 3.1000 (the signage ordinance) must be made to enable the regulations concerning signage on designated properties to coincide. Section 12.203, the section of the amended ordinance that reestablishes Fredericksburg’s Historic Review Board, gives the Board a mechanism to periodically review and recommend amendments to the City of Fredericksburg Zoning Ordinance and the Fredericksburg Code of Ordinances in subsection 12.203(h)(12). This mechanism should be utilized immediately once the amended

282 See Section 12.209 in Appendix B.
ordinance is adopted, so that several problem areas may be immediately addressed in the zoning ordinance, building code, and fire code, and a amiable relationship can be established between the Board and the Planning and Zoning Commission (hereafter referred to as the "Commission"). Each section of this chapter is devoted to analyzing the need for an amendment or change to a municipal code or ordinance, recommending the form the necessary change or amendment should take, and explaining how the recommended amendment or change will aid in the implementation of the amended preservation ordinance.

I. A Temporary Amendment to the Hotel Occupancy Tax

The exercise and enforcement of the requirements and regulations of Fredericksburg's current historic preservation ordinance require very little expenditure of city revenues. Board members receive no compensation, the Building Official, who acts as the staff for the Board, receives his pay almost exclusively for the services he renders as the "City Inspector," and the few functions the Board is expected to carry out under the ordinance that do require some sort of expenditure are mostly in the form of postage for mailings and costs associated with duplicating or printing reports and recommendations. However, the ordinance as amended will require some increase in expenditures of city funds in the form of a salary for the part time CHPO, payment for services rendered by various preservation planning consultants, funding for different educational programs, and various other expenses, all of which will need to be officially allocated for the support of historic preservation regulation in the annual city budget.

It will be obvious to the citizens of Fredericksburg that the temporary adoption of the amended ordinance will mean that the city will have to dedicate a portion of its revenues toward the exercise and enforcement of the provisions of the ordinance. It should be equally as obvious
that it will not be possible to provide the municipal funds needed to support the amended ordinances' requirements given the current level of revenue being received by the city. Consequently, a major stumbling block toward gaining enough public support for the ordinance to assure its passage by the City Council is going to be the significant tax increase the citizens of Fredericksburg will perceive will be necessary to fund the amended ordinance if it were to be adopted.

The provision in subsection 12.217(b) of the amended ordinance requiring that the money received from fines imposed on convicted violators of the ordinance be used to further the cause of historic preservation within the city of Fredericksburg is not expected to provide much revenue toward the costs of administering the amended ordinance. Furthermore, it is hoped that this source of funding will continue to decrease as time goes by and more owners become wary of risking violations of the amended ordinance. It should, therefore, be assumed that, in one form or another, municipal taxes will have to be raised in order to help pay for the implementation of all aspects of the amended ordinance.

Both the Texas Tax Code and the City of Fredericksburg Hotel Occupancy Tax do, however, provide a way to help directly and indirectly alleviate some of the tax burden that must be borne by the citizens of Fredericksburg in order to pay for the exercise and enforcement of the amended ordinance. Chapter 351, Section 351.101(b) of the Texas Tax Code states, "Revenues derived from occupancy tax are to be expended in a manner directly enhancing and promoting tourism and the convention and hotel industry," while Section 351.101(a) allows that the "revenue from the hotel occupancy tax may be used for... historic restoration and preservation

\footnote{Fredericksburg, Texas, \textit{Fredericksburg Code of Ordinances}, Chapter 1, Article 1.400, pp. 1-10 - 1-12 .}
projects at or near a convention center facility or that would be frequented by tourists." 284 Thus, the City of Fredericksburg Hotel Occupancy Tax also may be temporarily amended to specifically allocate a certain percentage of the annual revenue generated by the tax to support tourism-generating programs conducted by the Historic Review Board in accordance with the purpose of the temporarily amended preservation ordinance.

Although this author does not claim to have a great knowledge of tax law or the formulation of a municipal tax code, he believes that a temporary addition of a section by amendment in the spirit of the following proposal should be sufficient to accomplish the necessary allocation requirement (Note: Please see Appendix C for a reproduced copy of the current City of Fredericksburg Hotel Occupancy Tax):

§ 1.410 Allocation of Annual Revenue Collected from Tax*

Sixty-five (65) percent of the annual tax revenue collected from the tax shall be appropriated to the City of Fredericksburg Historic Review Board in the annual city budget for expenditure in a manner which directly enhances and promotes tourism in the City of Fredericksburg.

*State Law reference -- Expenditure of revenue collected, V.T.C.A., Tax Code, Section 351.101

By law, the monetary appropriations the Board will receive from the Hotel Occupancy Tax cannot be used to pay for many of the expenses necessary to implement the requirements of the amended ordinance, such as the costs of hiring preservation consultants to formulate a historic preservation plan for the city or to help the Board formulate design guidelines for new construction within historic districts. However, the hotel occupancy tax money could help pay for some of the public educational programs the Board is required to develop according to subsection 12.203(h)(16) of the amended ordinance if these programs are developed and promoted.

to attract tourists as well as city residents. Since subsection 1.402(b) of the Hotel Occupancy Tax excludes the imposition of the tax on permanent residents of Fredericksburg, the tax provisions as temporarily amended could be used help to directly reduce some of the tax burden that must be placed on citizens of Fredericksburg in order to support the full implementation of the temporarily amended historic preservation ordinance.\(^\text{285}\)

The revenue generated by the amendment to the Hotel Occupancy Tax could also be used by the Board to help indirectly reduce the burden of taxation to support the amended ordinance's implementation shouldered by the Fredericksburg taxpayer. Hopefully, the Board could follow the lead of cities like Austin or Fort Worth. Austin places some of its hotel occupancy tax revenue in a fund used to grant money to projects that rehabilitate historic buildings and structures for use as tourist-oriented sites and/or businesses, and it uses the rest to help promote the visitation of historic sites and structures through advertising and public education campaigns. Fort Worth utilizes some of its hotel occupancy tax money to fund a loan pool for tourism-generating projects involving aspects of historic preservation.\(^\text{286}\)

By creating similar grants and revolving loan programs and by promoting the visitation of historic sites, the Board could benefit the city and its citizens in two ways. First, it could help to generate more construction and construction-related job opportunities within the community by encouraging historic rehabilitations and higher levels of care and maintenance of historic resources. Second, it could help increase the level of tourism in the city, thereby creating more retail and supply jobs for citizens, further enriching business owners, and giving the city greater sales tax and parking meter revenues. The increase in city tax revenue that could be indirectly generated by the

\(^{285}\) See Appendix C.

\(^{286}\) W. Dwayne Jones, Preservation Planner, Texas Historical Commission, telephone conversation with author, 05 February 1996.
Board’s wise investment of the money it is annually allocated from the city Hotel Occupancy Tax would, in turn, allow for a reduction of the levels of other forms of taxation on the citizens of Fredericksburg that would otherwise be needed to support the implementation of the temporarily amended preservation ordinance. Furthermore, the creation of or increase in citizen incomes which the Board’s actions could indirectly produce would help ease the financial strain on overall household incomes that would be caused by taxation to support the exercise and enforcement of the amended ordinance.

Thus, by temporarily amending the Hotel Occupancy Tax in such a way, the city would enable the tourists who enjoy the richness of Fredericksburg’s heritage to directly and indirectly help the citizens of Fredericksburg pay for the enforcement of the regulations in the amended preservation ordinance that are designed both to preserve and protect these resources and to insure that tourists continue to spend their money in the city for the privilege of enjoying them.

The temporary amendment to the Hotel Occupancy Tax should be presented for adoption simultaneously with the presentation of the temporary, amended preservation ordinance, so that the advantages of the amended tax code can be used to help gain support for the temporary enactment of the amended preservation ordinance. A public education campaign on how the amended tax code could directly and indirectly reduce the need for an increase in city taxes to help finance the implementation of the amended preservation ordinance, carried out by the proponents of the amended ordinance, should be able to reduce opposition to the amended preservation ordinance citizens based on the fear of significantly increased taxation that will result from the ordinance’s adoption. The successful generation of revenue from the temporarily amended Hotel Occupancy Tax also should help generate public support for the permanent enactment of both the amended preservation ordinance and the amended tax code.
II. A Temporary Amendment to the Signage Ordinance

Currently, subsection 3.10007(f) of Article 3.1000, Chapter 3 of the Fredericksburg Code of Ordinances regulates signage in the city’s only municipal historic district as follows:

(1) Signs other than exempt signs under Section 3.1005 to be placed in the historic district shall also be subject to the review requirements of the historic preservation ordinance.

(2) Businesses located in the historic district shall have the option to erect a medallion or shield sign in lieu of the ground sign requirements of Section 3.1007(b)(3) or (c)(5). Any such sign shall not exceed sixteen feet of sign area, shall be mounted no more than nine (9) feet above the adjacent ground, and shall be erected wholly on private property.287

A similarly worded provision controlling signage regulation in the historic district is written as Section 12.208 of Fredericksburg’s present historic preservation ordinance.288 However, the temporarily amended historic preservation ordinance proposed in this thesis strongly encourages the Historic Review Board to designate all eligible properties outside of the city’s current, lone historic district referred to in the signage ordinance. Since Section 12.209 of the amended preservation ordinance requires that signage on all designated properties be regulated through the requirements of the certificate of appropriateness procedures, and since subsection 12.209.1 of the same ordinance states that the Board use the regulations found in Article 3.1000 to guide its decisions concerning the appropriateness of signage work requested for approval, it is necessary to temporarily repeal subsection 3.1007(f) of Article 3.1000 cited above and add a new, temporary section to the article regulating signage on all historically designated properties in the city. The new, temporary section should read as follows:

287 p. 3-64.

288 See Appendix A.
§ 3.1008 Signage on Properties Designated as Historic Landmarks or in Designated Historic Districts

(a) Signs other than those exempted under Section 3.1005 to be placed in designated historic districts or on properties designated as historic landmarks shall also be subject to the certificate of application requirements under Section 12.209 of Article 12.200, as temporarily amended.

(b) Businesses located in designated historic districts or on properties designated as historic landmarks under Article 12.200, as temporarily amended, shall have the option to erect a medallion or shield sign in lieu of the ground sign requirements of Section 3.1007(b)(3) or (c)(5). Any such sign shall not exceed sixteen (16) square feet of sign area, shall be mounted no more than nine (9) feet above the adjacent ground, and shall be erected wholly on private property.

The extension of the Historic Review Board’s jurisdiction over the placement of signs on all designated properties through this temporary amendment gives the Board the same authority granted it in Section 12.209 of the temporarily amended historic preservation ordinance, thereby allowing both ordinances to coincide. The concurrence of signage regulation in both ordinances in turn eliminates the possibility of an anti-preservation minded owner of a designated property being able to use the conflicting signage regulations of the two ordinances to escape having to conform with the additional, more stringent signage regulations offered under subsection 12.209.1 of the amended preservation ordinance. Thus, the temporary amendment of Fredericksburg’s signage ordinance in this manner is needed to strengthen the enforceability of the certificate of appropriateness regulations written into the temporarily amended historic preservation ordinance.

It should be noted that, although both subsection 3.1008(a) of the proposed, amended signage ordinance and subsection 12.209.1 of the proposed, temporarily amended historic preservation ordinance allow the Board to apply additional, historic preservation-oriented criteria to the regulations written in Article 3.1000 before deciding on an application for a certificate of appropriateness concerning signage, subsection 12.209.1 also requires the Board to be guided by the signage requirements specifically outlined in all relevant sections of Article 3.1000.289

289 See Section 12.209 in Appendix B.
This is so, because it is felt that the regulations in Article 3.1000 (an article too lengthy to be reproduced in its entirety in this thesis) are extremely well done and provide an excellent foundation of aesthetic regulation upon which to base any additional design requirements for signage formulated by the Board under subsections 12.203(h)(8) and (h)(9) and applied under subsection 12.209.1 of the amended historic preservation ordinance. It should also be noted that the temporary repeal of subsection 3.1007(h) and the temporary amendment of Section 3.1008 to Article 3.1000 recommended in the previous paragraph should be publicly introduced for temporary adoption by the City Council along with the introduction of the temporary, amended historic preservation ordinance for adoption. This will allow the proponents of the amended preservation ordinance to campaign for the adoption of the amended signage ordinance along with the adoption of the temporary preservation ordinance as a requirement for the successful enforcement of the amended preservation ordinance. Thus, it is hoped that the temporarily amended signage ordinance will be adopted by the City Council immediately after the Council temporarily enacts the amended historic preservation ordinance. Hopefully, in turn, the permanent adoption of the amended historic preservation ordinance (if indeed it is permanently adopted) will also result in the permanent enaction of the temporary amendments to the signage ordinance proposed above.

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290 See Section 12.203 and Section 12.209, respectively, in Appendix B.
III. Necessary Changes to the City of Fredericksburg Zoning Ordinance

One of the most immediate needs for changes in the city zoning ordinance is to change the height, massing, density, setback, and off-street parking regulations for each usage classification within Fredericksburg’s only current historic district so that these regulations will coincide and not contradict the design guidelines for new construction, additions, alterations, relocations, etc., that the Board is required to develop for this and other historic districts in subsection 12.203(h)(7) of the amended ordinance. These guidelines are designed to ensure that all changes within a district are compatible with the general massing, density, setbacks, and heights of the historic buildings that dominate the historic district in order to maintain the overall historic character of the district. Allowing the existence of two different and therefore contradictory sets of spatial regulations within an historic district undermines both the authority of the Board and the enforceability of the amended historic preservation ordinance in general. The existence of less restrictive spatial regulations help encourage owners to seek to demolish their historic buildings and structures, especially historic commercial structures that were not constructed incorporating Germanic architectural elements, in order that they might maximize their allowable commercial/retail space with the construction of new buildings.

The "downzoning" that the Planning and Zoning Commission would need to do in order to have their spatial regulations conform to the design guidelines of the Historic Review Board might be challenged as a regulatory taking of private property by some of the more property-rights oriented property owners within the area being downzoned. However, the city should be able to defend itself against any takings challenge resulting from downzoning, since the downzoning should not deprive the property owner all economically viable use of his/her land

291 See Appendix B.
and does in fact advance a legitimate state interest (the two primary tests used in proving or disproving a regulatory taking). The downzoning would be based upon and modeled to more closely conform to the guidelines written by the Historic Review Board under the authority of the amended and adopted historic preservation ordinance. The authority to write such construction, alteration, etc. guidelines for historic landmarks and historic districts granted in the ordinance in turn comes from the THC’s model historic preservation ordinance, which is written in strict accordance with all relevant state laws. Thus, unless the guidelines are written by the Board in such a way as to eliminate all economically viable use of a property (highly unlikely, since the guidelines are written to conform to the heights, setbacks, etc. of existing historic buildings), the downzoning that is used to conform to the guidelines should be perfectly legal and therefore satisfy the first of the two tests to determine a regulatory taking. The fact that zoning and historic preservation regulation as an overlay of zoning have traditionally been held by courts to advance legitimate state interest, substantiated by the fact that Chapter 211 of the Texas Local Government Code specifically authorizes the utilization of historic preservation regulation as a function of zoning, should satisfy the second judicial test to determine a regulatory taking described previously.

Special off-street parking requirements already exist for designated portions of the commercial areas of the historic district in subsection 6.825 of the City of Fredericksburg Zoning

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293 Ibid.

294 THC., p. 3.
These requirements are designed to protect some of the historic buildings and structures from demolition or partial demolition by owners who would, under normal zoning classification regulations, have to be destructive of their or other properties in order to comply with the full off-street parking requirements of the zoning ordinance. However, the Board and the Commission should also sit down and update these requirements, so that the designated portions of the district can be expanded to meet current needs and conditions. If this is not carried out, owners of businesses not covered by these special conditions might be tempted to try and acquire and demolish their neighboring historic buildings, since these demolitions would allow such owners to provide the parking required by ordinance for their expanded floor space. The lack of special off-site parking requirement designations of these owners’ properties within the zoning ordinance and the need to comply with the zoning ordinance’s regular off-street parking regulations could be used by these owners as a way to force the Board to grant them a certificate of appropriateness for demolition.

In order to keep property owners from playing one set of regulations off against another in front of both the Board and the Commission or in a court of law for the purpose of circumventing the regulations and intent of the amended historic preservation ordinance, conformity should be created in the coordination of spatial and off-street parking regulations between the Board’s guidelines for this and other future historic districts and landmarks and the various zoning regulations in place on the properties in this and other future historic districts. Of course, the amended ordinance could have been written with a section like the one contained in the certified local government of Fort Worth’s preservation ordinance, which allows the "more


296 Ibid.
restrictive height and area regulations" of the preservation ordinance to control when its regulations and those of the city zoning district classification restrictions contradict one another. It is felt, however, that such a section in the amended ordinance could cause ill will between the Board and the Commission and thereby alienate the Commission from the cause of historic preservation. Since the members of the Board and the City Historic Preservation Officer will need the Commission to be sympathetic to their desires in their quests to fulfill the requirements and/or intent of the amended ordinance on various occasions, both the maintenance of amiable relations with the Planning and Zoning Commission and the education of the members of the Commission on the social and economic reasons for historic preservation regulations should be one of the Board and CHPO's high priorities.

The various occasions when the Board and CHPO will need the cooperation of the Commission are not limited to the times when the Board must formulate design guidelines for newly designated landmarks and historic districts, must review and recommend changes to the City of Fredericksburg Zoning Ordinance and the Fredericksburg Code of Ordinances, or must present historic preservation plans for consideration and adoption as part of the comprehensive plan for the city. The Board and CHPO also will need to go before the Commission from time to time in completing the economic hardship and emergency demolition procedures required in the amended preservation ordinance. Under these procedures, a land use variance for a certain property or a certain area within a zoning district may have to be secured from the Commission as the only way to achieve the rehabilitation and adaptive reuse necessary to prevent the building from being demolished. The Board and the CHPO may sometimes even have to go before the


298 See subsection 12.203(h)(13) of the amended ordinance in Appendix B.
Commission to help an owner receive a variance from the very height, density, or other spatial regulations that the Board and the Commission formulated earlier as the only way the owner can make the property he/she wishes to demolish generate a reasonable economic return. It is therefore absolutely critical that the Board and CHPO continually educate the members of the Commission on the importance of historic preservation regulation and the crucial need for flexibility in the zoning ordinance to provide the means necessary for the continual preservation of all designated landmarks and designated properties within historic districts as possible.

Another reason for maintaining amiable relations between the Board and the Commission and educating every Commission member on the importance of and need for historic preservation is the fact that the Commission makes zoning and planning decisions that also affect both properties eligible for designation, but as-of-yet undesignated, and properties soon to be eligible for historic designation. The Board and CHPO must strive to see that the Commission takes historic preservation considerations into account when making all its decisions, so that these different decisions will be as benign as possible to the character of the as-of-yet designated properties. Thus, along with having Board members or at least members of local preservation-related organizations monitor Commission meetings and holding education sessions on historic preservation for newly elected members of the Commission, members of the preservation community should work to have Section 12.101, of Chapter 12, Article 12.100 of the Fredericksburg Code of Ordinances amended to better benefit the cause of historic preservation in the city. This amendment should require that the City Historic Preservation Officer be an ex officio member of the Commission and that at least one mayor-appointed member of the Commission is a member of the Board, the Gillespie County Historical Society, or the Fredericksburg Heritage Federation. All of these actions and amendments, if implemented, will
insure that the Commission will continually receive education in and guidance on matters concerning historic preservation both from outside sources and from within its own ranks.
IV. Necessary Changes to the City Building Code and Fire Safety Code

Even though an owner with the help of the Board and CHPO might receive a land use variance on his/her property that will enable him/her to rehabilitate the property for an adaptive reuse and allow a reasonable amount of financial return on the designated property, the present city building and fire safety codes would probably make the required rehabilitation economically prohibitive and make the following of *The Secretary of the Interior's Standards for Rehabilitation* impossible. The *Standard Building Code* of the Southern Building Code Congress International, Inc., currently used as the building code by the City of Fredericksburg for all structures save one and two family dwellings requires that buildings be brought into full compliance with current code standards if the cost of the proposed renovation (or rehabilitation) exceeds fifty percent of the building’s assessed value. *The Standard Building Code* also requires partial compliance if the renovation/rehabilitation cost ranges between twenty-five and fifty percent of the building’s fair market value.299

Full or partial compliance with the current building code could require that an additional means of egress be added to the exterior of highly prominent and pristine example of a particular type of architecture in the city. Or compliance might mean that wooden floorboards must be replaced or covered with fire-retardant materials, the use of period window frames and wooden paneling is prohibited, or that original walls and ceilings must be ripped open in order to provide plumbing for necessary sprinkler systems. The escalation of cost to rehabilitations that could be caused by these draconian building code and fire prevention requirements, the loss of historic interior fabric and character that could result, and the potential inability to follow *The Secretary*

of the Interior’s Standards for Rehabilitation and thereby not qualify for Historic Rehabilitation Tax Credit because of the building code requirements all greatly limit the necessary or desired ability to preserve designated structures through historic rehabilitation and adaptive re-use.300

While the amended historic preservation ordinance certainly does not regulate interior changes to designated buildings, some of the requirements needed to bring buildings that are to be rehabilitated up to "code" may affect the exterior appearance and character of designated properties. Furthermore, the Board needs historic rehabilitation to be as financially inexpensive and as legally uninhibited as possible, so that owners can afford the rehabilitations needed to adaptively re-use and, thereby, save designated properties from demolition or relocation. The relaxation of building code restrictions is also quite necessary, so that other municipally designated and undesignated but qualifying historic buildings and structures can be protected and preserved through the use of the Historic Rehabilitation Tax Credit for certified commercial historic rehabilitations that have followed The Secretary of the Interior’s Standards. For these reasons, the Board, CHPO, and allies of historic preservation in Fredericksburg should work tirelessly for the city’s immediate adoption of the Building Officials and Code Administrator’s National Existing Structures Code as the code within the existing city building code that should be used when code compliance is to be determined for work on older or designated historic buildings and structures.

The National Existing Structure Code’s point system for the safety evaluation of proposed work allows some fire safety and spatial conditions to exist in older structures in violation of current code standards, as long as the negative number of points these conditions receive in the code compliance evaluation are balanced out or are exceeded by the positive numbers generated

by conditions that meet or exceed fire safety, spatial allowance, and other requirements of the current building code. Thus, the National Existing Structure Code provides flexibility in a way that satisfies the spirit of the building code and its many fire safety and prevention provisions, while it still meets many of the material and financial needs of historic rehabilitation and rehabilitation’s goal of adaptive re-use.

In addition to having the National Existing Structures Code adopted as part of the city’s building code, the Board, the CHPO, and its allies should work hard to educate every city fire marshal on the need for historic preservation regulation in Fredericksburg and its social and economic importance of preservation to the city. Having a pro-preservationist fire marshall is extremely important to the cause of increasing the economic and material feasibility of carrying out rehabilitations in accordance with The Secretary of the Interior’s Standards, since the fire marshal is given the power to modify any of the provisions of the Standard Fire Prevention Code of the Association of International Fire Chiefs that the City of Fredericksburg currently enforces.301 However, the Board, CHPO, and other preservationists should only expect, and the fire marshal can only grant, modifications that "provide that the spirit of [the] code be observed, public safety be secured, and substantial justice be done.»302

301 Fredericksburg, Texas, Fredericksburg Code of Ordinances, Chapter 5, Article 5.100, § 5.103, p. 5-3.

302 Ibid.
CHAPTER FOUR: THE PROBLEM WITH SPRAWL AND RECOMMENDATIONS FOR HELPING CURB SPRAWL’S EFFECTS AND PRESERVE THE HISTORIC LANDSCAPE

I. Background Information

Fredericksburg, as a Texas Hill Country community, has been, is, and always will be defined by the hills that surround it in the creek valley. The hills have historically isolated and insulated the community from the outside world, making travel into and out of the city somewhat difficult before the arrival of paved roads. Furthermore, the bedrock that exists just below the soil line has traditionally made agricultural production difficult, thereby keeping the community in relative poverty through dependence on ranching and orchards of hardy peaches as the only means of production from the land. The Hill Country has also not been blessed with oil deposits, which are found in abundance in most other parts of Texas. However, the hills did provide the limestone needed to build the community’s houses in the absence of an abundance of straight lumber from area trees.

Thus, the substance of the hills to a large extent determined the form and texture of Fredericksburg’s early built environment, and the isolation and poverty created by the hills helped Fredericksburg preserve many of its original and early buildings and structures from demolition or great adaptation in the face of rapid growth and development. The small, oak and juniper-covered hills are part of the context of Fredericksburg’s built environment and part of the overall historic landscape of the city, because they have and always will serve as the backdrop and setting of the community. Because of the huge influence the hills have had on the development of Fredericksburg, they are also part of the collective culture of the community, since so much of the culture revolves around ways of life determined by the existence of the hills. The hills are
also part of the history and legend of the town, and their role in the securing of peace with the Comanche Nation, recounted in Chapter One, is commemorated each year with the Easter Fire Celebration, which traditionally has taken place in the hills immediately surrounding the city. Now, however, the sparsely vegetated hills that once shielded Fredericksburg from development and growth pressures are being threatened with development themselves, development that will forever change the historic landscape of the community and mar the scenic beauty for which Fredericksburg is known.

The orchards and ranches that surround the city and that have existed as a means of support for area residents almost from the beginning of the community are also part of the historic landscape and traditional culture and character of Fredericksburg. Furthermore, peach production still serves as a major component of Fredericksburg economy. Peaches are a relatively valuable agricultural product within the Texas commercial produce market, and the reputation of the peaches from the surrounding area makes peach harvesting season a major annual tourist attraction for the city and its tourist-oriented businesses.303

II. The Proliferation of Sprawl and the Problems It Causes

Unfortunately, the surrounding peach orchards and ranch lands are also becoming victim to the attraction of the rural atmosphere they help give to Fredericksburg. More and more people are moving into Fredericksburg because of the desirability of its quaint architecture and culture, its beautiful setting, its rural appeal, the advantages of small town life, and its location within commuting distance of the large metropolitan areas of Austin and San Antonio. As a result, the real estate market is booming, and new residential subdivisions have been and continue to be laid out all around the edges of the city.\textsuperscript{304} In fact, as of the end of August, 1995, there were eight residential subdivisions being created to the north and the south of town.\textsuperscript{305}

Six of these subdivisions are being built on and around the section of hills to the north of town, because lots that offer views of the "burg" are in great demand and command the highest asking prices.\textsuperscript{306} Although these housing developments are allowing traditionally land-rich and cash-poor families to finally earn a substantial amount of money from their land, they are also denuding the hills, thereby destroying the historic landscape of the community and greatly detracting from the beauty of the scenic vistas that attract tourists and settlers alike to Fredericksburg. The other two subdivisions are being created on the south side of the city, in an area that is prime orchard land.

The orchard and ranch lands that abut the major highways leading into Fredericksburg are also being bought up by real estate developers. Fredericksburg’s booming population and

\textsuperscript{304} Karen Sue Oestreich, former member, Fredericksburg Historic Review Board; Office Manager, Sunset Realtors, Fredericksburg, Texas, conversation with author, Fredericksburg, Texas, 29 August 1995.

\textsuperscript{305} Ibid.

\textsuperscript{306} Ibid.
increasing tourism are leading to the creation of new commercial strip centers, megastores (a Walmart superstore is located on prime orchard land south of the city), hotels and motels, and fast food restaurants, all catering to the city’s growing consumer market. Unfortunately, this commercial sprawl is not being concentrated just along the highways leading to San Antonio and Austin, but is taking away traditional orchard lands along all of Fredericksburg’s arteries to surrounding communities. Thus, every year, fewer and fewer peaches are grown to satisfy the lucrative tourist trade, and more and more of the traditional historic landscape and a traditional way of life and economic support are disappearing.  

The question is, how can Fredericksburg stop the sprawling destruction of the historic and scenic landscape? One certainly cannot prohibit all growth and freeze Fredericksburg in time in order to protect both its historic built and natural environment. To attempt to do so would not only be antithetical to all for which modern historic preservation stands, it would also be an act of political suicide for any public official or local organization.

Local people support the building of new strip centers, megastores, and restaurants, because these businesses offer them more choices than what has been previously available or services and products that were not previously available in the city or other nearby communities. The construction of houses and commercial buildings and the new businesses that open up in the commercial buildings are viewed as a source of jobs for people in the community as well. Furthermore, many citizens of Fredericksburg and the immediately surrounding area also welcome the real estate boom, because it allows them to make more money from the land than they could were it in continual use as orchards or ranch land for many years to come. These facts, plus the fact that citizens are wary of government land regulation, mean

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307 Ibid.
308 Ibid.
that attempts at growth management by the City of Fredericksburg would meet with stiff opposition and charges of excessive government regulation of private property. These same political considerations no doubt motivated the City Council to adopt the "Planned Growth Area" recommended by Bovay Engineers, Inc., for channeling Fredericksburg’s growth within the next twenty years as a proposed boundary line that encompasses even more land area than that contained by the entire area of the city’s current extraterritorial jurisdiction.  

Although the citizens of Fredericksburg perceive many benefits from allowing new residential subdivisions and new commercial centers to sprawl from the edges of the city in all directions, they should also be made aware of some of the negative aspects that can and may result from such unrestricted sprawl, besides the considerable threat to the tourist industry caused by the continued loss of the historic landscape and scenic vistas previously mentioned. One danger of the proliferation of buildings in all directions, feeding a booming market, is that commercial space could be over built in the city. This could result in businesses moving from the historic downtown commercial district into these newer buildings, because they offer more modern conveniences than could some of the older buildings and are cheaper to lease because of the owners’ desperation to attract tenants to his/her newly constructed building in the glutted commercial leasing space market.  

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310 It is not the purpose of this paper to highlight all of the many social and economic problems associated with sprawl in a community. Only those problems which affect the historic built and natural environments of Fredericksburg are addressed in this chapter.  

built that will take the focus of tourism away from Fredericksburg's quaint, historic central business district with its surrounding historic residential neighborhood. Outlet malls in the neighboring Adelsverein community of New Braunfels helped turn this city's historic downtown into a ghost town, thereby driving locally owned and operated commercial enterprises out of business and greatly reducing New Braunfels' potential income from heritage tourism.

Still another danger of allowing unregulated sprawl to proliferate along the edges of the city is the economic cost to the City of Fredericksburg and its citizens of providing services and infrastructure to these new commercial and residential subdivisions. Fredericksburg's subdivision ordinance requires that the owners of subdivisions pay one half of the cost of improving perimeter streets around the new subdivision and for the construction of all water, sewer, and drainage systems outside of the boundaries of the subdivision that will be required to provide the subdivision city water and sewer services. However, there are other costs resulting from integrating new subdivisions into the city's many services and the city's infrastructure that developers of these subdivisions are not required to pay for and that the city will take a loss on in providing these services initially before taxes on these new properties become available to cover only the current costs of maintaining these services. These initial service and infrastructural expansion costs include extending police and fire protection to the new subdivision, increasing electrical generating and sewage treatment capacity, expanding existing roads to meet the needs of increased traffic demands, and increasing city staff or staff hours to properly administer these new areas that are to be annexed into the city.


Unfortunately, Texas has not passed enabling legislation that would allow municipalities to charge impact fees to owners of newly developed subdivisions in order to help mitigate the initial costs of providing such services. Furthermore, the city’s lack of realistic "planned growth areas" designed to channel growth into one or two desired areas, the requirements that subdivisions help the municipality pay for only some of the costs of providing services, and the city and its citizens desire for growth as an economic boost to jobs and taxes in the city all work together to help encourage Fredericksburg Planning and Zoning Commission to approve subdivisions to be simultaneously developed all around the edges of the city. As a result, the city’s services and new infrastructural systems must be inefficiently spread to all areas of the city to meet the demands of these new subdivisions at a huge initial expense rather than concentrated economically and efficiently in one or two new areas of growth.

A concerted effort must be made to educate Fredericksburg’s citizens about the threats commercial sprawl poses to the city’s thriving historic, tourist-oriented, central business district (CBD) and to the stability of the city government’s financial resources. Proponents of historic preservation must point out to them what Fredericksburg would be like if many of its businesses currently located in the CBD give up the appeal of an historic building to lure in tourist customers in order to take advantage of cheaper rent in a strip center across from an outlet mall which is increasingly attracting more tourists than Fredericksburg’s historic resources. The very nature of Fredericksburg, historically, economically, and culturally, would be altered to the detriment of Fredericksburg’s historic resources and the charm of its small town "quality of life," both of which its citizens, new and old, currently cherish so much. Furthermore, citizens

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314 Citizens cited the "history" of Fredericksburg and its "quality of life" as the fourth and fifth "Best Things," respectively, which they liked about Fredericksburg in a visioning workshop held to get ideas from the citizens for the formulation of the city’s next comprehensive plan. Hankamer Consulting, Inc., "Results of Visioning Workshop, October 17, 1995," (Hankamer Consulting, Austin, Texas, 1995, photocopy), p.2.
must be made aware of the possibility that their taxes will have to be significantly increased in order to help the city pay for initial city services and utilities to new subdivisions, all because of an inefficient allocation of the city’s limited resources resulting from a lack of growth management planning. Only through education can the mythical idea that growth is always beneficial be dispelled in the minds of the people of the city.

Admittedly, it is very difficult for Fredericksburg’s city government itself to attempt to prohibit uses of land that might be detrimental to the traditional, CBD-based commercial economy because of Texas local government subdivision regulations. However, if the friends of historic preservation and land conservation are able to successfully educate and then mobilize many of the citizens of Fredericksburg to fight against the proliferation of sprawl around the city and the building of outlet malls and megastores, then it may be possible to inhibit uncontrolled sprawl in the area. The amendments to the city’s comprehensive plan, zoning ordinance, and subdivision ordinance recommended in this chapter are designed to give the city government regulatory tools it can use to help protect Fredericksburg from some of the harmful effects unregulated sprawl could have on the city’s heritage and economy.

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III. A Recommended Long Term Solution to the Problem of Sprawl and the Loss of the Historic Scenic and Agricultural Landscape

One long term solution to the costs of uninhibited sprawl to the city’s revenues and historic natural resources is the development of a municipal growth phasing program. Such a program would require, or at least strongly encourage, subdivision creation to take place in one or two designated areas along the edges of the city where the city services and infrastructural improvements necessary for new developments, such as a new volunteer fire department substation, newly expanded roads, and increased electrical service, could be most economically and efficiently concentrated. These designated areas would also be determined by the locations where subdivision development would do the least amount of damage to the scenic hills surrounding the city, thereby helping to protect Fredericksburg’s historic landscape. The growth area determined by the growth phasing program would also have the advantage of limiting development on orchard and ranch land in only one or two areas of the city, rather than sanctioning the current market practice of development on orchard and ranch lands piecemeal around the city.

The growth phasing program has a good chance at limiting the proliferation of sprawl within the city’s extraterritorial jurisdiction (ETJ) and channeling development into the one or two desired growth areas because of the advantage to developers of connecting to the city’s services and infrastructure, and particularly of connecting to city water and sewer services. The cost of drilling through bedrock in order to find a water well for drinking and other uses and to establish a septic system, combined with the added difficulty of finding water reserves because of the lowering water table of the creek valley in which Fredericksburg is situated, makes drilling for water, establishing septic systems, and laying water, sewer, and storm drain pipes prohibitive to developers. It would be much easier for them to be able to connect to Fredericksburg’s water
and sewer systems and then only have to pay the cost of installing the water, sewer, and storm drain pipes throughout their development or subdivision. Consequently, most developers will be inclined to buy land within the designated growth phasing areas of the city’s ETJ in order to be able to easily acquire city services and thereby keep the costs of their desired development or subdivision to a minimum.

The development of such a growth phasing program could be started right away as a part of Hankamer Consulting, Incorporated’s, development of Fredericksburg’s new comprehensive plan. Various historic preservation and landscape consultants could be hired to map scenic areas around the city, and city planning experts could be consulted to determine the best areas to channel new city growth from a municipal services and infrastructural perspective. The boundaries of the growth phasing program could then be drawn and included within the comprehensive plan as part of Fredericksburg’s official policy toward city growth and the development of subdivisions desiring to eventually become incorporated into the city limits and/or receive city services. Furthermore, the Purpose and Intent clause of the city’s subdivision ordinance could be amended to state that the Planning and Zoning Commission’s decisions on approval of subdivision creation shall be guided by the growth phasing program boundaries established in the comprehensive plan.316

Build-out maps showing the potential maximum development of Fredericksburg’s extraterritorial jurisdiction under current subdivision authorization practices could be created and facts, figures, and examples of how uninhibited sprawl can drain city coffers, hurt the tourist industry, and lead to the decline of the downtown commercial area can be formulated by a consulting firm to help make the citizens aware of the critical need to adopt some sort of growth phasing program for the city. However, given the current beliefs of the citizens of

316 Ibid., Article 9.100, p. 9-3.
Fredericksburg, the economic benefits to landowners allowed to sell their lands to developers at great profit, and the political climate against private property regulation mentioned in the previous paragraphs, it is highly unlikely that such a necessary growth phasing program could be adopted relatively soon as part of the city’s new comprehensive plan.

Such a program will probably receive public favor only after the real estate boom has died down, the memory of the recent fights with national and state government agencies over property rights has somewhat faded in people’s minds, and the citizens of Fredericksburg start to feel the increased burden of taxation necessary to pay for the initial provision of city services and infrastructure to newly developed subdivision. Members of the Historic Review Board, its allies dedicated to historic preservation and scenic land conservation, and citizens concerned about increasing taxation should, however, join forces to begin to not only educate the citizens of Fredericksburg about the harmful effects of sprawl, but also about the vital need for a growth phasing program as a way to mitigate the sprawl’s effects. In this way, a coalition of dedicated citizens can be organized that both will work toward changing people’s attitudes and will be ready to spring into action when popular sentiment begins to swing against continued subdivision development. Once the many detrimental aspects of sprawl begin to become apparent to more people through events in the city and/or educational efforts, the educated citizenry can then be called upon to support City Council authorization to hire a consulting firm to develop a growth phasing program for adoption by the city. While the long term solution of developing a growth phasing program for Fredericksburg offers hope in the future to limit the harmful effects of sprawl on the some of the scenic hills and the traditional orchard operations surrounding the city, more immediate solutions must be found to help mitigate the affects of currently planned development on the area’s historic landscape.
IV. Texas Law’s Limit Otherwise Viable Short Term Solutions to Protecting Area Agricultural Land and Scenic Hills

Once again it must be emphasized that developing solutions to the problems caused by sprawl are extremely difficult given the State of Texas’ prohibition against municipalities extending their municipal zoning restrictions on use and spatial development of lots (height, bulk, size, or number of units) into their extraterritorial jurisdictions and the complete absence


§ 212.003. Extension of Rules to Extraterritorial Jurisdiction.

(a) The governing body of a municipality by ordinance may extend to the extraterritorial jurisdiction of the municipality the application of municipal ordinances adopted under §212.002 [Rules for the creation and adoption of zoning ordinances and what may be included in these zoning ordinances] and other municipal ordinances relating to access to public roads. However, unless otherwise stated by law, in its extraterritorial jurisdiction a municipality shall not regulate:

(1) the use of any building or property for business, industrial, residential, or other purposes;

(2) the bulk, height, or number of buildings constructed on a particular tract of land;

(3) the size of a building that can be constructed on a particular tract of land, including without limitation any restriction on the ratio of building floor space to the land square footage; or

(4) the number of residential units that can be built per acre of land.

(b) A fine or criminal penalty prescribed by the ordinance does not apply to a violation in the extraterritorial jurisdiction.

(c) The municipality is entitled to appropriate injunctive relief in district court to enjoin a violation of municipal ordinances or codes applicable in the extraterritorial jurisdiction.

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of county zoning authority in Texas except by special enabling legislation. Counties are
given the authority to regulate some aspects of subdivision development under Texas law, but
only in those areas outside of the limits of both municipal corporate and extraterritorial
jurisdictions. Thus, the complete lack of zoning authority in Fredericksburg’s
extraterritorial jurisdiction (ETJ) prohibits the use of Transferable Development Rights (TDRs)
as a financial incentive to landowners to keep their orchards or hills free from development, since
development rights by their nature are created through zoning restrictions. Area-based
allowance agricultural zoning, which requires that owners of agricultural land may only develop
one dwelling unit per twenty to forty acres of land (the number to be decided by the state
legislature) and must concentrate all dwelling units on small lots (approximately one to three
acres, depending on the zoning ordinance), obviously also cannot be used in the ETJ.

It should be noted, however, that the Texas Tax Code requires the appraisal of recognized
agricultural lands at a value "based on the land’s capacity to produce crops, livestock, or timber,
instead of its value on the real estate market." This provision is designed to protect
agricultural producers from having to sell their off their lands as commercial and residential
subdivisions begin to be created around the land, because they cannot afford to pay taxes on their

318 Vernon’s Texas Codes Annotated: Local Government. Vol. 2., Title 7, Subtitle B,
319 Ibid., Chapter 232, Section 232.001, pp. 544-547.
Saving America’s Countryside: A Guide to Rural Conservation (Baltimore, MD: The Johns
322 Comptroller of Public Accounts for the State of Texas, Property Tax Division, Texas
Property Taxes, 1995: Taxpayer’s Rights, Remedies, and Responsibilities, Publication #96-
295 (Austin, Texas, 1995), p. 3.
agricultural land once it is appraised at the value of its higher and best development usage. A rollback tax provision is also in place within the Texas Tax Code for agricultural lands to penalize all owners who change the use of their lands to a non-agricultural use, thereby further encouraging lands to remain in agricultural use in the face of surrounding development pressures. Finally, like many states, Texas has a right-to-farm law, which seeks to protect owners of recognized agricultural lands from having their agricultural operations prohibited because of nuisance suits brought upon them by nonfarm neighbors objecting to the odors, noise, dust, chemicals, and other unpleasant aspects of agricultural usage that they find offensive.

Accordingly, owners of agricultural lands around Fredericksburg are not being forced to sell their lands to developers because of increased taxation or the fear of nuisance suits against them. They are simply being offered substantial profits for the sale of their land to developers - profits that are hard for many of these relatively poor peach growers and ranchers to turn down given the general bleak economic future of agricultural production in this country. Furthermore, developers are not being deterred by the rollback taxes they must pay in order to convert the use of agricultural lands to residential and commercial uses. The solution to Fredericksburg’s problem of slowing the loss of the traditional ranch and orchard lands and the loss of the scenic views of the natural hillsides in the surrounding area does not, therefore, reside in granting preferential tax treatment and legal protection to agricultural land owners or in zoning solutions. Instead, the most immediate solutions to the problem until a growth phasing program can be

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323 Ibid., pp. 3-4. Note: "The rollback tax is the difference between the taxes you paid on your land’s agricultural value and the taxes you would have paid if the land had been taxed on its higher market value. Furthermore, seven percent interest is charged for each year from the date that the taxes would have been due," p. 3.

adopted seem to lie in the innovative use and encouragement of cluster zoning-type policies and the encouragement of landowners to establish conservation easements on their properties.
V. Amendments to City PUD Regulations to Preserve the Hills

Cluster zoning allows subdivision developers to cluster some of the residential units in a subdivision on smaller lots than those required by zoning for minimum lot size, as long as the average density of the residential development is kept above the required minimum lot size by the presence of larger than average lot sizes. The clustering of residential units in a development enables the developer to build fewer streets and shorter utility lines. More importantly, it gives the developer flexibility in that he/she can move development away from the steeper slopes and scenic beauty of any hills that might be on the property. Finally, cluster zoning does not need enabling legislation from the state government in order to be adopted by municipalities granted zoning authority under the Texas Local Government Code.

Proponents of historic and scenic landscape conservation could push the City Council and Gillespie County Commissioners to authorize the employment of various historic preservation and landscape consultants to study and map all the hills in the area around the city. The hills that have not yet been or have only partially been developed may then be documented as an important component of the historic and scenic landscape and designated as deserving of protection from future development. Hopefully, these proponent groups could receive grants from various conservation-oriented non-profit organizations at the state and national level and perhaps even grants from the Texas Parks and Wildlife Department to help pay for the necessary study and mapping. Once the study is completed, the proponents of scenic and historic landscape protection


326 Imogen R. Cooper, AICP, Senior Planner, Department of Planning, Historic Preservation, and Urban Design Division, City of San Antonio, conversation with author, San Antonio, Texas, 8 January 1996.
could call upon the citizens they have educated about the need for sprawl control to lobby the City Council to insert a hill protection provision, based on the findings of the study, in the section authorizing Planned Unit Development Zones (PUD) in the City of Fredericksburg Zoning Ordinance.\(^{327}\)

PUDs are actually variations of clustering that allow local governments to require large scale developers (usually 100 acres or more) to take certain desirable or important natural features into account when planning the lands development.\(^{328}\) The proposed provision amending Fredericksburg’s PUD regulations would require that developers protect from development any hills on their lands that are designated according to the study conducted. It would further require that the developers insure that the hills will be protected from future development as well by means of a conservation easement (to be explained in a later section of this chapter), by deeding the land(s) to a community organization or homeowner’s association with a restrictive covenant against development, or by some other legal means. However, the provision would allow developers to use cluster zoning to accomplish the hill protection requirement, which in turn will enable developers to eliminate few if any units from the overall number of commercial and/or residential units that could legally be placed upon the hills under normal zoning regulations.

One way to avoid charges of spot zoning through the prohibition of development of the hills is to first include within the city’s comprehensive plan declarations of the importance of the surrounding hills to the city’s quality of life and to the vital tourist industry and of the intent of the city policy to actively work toward the preservation of these hills as significant components

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of the historic and scenic landscape. All the hills within the city limits could then be designated as historic landmarks under subsections 12.205.1(a), (h), and (i) of the proposed amended historic preservation ordinance, in addition to the designation of these hills as scenic in the study conducted by consultants to determine which hills should be preserved. The inclusion of the statements in the comprehensive plan and the designation of these hills as historic, combined with the developers ability to use cluster zoning methods of development to avoid the loss of many potential units, should protect the city against charges of spot zoning, since all of these things should hopefully enable the city to be able satisfy the criteria that are used by courts to determine if certain zoning prohibitions are unconstitutional.

Not only does the proposed amendment to city PUD requirements avoid the potential for judicial decisions of spot zoning, it also should hopefully be acceptable to local residents’ strong

329 Subsection 12.205.1(a) allows for the designation of sites that "Possesses value as a visible example or reminder of the history or cultural heritage of the community, county, state, or nation;" subsection 12.205.1(h) allows for the designation of a site that "Is a unique location or possesses singular physical characteristics representing an established and familiar visual feature of a neighborhood, community, or the city;" and subsection 12.205.1(i) enables the City Council to designate any resource, "whether natural or man-made, that greatly contributes to the character or image of a defined neighborhood or community area." For further context, see Appendix B.

330 The criteria used by courts to determine whether zoning regulations fall into the category of unconstitutional and invalid spot zoning are as follows: (1) The size and number of parcels allowed [The developer’s ability to utilize cluster zoning methods to allow some lots to be larger than minimum lot requirements under the City of Fredericksburg Zoning Ordinance and to encompass some of the protected area of the hill should help the city to satisfy this criterion.]; (2) Usage compatibility with surrounding uses [Here again the developer’s ability to lay out lots that are larger than minimum lot requirements under the City of Fredericksburg Zoning Ordinance and to encompass some of the protected area of the hill should help the city to satisfy this criterion.]; (3) Demonstrated public benefit [The inclusion of the statements in the comprehensive plan and the designation of the hills as historic landmarks under the proposed amended Fredericksburg historic preservation ordinance should help the city meet this criterion]; and (4) Compliance with the comprehensive plan [The declarations of the importance of the scenic hills to the city and of the city’s policy to protect the hills from development should satisfy this final criterion]. Marya Morris, Innovative Tools for Historic Preservation (Washington, D.C.: National Trust for Historic Preservation and American Planning Association, 1992), p. 27.
beliefs against government regulation of private property. As alluded to in a previously paragraph, PUDs by their very nature are designed to allow government to regulate the development of large tracts of land, so as "to encourage more efficient uses of land, while still providing proper arrangement of uses and structures...to insure the fulfillment of desired community needs..."331 Since the City Council succeeded in adopting a PUD section in the zoning ordinance at some earlier date, and since the protection of the hills can be demonstrated to be an economic and public welfare need of the citizens of the city, it is hoped that a substantial number of citizens will not object to the adoption of the provision prohibiting development on designated hills into the city’s PUD regulations.

Furthermore, allowing developers the ability to develop most of the units the hills could support under normal zoning regulations with cluster zoning methods and thereby reap much of the potential profits off the development should help quell charges of excessive government regulation of private property. Finally, the fact that very few hills which could be designated as scenic or historic lie within the city’s current municipal limits (save for Cross Mountain City Park) should help somewhat diminish citizen’s concerns over the immediate affects of the amendment of the PUD section to their lands located in the city limits. However, the added provision to the PUD requirements will allow the city to protect hills designated by the commissioned study or the Historic Review Board from development once these hills are incorporated into the city’s limits through annexation.

VI. Amendments to City Subdivision Ordinance to Encourage Hill Preservation

The very fact that many of the hills that surround Fredericksburg proper lie outside of the city’s limits means that the proposed amendment to the PUD regulations will not offer protection against the development of these hills, since the city is prohibited by law from exercising most of its zoning regulations within its ETJ limits. The city is, however, given the ability to promote and influence the protection of the important scenic hills through the use of the power granted the Planning and Zoning Commission to approve or approve with conditions the preliminary and final subdivision plats for subdivisions located in the city’s ETJ. More importantly, the Planning and Zoning Commission is granted the authority to approve the zoning classifications developers wish to create within any subdivisions in the ETJ. Thus, along with the amendments promoting the preservation of the scenic hills made to the city’s comprehensive plan mentioned previously, the City Council could be motivated by public pressure to amend the city subdivision ordinance in several places, so that the ordinance strongly encourages developers to leave hills which have been designated scenic by the commissioned study undeveloped through cluster zoning-type methods of development.

Specifically, the subdivision ordinance’s Article 9.100, the article that states the purpose and intent of the ordinance, could be amended to include a specific reference to the objective of preserving and maintaining both the historic landscape of the valley and the scenic vistas provided by the hills surrounding Fredericksburg by keeping the hills free from development.

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332 Fredericksburg, Texas, Fredericksburg Code of Ordinances, Chapter 9, Article 9.700, Section 9.701 and Section 9.702, respectively, p. 9-11 - 9-14.


334 Ibid., Chapter 9, p. 9-3.
Subsection 9.803(f), which calls for the preservation of natural features in subdivision development, could also be amended to make specific mention of hills designated by the city's commissioned study as among the natural features that "shall be preserved in the design of the subdivision."^335 These two specific amendments, along with the powers given the Planning and Zoning Commission concerning the approval of subdivision development in the city's ETJ listed in the previous paragraph, would allow the Planning and Zoning Commission to influence subdivision developers to conform to the city's stated policy to preserve the scenic hills that surround it. Of course, the best and most obvious method for developers to utilize in accomplishing this stated city goal is the use of something similar to cluster zoning with a conservation easement or some other form of protection to insure that the hills are never developed in the future.

Three very important issues stand in the way of realizing the city's goal to preserve the natural appearance of the hills located in its ETJ from development through the use of the amendments described to the city's subdivision ordinance. The first is the Planning and Zoning Commission's unillustrious record in attempting to accomplish the goal, "To maintain and preserve scenic vistas" that is already written as part of the stated purpose and intent of the subdivision ordinance.^336 A couple of hills to the north of the city but within the ETJ are already partially covered with houses in a development known as "Northwood Hills."^337 This obvious lack of success could be caused by a lack of understanding on the part of the

^335 Ibid., Chapter 9, Article 9.800, p. 9-21. Note: Subsection 9.803(f) currently reads, "Preservation of natural features." All natural features such as large trees, watercourses, historical spots, and similar community assets, shall be preserved in the design of the subdivision."

^336 Ibid., Chapter 9, Article 9.100, subsection (f), p. 9-3.

^337 Based upon the author's personal investigations of the subdivisions surrounding the city limits of Fredericksburg conducted on several nonconsecutive days in August, 1995.
members of the Commission of the important role the scenic vistas of the hills from the city play in the adding to the quality of life and in attracting tourists to the city. Such a lack of understanding could be corrected through education and hopefully would be corrected before the amendments are added to the subdivision ordinance.

The second issue that poses a threat to the realization of preserving the scenic hills offered by the amendments to the subdivision ordinance is the fact that hillside land commands the highest real estate prices because of the views they offer of the surrounding land. Consequently, the owners of land in the ETJ that contain hills designated as scenic by the city-commissioned study will whole-heartedly fight the proposed amendments to the subdivision ordinance, and they will receive much sympathy from their friends and fellow citizens in Fredericksburg. This potential fight could also jeopardize the push to amend the PUD regulations to include provisions for the protection of scenic hills in the city limits, especially since the push for the adoption of amendments to both the PUD regulations and the subdivision ordinance would probably occur simultaneously. Owners of land that contains scenic hills and that is adjacent or near to the current city limits will realize that their land would not only be affected by the subdivision ordinance amendments, but could also be affected by the PUD regulations if and when the city annexes their land into the city’s corporate limits. Thus, these landowners may also join the fight against the proposed amendments to the city’s PUD regulations while fighting to deny the amendments to the city’s subdivision ordinance.

Furthermore, even if the proposed amendments to the subdivision ordinance are adopted by the City Council, the developers of subdivisions containing hills designated by the commissioned study would lobby hard to get the Planning and Zoning Commission to accept the zoning classifications for the subdivisions these developers propose for approval even though the developers are not proposing to protect the hills from development in any way. Owners could
even threaten lawsuits against the City of Fredericksburg if the Planning and Zoning Commission persists in trying to pressure or persuade the developers to protect the hills from development. Were such lawsuits threatened, it is likely that the Planning and Zoning Commission would back down. This is because of the very shaky legal ground the Commission would be on under the powers granted municipalities in Texas law in trying to coax an owner of land in the ETJ to use his/her land in a certain way or to only build a certain number of units per acre of land by utilizing the cluster zoning method of preserving the hills.

This then is the third and most important issue standing in the way of protecting the hills in Fredericksburg’s ETJ from development through the proposed amendments to the subdivision ordinance. The developers of subdivisions in the city limits would certainly have to conform to the requirements of leaving the hills undeveloped, just as would developers of PUDs. However, the inability of municipalities to regulate the use of property within their ETJs according to Texas Local Government Code means that, even though the Planning and Zoning Commission has the authority to approve the zoning classifications to be used in an ETJ subdivision as well as the initial and final subdivision plat for such a subdivision, the Commission would not find it legally prudent to try and force the issue of preserving the scenic hills within the development.338

As was said from the beginning of this proposal, the amendments to the subdivision ordinance would only give the Planning and Zoning Commission the ability to strongly encourage and pressure developers to preserve their scenic hills. The incentive given to the developers to do so would be to get in the good graces of the Commission in light of their authority to approve, deny, or approve with conditions the proposed zoning classifications and the initial and final subdivision plats. Thus, the Commission really has no means to enforce the preservation of the

hills or the preservation of the natural features located in the ETJ already written as goals of the ordinance. To deny zoning classification approval or initial or final plat approval on the basis of anything resembling a failure to use the land in a manner that consciously protected these special features would be to court legal disaster. This lack of enforcement power is probably the more dominant reason why the Commission was unsuccessful in saving the hills in the ETJ that have already been heavily built upon, rather than a lack of Commission members’ understanding of the importance of preserving such sources of scenic vistas and such splendid natural features.

The high level of opposition that would probably be encountered in trying to implement the various aspects of cluster zoning methods within the PUD regulations and subdivision ordinance and the relative inability of these regulations, if amended, to really make a difference in protecting the surrounding hills from development would seem to discourage proponents of historic and natural landscape preservation from even trying to amend the ordinance and regulations. However, as with the fight to adopt an amended preservation ordinance with stronger regulations, the fight to save the scenic hills from development must begin now. The huge development pressures that currently threaten both the historic and natural environments in and around the city, the fact that two nearby scenic hills are now covered with houses and roads, and the potential for much greater development pressures as Fredericksburg continues to grow all force the hand of local historic and natural landscape preservationists to attempt to save Fredericksburg’s historic landscape. Even if the PUD regulation and subdivision ordinance amendments will result in few if any hills actually being saved from residential development, the awareness of the problem in citizens’ minds generated by the education campaigns and the fight to secure these amendments will ultimately help the people of Fredericksburg realize the danger involved in continued development of the hills. This in turn will hopefully hasten the ability of the proponents of historic and natural landscape preservation to gain enough public support to
successfully lobby the City Council to authorize the development of a growth phasing plan as a long-term method of preserving both the scenic hills and much of the agricultural land that surrounds the city.
VII. Prohibitions on the Development of Steep Hillsides

A possible alternative to a provision banning the development of all hills being added to the city’s PUD regulations and language strongly discouraging the development of hills being placed in Fredericksburg’s subdivision ordinance is the formulation of regulations that base the amount of development allowed on a hill on the steepness of the slope of the hillside. Such regulations are included in the zoning ordinances of municipalities in other states, such as in certain townships in Pennsylvania, in order to help prevent the erosion of shallow soils and maintain the scenic landscape.\(^{339}\) These regulations enlarge the minimum size required for each lot in a subdivision of land in relation to the steepness of the slope on which the lot is located. For example, slopes between eight and fifteen degrees require the minimum size of a lot designated for residential development to be fifty percent larger than a municipality’s established minimum lot size for areas zoned for residential development in the more level parts of the municipality, while the minimum size of a lot on a slope greater than fifteen degrees is required to be one hundred percent larger than the standard minimum lot size normally required for the lot’s designated usage under the zoning ordinance.

The formulation and inclusion of minimum lot size requirements for various categories of slope steepness as an additional regulation within Fredericksburg’s PUD regulation and as recommended guidelines for development in the city’s subdivision ordinance is certainly possible. These requirements could be legally based on the need to prevent soil erosion and on compliance with the city’s goal of maintaining the quality of life and the historic and scenic landscape of the surrounding area through the protection of the hills from unsightly development, as stated in the

\(^{339}\) John C. Keene, Professor of City and Regional Planning, Department of City and Regional Planning, Graduate School of Fine Arts, University of Pennsylvania, telephone conversation with author, 4 April 1996.
amendment to the city's comprehensive plan passed through the initiative of Fredericksburg's proponents of historic and scenic landscape protection. Furthermore, the establishment of such slope-based lot size dimensions as a component of both PUD regulations and the city's zoning ordinance, as well as a guideline for development in Fredericksburg's subdivision ordinance, would be much more acceptable to the regulation-wary citizens of the community as a way to help preserve the historic and scenic character of the hills than would be the outright ban on hillside development proposed for PUDs and recommended for subdivisions in the city's ETJ.

In theory, therefore, lot size restrictions based on slope steepness would be a method of regulation that could fulfill the goal of protecting the hills from more dense and, thereby, more unsightly forms of development and that would be a more acceptable alternative of hill protection to the populace than the outright prohibition of development on the hills. However, in reality, many of the small hills that surround Fredericksburg do not have steep enough slopes to justify the establishment of such minimum lot size requirements on the land which composes these hills. Consequently, few hills within the city limits could be protected from extensive development through the inclusion of such regulations in the city's zoning ordinance.

Furthermore, an increase in the minimum lot size required for development is no guarantee that the few steeper hills where such regulations can be imposed will not be stripped of all vegetation by the development allowed and/or dominated by the presence of several relatively large houses, structures, thereby defeating the original intent of these regulations.

340 See the discussion of this amendment recommended for adoption in Part V of this chapter.

341 This statement is based on the author's evaluations of the steepness of the slopes of the hills he has traversed as a frequent hiker in the hills surrounding the city of Fredericksburg. It is not based upon any topographical or geological study conducted on the hills of the area.
Many hills surrounding the Hill Country communities of Boerne, Comfort, and Kerrville are now dominated by the large houses of wealthy members of the community, which have intentionally have been built to be seen for miles around as statements of the social and economic prominence of their owners.\textsuperscript{342} The attractiveness of the scenic views offered from houses built on hillsides, combined with the high value of the lots because of the vistas they allow, makes it probable that many such lots will be bought by wealthier people, who may be inclined to build relatively large and even dominating houses on the steeper hills located in or surrounding the city. Many of the owners of newly built houses on these hills will also strip the area immediately surrounding their houses of vegetation in order to allow for an uninhibited view of the surrounding area, thereby further destroying the historic character and scenic qualities of the hills upon which these houses have been built. Thus, slope-based restrictions on lot sizes are not an adequate method of preserving the scenic beauty and historic nature of the hills surrounding Fredericksburg, and they should only be considered for implementation as a method of limited hill protection if and when the prohibitions against the development of hills fail to be included within the city’s PUD regulations and subdivision ordinance.

\textsuperscript{342} This statement is based on the author’s experiences and observations as a frequent visitor to the Hill Country and a former resident of San Antonio.
VIII. The Encouragement of Conservation Easement Donation

Still another short term and long term solution to protecting not only some of the scenic hills around the city, but also some of the traditional ranch and orchard lands in the area is the active promotion of the granting of conservation easements by owners of land inside and outside of Fredericksburg’s ETJ. Under Texas law, landowners are given the ability to write a conservation easement to cover historical, architectural, archaeological, cultural, natural, and scenic values of real property and to donate the easement to a qualified state agency or 501(c)(3) organization.\textsuperscript{343} "The landowner decides which aspects [of the land] are to be protected from development and to what degree and under what circumstances any development would ever be allowed" and stipulates these restrictions in the easement before donating it to the government agency or nonprofit organization.\textsuperscript{344} The restrictions placed on the land by the landowner through the easement are entered into the deed for the property and remain in effect in perpetuity as the title to the land is transferred to various owners, with enforcement powers residing in the state agency or nonprofit organization that accepted the conservation easement.\textsuperscript{345}

The donation of a conservation easement may qualify as a charitable tax deduction from the IRS. Under the Texas Tax Code, landowners may also qualify for a reduction in property taxes through a reappraisal by differential assessment of their land value once the land has been restricted from certain kinds of development for one year under the terms established by the

\footnotesize{\textsuperscript{343} Vernon’s Texas Codes Annotated: Natural Resources. Vol. 2, Title 8, Chapter 183, Sections 183.001 - 183.005 (St. Paul, MN: West Publishing Company, 1995), pp. 207-232.}

\footnotesize{\textsuperscript{344} Texas Parks and Wildlife Department, "Conservation Easement Act," educational pamphlet (Austin, Texas: Texas Parks and Wildlife Department, 1994).}

\footnotesize{\textsuperscript{345} Ibid.}
The decreased appraised value of the land due to the easement also helps decrease estate taxes for the children who inherit the restricted land, thereby reducing the risk that these children will have to sell their legacy in order to pay the taxes on it. The landowner may also receive intrinsic satisfaction at helping to protect the scenic beauty or historic resource(s) located on his/her property from development forever.

The ability of landowners to donate conservation easements under Texas law and to possibly qualify for tax benefits under both national and state tax codes provides some hope that local proponents of historic and natural landscape preservation will be able to persuade some landowners in the surrounding area to protect their agricultural lands and the scenic hills within it from future development through the use of easements. An education campaign could and should be conducted by local landscape conservation proponents on the importance to the of saving the hills and the historic agricultural landscape, as well as on the tax benefits that could be enjoyed be a donating landowner and his/her heirs. The landscape conservationist’s campaign efforts could be greatly enhanced by working in conjunction with the Hill Country Foundation (a 501(c)(3) land trust that works in the Texas Hill Country and accepts conservation easements) and the Texas Parks and Wildlife Department (a state agency designated to

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346 Texas State Property Tax Board, *Guidelines for the Appraisal of Recreation, Park, and Scenic Land* (Austin, Texas: Texas State Property Tax Board, 1982), pp. 1-2. NOTE: While this differential assessment of land value will make little if any difference on agricultural land in the Fredericksburg area which already receives a differential assessment because of its recognized agricultural usage, it could help landowners in the area whose land may have fallen out of recognized agricultural usage.

347 Danielle Milam, former president of the Bexar Land Trust of Bexar County, Texas, which recently merged with the Hill Country Foundation, telephone conversation with author, 12 February 1996.
receive conservation easements and the most active of state agencies in the promotion of the conservation easement donation).³⁴⁸

It is doubtful that such an education campaign and the intrinsic and limited financial benefits will turn the hearts of some landowners away from seeking to sell their agricultural and scenic land for a substantial profit. However, the strong sense of tradition in holding the land of your forbearers common among the German families, which this author has experienced in his own family and which he has learned is still felt by many other members of the German community in the area, gives hope to the possibility that at least some traditional agricultural land and scenic hills will be preserved through conservation easements as a result of the public education campaign.³⁴⁹ Owners desiring to keep their lands in their traditional ranching or peach growing usage, as well as in the family, would probably welcome the idea of restricting their land, including their hills, to such usage through an easement and receiving federal and state tax benefits in the process once they were fully educated on the existence and process of conservation easements. Furthermore, the campaign to encourage the donation of conservation easements might also benefit from the fact that the protection granted the historic agricultural and scenic landscapes through conservation easements is entirely voluntary, rather than required by local government ordinance or other form or regulation. Thus, landowners who might object to the passage of amendments protecting the scenic hills in Fredericksburg’s PUD regulations and

³⁴⁸ Carolyn A. Scheffer, State Park Planner, Texas Parks and Wildlife Department, conversation with author, Austin, Texas, 1 September 1995.

³⁴⁹ Karen Sue Oestreich, former member, Fredericksburg Historic Review Board; Office Manager, Sunset Realtors, Fredericksburg, Texas, conversation with author, Fredericksburg, Texas, 29 August 1995. As a realtor, Ms. Oestreich said she found many instances where members of old German families had taken on jobs in Fredericksburg or the surrounding community in order to keep their families’ traditional agricultural lands and ways of life. Their desires to keep traditional ways of life meant that they were unwilling to sell their lands when approached by Sunset Realtors.
subdivision ordinance on the principle of objecting to government regulation of private land in general might still donate a conservation easement that would protect the scenic hills on their lands and/or the agriculture use of their properties.

As this chapter indicates, preserving the historic scenic and agricultural landscape around the City of Fredericksburg will not be an easy task. However, it is an extremely necessary and important task if Fredericksburg is to maintain much of its charm and attraction to tourists as well as one of the important aspects of the quality of life in the city enjoyed by old timers and new comers alike. The passage of the amendments to the city’s PUD regulations and the subdivision ordinance, if indeed they are passed, and the campaign to encourage area landowners to donate conservation easements will not guarantee that many of the scenic hills and much of the orchard and ranch lands that surround the city will be protected from development. However, the public educational campaigns that must be carried out in the effort to secure passage of the proposed amendments and promote the donation of conservation easements will make the citizens of Fredericksburg and Gillespie County aware of the problem of sprawling development and the dangers it poses to the city and county economy, social welfare, and traditional way of life.

It is hoped that through a continued educational campaign on the merits of sprawl limitation and historic landscape protection, as well as on the need for a city growth phasing program as an ultimate solution to the problems of sprawl, the citizens of the city and the county will become convinced, especially in the face of rising taxes to help pay for the costs of unfettered development, to support the creation of a city growth phasing program. Hopefully as well, when the day comes for the city’s authorization of the development of a growth phasing program, there will still be undeveloped agricultural land and scenic hills within the city’s ETJ to protect and preserve.
CHAPTER FIVE: RECOMMENDATIONS FOR FUTURE AMENDMENTS TO
THE CITY HISTORIC PRESERVATION ORDINANCE

Given the need to maintain a balance between the current political climate in Fredericksburg against excessive government regulation and the current preservation regulation needs of the community, the proposed amended historic preservation ordinance does not include certain requirements, powers, and incentives that it will be necessary to include in the future. It also does not include certain requirements that are currently necessary but that, if included, would jeopardize the likelihood of the amended ordinance being adopted by the City Council. These requirements and incentives are discussed in this chapter and recommended for inclusion in the amended ordinance at a future date. Some of these requirements and powers should be implemented as soon as possible after the amended ordinance is permanently adopted after the four year trial period. Other requirements and incentives can be formulated and adopted only when the obvious need for them arises.

I. Additional Members of the Historic Review Board and Full Time Status for the City Historic Preservation Officer

As Fredericksburg grows and as the number of resources designated as historic landmarks and historic districts grows as well, it will become necessary to amend Sections 12.203 and 12.204 in order to cope with this growth and the increased responsibility this growth will place upon the Historic Review Board (hereafter referred to as the "Board") and the City Historic Preservation Officer (CHPO). Subsection 12.203(a) will need to be amended in order to increase the number of members of the Board to nine and perhaps eventually more, in order to be sure
that the Board has enough members to meet its enlarged oversight responsibilities. Subsection 12.203(b) should also be amended to expand the professions and interests represented among Board members. Some possible future additions could come in the form of a member from the banking or accounting professions and/or a member who is a practicing attorney. It would also be wise to require a licensed landscape architect to be a member of the Board, if there are several licensed landscape architects who reside in Fredericksburg or Gillespie County who would be willing to serve, in light of the need and the power of the Historic Review Board to designate scenic hills in the city limits as historic landmarks. It should, however, be left up to the Board to determine both at what time it should increase the number of its members and which professions or interests it feels should be represented on the Board to help it do the best job possible.

The official description of the workload required of the City Historic Preservation Officer in Section 12.204 of the amended ordinance should also be changed from "part time" to "full time" as the number of resources designated historic landmarks and historic districts increases and as the CHPO's duties thereby also expand. The wording of Section 12.204 in the amended ordinance requires that "the duties of the City Historic Preservation Officer shall control the time, energy, and loyalty of the appointed individual above his/her duties as part time Building Inspector." Accordingly, as the historic preservation-related work load of the person appointed CHPO steadily increases, he/she will eventually have to devote full time toward the

350 See Appendix B. Note: The number of members of the Board should be kept at an odd number, in order to prevent ties to occur when voting on various matters and decisions takes place.

351 See Subsections 12.205(1)(a) and (h) in Appendix B. Also see the section on amending the city's PUD regulations in Chapter Seven.

352 See Appendix B.
fulfillment of the duties of the CHPO. By doing so, he/she will be a Building Inspector in name only. It would be in the best public interest if the Board recommends that the part time status of the CHPO be amended to full time status within the ordinance, so that full public accountability can be given for the work the person designated the CHPO actually does and for the wages he/she receives for performing this work. Once again, however, it should be left to the discretion of the Board to determine when such amendment to Section 12.204 needs to be made.
II. The Creation of Application Fees for Certificate of Appropriateness Applications

In order to help pay the full time salary of the CHPO and/or help fund the cost of historic preservation regulation in Fredericksburg as the properties designated as historic continue to increase, Section 12.205 should be amended to require fees be charged on all Certificate of Appropriateness applications that must go before the Board for a hearing. This fee should not, however, be charged to applications that are found by the CHPO to be solely for work involving ordinary maintenance and repair under subsection 12.209.2(b) of the amended ordinance, in order to not discourage the regular maintenance and repair of designated properties in any way.\(^{353}\) Fees for application and city services are quite common in municipalities all across the nation and in Fredericksburg in particular. The City of Fredericksburg requires fees to be paid before site plans are examined or construction permits are issued. It also charges filing fees for plats and fees for garbage and trash pickup to name but a few.\(^{354}\) Thus, the concept of a city regulatory board charging fees to review applications will not be a bold new concept or an unacceptable idea when it is proposed for acceptance by the Board for adoption by the City Council. Charging modest fees for certificate of appropriateness is also an acceptable practice under THC guidelines for CLGs. The small city of Granbury, Texas, which recently received CLG status with its new preservation ordinance, requires in its historic preservation ordinance that such fees be collected to help defray the costs of the review and technical services rendered during the application process.\(^{355}\) The modest fees written into the Fredericksburg preservation ordinance by amendment could be calculated by the Board and city officials,

\(^{353}\) See Appendix B.


\(^{355}\) Granbury, Texas, "City of Granbury Ordinance No. 94-483," Section 11.208, p.4.
according to the cost of the proposed work in the application, and then placed in a schedule of fees in an appendix of the ordinance, just as Granbury’s fees are established in a table of fees within the ordinance.356

The Board might run into some opposition on the part of owners of designated properties, who might argue that they would be unfairly forced to pay additional costs for the work that they are already being forced to carry out for the public benefit according to the specifications of the Board. However, the Board could counter such an argument with the fact that the certificate of appropriateness process helps insure that owners’ neighbors, at least in historic districts, must also carry out high quality and preservation-sympathetic work, thereby helping to keep individual owners’ property values high. Thus, shouldn’t these owners be willing to pay a small fee in order to keep their property values high? Furthermore, the argument that other city departments and boards already charge fees for the review services they render, as shown previously, can also be used to blunt owners’ opposition.

However, because of possible opposition by owners of designated property or owners of property eligible for designation to fees being rendered for certificates of applications reviewed by the Board, the amendment to require such fees should not be formulated and recommended for adoption until the amended ordinance is in fact permanently adopted after its four year trial period.357 It would certainly be unwise to risk the ire of such owners at a time when their support will be crucial in the fight to have the ordinance permanently adopted. On the other hand, a large and active opposition to permanently adopting the ordinance might manifest itself based on the mistaken belief that the increased historic preservation regulation required by the


357 See Section 12.219 in Appendix B.
preservation ordinance will mean a substantial increase in taxation to pay for the regulation. If such a scenario occurs, then the Board may have to propose requiring such fees as a means of placating this opposition and gaining further support for the ordinance’s permanent adoption. It is hoped that the Board could still quiet the opposition of the owners of designated or eligible properties using the arguments given above, while making it seem to the citizens at large that those whose properties are regulated will pay for a substantial part of the cost of supporting the Board’s enforcement of the amended preservation ordinance.

It should, of course, be left up to the Board to decide when to formulate and propose the amendment to require fees for the review of all certificate of appropriateness applications based upon the political climate of the city and the economic needs of the Board and its staff. These fees should, though, eventually be adopted, since each fee could help directly pay for the cost of processing each application for review, thereby somewhat reducing the Board’s dependence on allocations from city hotel/motel tax revenues\(^{358}\) and direct city budget appropriations. The Board, in requesting approval for such an amendment from the City Council, must establish some guaranteed mechanism that would allow the Board to retain all of the fees charged for applications for its own expenses. Otherwise these fees for direct services will be lost to the city’s general coffers, where the money will be distributed piecemeal to other city boards and departments through budget appropriations.

\(^{358}\) See Chapter Three.
III. Municipal Tax Incentives

Fredericksburg’s economy is, as has often been stated in this thesis, booming at the moment, and a big factor in this economic success is the city’s growing tourist industry. Many of the tourists who visit Fredericksburg are attracted to the city because of the quaintness and charm of its Germanic and late nineteenth and early twentieth century architecture, and business people know this. More and more business people are trying to take advantage of this attraction by opening up "bed and breakfast" operations in historic houses and by sometimes even constructing new buildings that mimic the Germanic architectural characteristics found among some of the city’s earliest structures in order to lure customers into their businesses. The regulations and enforcement powers found in the amended ordinance are designed to insure that business people or developers are prevented from building new structures in historic districts which create a false sense of history and which prevent harmful additions, alterations, etc. to designated residences being converted for use as bed and breakfast establishments.

However, no municipal tax incentives are included in the amended ordinance or exist in the Fredericksburg tax code that encourage people to purchase and/or preserve endangered designated or eligible historic buildings and structures within the city - buildings and structures that are not in the most desirable of commercial locations perhaps - through historic rehabilitations of these properties. The opportunity to qualify for federal historic rehabilitation tax credits under Section 251 of the Tax Reform Act of 1986 does exist for some owners of property within Fredericksburg’s only current historic district, since the same area is also an historic district listed in the National Register of Historic Places. However, only owners of property that has been designated as historically significant in the historic district can qualify, and only if they carry out rehabilitations for industrial, commercial, or rental residential uses that
meet *The Secretary of the Interior's Standards for Rehabilitation* as determined by the National Park Service. Even owners of locally designated properties that are not on the National Register cannot qualify for the federal tax credit unless their properties are at least in the initial stages of application process for National Register status. Even owners of locally designated noncommercial residences that are listed individually or are within a district on the National Register cannot qualify at all for the federal tax credit unless they carry out rehabilitations designed to change the use of their properties. Thus, there are significant gaps in the incentives available at the federal level which might encourage people to purchase endangered historic structures and buildings in Fredericksburg and preserve them through historic rehabilitations. Municipal tax incentives for certified historic rehabilitations of both residential and commercial properties designated as historic landmarks or designated as "contributing" properties within an historic district would fill these gaps.

It is politically unfeasible to place such tax incentives in the amended ordinance itself at this time, since the real estate market for historic properties is quite strong at this point in time. It is doubtful that citizens or the City Council would agree that such municipal revenue-diminishing tax incentives need to be created at the present moment. However, Fredericksburg’s current boom in tourism cannot last forever. Sooner or later, the Texas economy will slow, and fewer tourists will be able to afford to spend their money in Fredericksburg. At that time, the real estate market for historic properties will diminish, and some historic buildings and structures that have been locally designated under the ordinance may become vacant as the tourist-oriented businesses in them begin to fail. Other businesses will be looking to establish themselves in more

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modern buildings, because of the extra amenities these structures offer and the loss of attractiveness of being located within a quaint historic building.

At that time of future economic lull, Fredericksburg should take advantage of the Section 11.24 of the Texas Tax Code and institute some form of property tax incentive to encourage the preservation of designated structures and buildings through historic rehabilitations certified by the CHPO and approved by the Board as being conducted according to The Secretary of the Interior's Standards. Since the state tax enabling legislation is quite open ended, it should be left to the Board and the City Council to determine the method of the desired incentive(s) (e.g. abatement or exemption) and the level of the incentive(s) (e.g. 100 percent ad valorem percent property tax abatement for commercial properties like that offered by the City of San Antonio or a freeze on assessed value). The Board and the Council should also determine the length of time the incentive will be in effect (e.g. five years or ten years) and whether or not the incentive will be transferable along with the titles to the designated properties.

These decisions should be made based upon a careful analysis and balance of how much revenue the city believes it can afford to lose in the short term through the tax incentives versus how much it thinks it can regain in the long term through a taxation on the increased values of

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361 Section 11.24 ("Historic Sites") of the Texas Tax Code states: "The governing body of a taxing unit by official action of the body adopted in the manner required by law for official actions may exempt from taxation part or all of the assessed value of a structure and the land necessary for access to and use of the structure, if the structure is:

(1) designated as a Recorded Texas Historic Landmark by the Texas Historical Commission and by the governing body of the taxing unit; or

(2) designated as a historically significant site in need of tax relief to encourage its preservation pursuant to an ordinance or other law adopted by the governing body of the unit."

the properties the incentives helped motivate historic rehabilitation improvements upon. By implementing San Antonio’s policy of terminating the municipal tax incentive if the rehabilitated property changes ownership, the city could perhaps even generate additional tax revenues sooner than expected from certified rehabilitated properties.\footnote{Ibid.} When certified rehabilitated property changes ownership before the expiration of the tax benefit, the city would be able to reap the tax revenue of the property assessed at full current market value earlier than anticipated, thereby reducing the anticipated loss in tax revenues due to the incentives while still accomplishing the preservation purpose of the incentive.

The specific requirements of and procedures for receiving the tax incentive could be amended into the historic preservation ordinance itself, as is the case with the historic preservation ordinance of the City of Fort Worth,\footnote{Fort Worth, Texas, "City of Fort Worth Historic Preservation Ordinance," Subdivision C., pp. 18-25.} or it could be created in a new city ordinance, as is done by the City of San Antonio.\footnote{The City of San Antonio actually has two ordinances establishing and regulating municipal historic preservation tax incentives, one for commercial properties and one for residential properties. Susan G. Robinson, "The Effectiveness and Fiscal Impact of Tax Incentives for Historic Preservation," \textit{Preservation Forum} 2, no. 4 (Winter 1988-89): 11.} However, no matter what the specific incentives are or in which legal document they are placed, subsection 12.203(h) of the amended ordinance (which lists the duties and functions of the Board) will need to be amended in order to give the Board the authority to hold public meetings and review applications for the tax incentives.\footnote{See Appendix B.} An amendment such as that which follows should be sufficient:

\begin{verbatim}
363 Ibid.
364 Fort Worth, Texas, "City of Fort Worth Historic Preservation Ordinance," Subdivision C., pp. 18-25.
366 See Appendix B.
\end{verbatim}
(#) Pursuant to [Section number within the historic preservation ordinance or the name of the ordinance authorizing the tax incentive], to hold public hearings and to review applications for ad valorem tax [the specific method of incentive chosen] for residential and commercial buildings and structures which are designated as historic landmarks or which are properties which have been designated as "contributing" within historic districts and which are in need of tax relief to encourage their preservation and rehabilitation; to certify the facts governing eligibility, along with the Board's recommendation, to the Gillespie Appraisal District, for approval or disapproval of the application for [the specific method of incentive chosen]; upon receipt of a sworn statement of completion, to authorize the City Historic Preservation Officer to investigate the building or structure to determine whether the rehabilitation has been substantially completed as required for certification and to prepare a report for the Board and testify before the Board upon the findings of his/her investigation, and to notify the Gillespie Appraisal District in writing upon the decision of the Board as to whether the verification of the completion is favorable.367

The Board may also wish to amend Section 12.204 of the preservation ordinance so as to add the duty of investigation of properties applying for the tax incentive to the list of duties and responsibilities formally required of the City Historic Preservation Officer in this section.368 However, judging from historic preservation ordinances of the certified local governments of San Antonio and Fort Worth, such an amendment is unnecessary. Chapter 1, Article 1.300. Taxation., of the Fredericksburg Code of Ordinances will also have to be amended appropriately in order to further legalize and allow implementation of the method and requirements of the municipal tax incentive the Board and City Council agree to implement.

368 See Appendix B.
Finally, the most important amendment to the ordinance, which should be adopted as soon as possible after the permanent adoption of the ordinance as amended, is one that would extend the protection offered designated properties under the certificate of appropriateness application requirements to properties nominated for designation. This protection would go into effect once the nominations for particular designation are received by the Board from the CHPO and the return receipt from the certified mail letter sent to the owner of the property informing him/her of the nomination is received by the CHPO's office.\(^\text{369}\) Such regulatory power over nominated properties is not required in preservation ordinances designed to satisfy CLG requirements.\(^\text{370}\) However, it is granted to the historical commissions of the certified local governments of San Antonio and Fort Worth under their respective ordinances.\(^\text{371}\)

These two Texas cities have authorized the use of this regulatory power over nominated properties with good reason. Under Section 12.209 of the proposed amended ordinance for Fredericksburg, owners of property nominated for designation as historic landmarks or of property within an area nominated as an historic district are free to conduct any form of work on their property between the time they receive notice of the nomination of their property by certified mail and the time when (and if) their property's nomination is confirmed by City Council.\(^\text{372}\) Consequently, owners of nominated property who might object to the nomination can intentionally carry out any demolitions, alterations, additions, etc. that they desire

\(^{369}\) See Section 12.206 in Appendix B.

\(^{370}\) THC, Section 7, p. 11.

\(^{371}\) S.A. Ord., Section 35-431.2, p. 25, and Fort Worth, Texas, "City of Fort Worth Historic Preservation Ordinance," Subdivision B, Section 4, p. 12, respectively.

\(^{372}\) See also Section 12.205 in Appendix B.
but that they know will not be allowed under the certificate of appropriateness guidelines in subsection 12.209.1 of the amended ordinance. These owners also might carry out detrimental changes to their properties that they know will be likely to decrease their properties chances of being accepted under the guidelines for designation in subsection 12.205.1. Thus, the nomination notice sent to property owners may serve as a warning to objecting property owners to make all the desired and character-altering changes to their nominated property they desire before the property becomes regulated, and the amended ordinance as written is powerless to stop them from doing so.

This is, of course, a somewhat cynical view of the owners of property eligible for designation as historic in Fredericksburg. The danger of the destruction of the significant character of nominated properties in this manner is real, however, especially in a city where some citizens are quite hostile to government regulation of private property. Because of the current presence of such powerful pro-property rights anti-government regulation feelings among the citizens of the city, the regulatory powers over nominated properties are reluctantly left out of the amended ordinance. It would not be wise to jeopardize the temporary passage of the entire amended ordinance by the inclusion of a regulatory power that is not required for CLG status under THC regulations. Thus, the amendments required to grant these crucial powers of regulation should probably only be attempted by the Board once the amended ordinance is permanently adopted by the City Council and/or the fervor over recent property rights battles in the area is significantly diminished by the process of time.

In order to grant the Board these powers of regulatory review over properties nominated for historic designation within the ordinance, subsection 12.203(h)(7) should be amended to read:

(7) Prepare specific design guidelines for the restoration, rehabilitation, alteration, construction, reconstruction, or relocation of landmarks or buildings, objects, sites, and structures within historic districts and of properties nominated
This amendment will require the Board to regulate the work done to properties nominated for designation as one of its specific duties and functions.

Section 12.209 of the ordinance will also need to be amended as follows:

§ 12.209 Certificates of Appropriateness

No person shall carry out any construction, reconstruction, alteration, installation, maintenance, repair, restoration, rehabilitation, demolition, or relocation of any historic landmark, any property nominated for nomination as an historic landmark, any property within a historic district, or any property within a specific geographic area nominated for designation as an historic district, nor shall any person make any material change in the light fixtures, signs, sidewalks, fences, steps, paving, or other exterior elements visible from a public right-of-way which affect the appearance and cohesiveness of any historic landmark, any property nominated for designation as an historic landmark, any property within an historic district, or any property within a specific geographic area nominated for designation as an historic district, without first obtaining a certificate of appropriateness for any such action from the Historic Review Board or a permit to carry out work deemed ordinary repair and maintenance, which excuses an applicant from obtaining a certificate of appropriateness, from the City Historic Preservation Officer.

This amendment officially includes all properties nominated for designation as historic landmarks and all properties in an area nominated for designation as an historic district subject to the certificate of appropriateness regulatory process.

All references that mention the requirement for certificate of appropriateness applications for any historic landmark or any property in an historic district in any of the subsections of Section 12.209 should be similarly amended. An additional subsection should also be

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373 The words in italics being those added to the subsection by amendment.

374 The words in italics being those added to the section by amendment.

375 It would be too lengthy to include all the actual amendments which would need to be written to implement this regulatory power within this chapter.
inserted by amendment between subsections 12.209.2 and 12.209.3 of the current amended ordinance that contains specific requirements and regulations concerning the Board's ability to regulate properties nominated for designation. This additional section should read as follows:

§ 12.209.3 Certificate of Appropriateness Applications Affecting Property Nominated by the City Historic Preservation Officer for Designation

When a certificate of appropriateness application is made for work on a building, object, site, or structure nominated by the City Historic Preservation Officer for designation by the Board, the Planning and Zoning Commission, and City Council as an historic landmark or on a building, object site, or structure located within a specific geographic area nominated by the City Historic Preservation Officer for designation by the Board, the Planning and Zoning Commission, and City Council, the applicant shall follow the application procedures outlined in subsection 12.209.2 of this ordinance until the final decision on the nomination of the property by the City Council.

The applicant may submit an application for a certificate of appropriateness for a proposed project to the City Historic Preservation Officer prior to final City Council action on the designation request of the property in question. The City Historic Preservation Officer shall make the determination whether the proposed project strictly involves ordinary maintenance and repair and shall either issue the permit for the ordinary maintenance and repair work intended upon approval of the Chairman or Vice-chairman of the Board pursuant to subsection 12.209.2(b) of this ordinance or shall submit the completed application for work not strictly involving ordinary maintenance and repair to the Board review pursuant to subsection 12.209.2(c) of this ordinance. The Board shall review the application using the criteria set forth in subsection 12.209.1 of this ordinance. Should the Board deny the applicant's request, the applicant may appeal to the City Council following the procedures outlined in subsection 12.209.2(h) of this ordinance.

The City Council may authorize the issuance of the certificate of appropriateness on a resource nominated for designation by the City Historic Preservation Officer if, by formal resolution, it deems the issuance of the certificate of appropriateness necessary for the public health, welfare, or safety.

Should the City Council fail to designate the nominated building, object, site, or structure as an historic landmark or the nominated area as an historic district, the Building Official shall issue all relevant construction permits for the work requested provided all City Code requirements are met.376

All of the amendments to the historic preservation ordinance recommended for eventual adoption in this chapter may be formulated and adopted for the most part at the discretion of the

Board, given its evaluation of the needs of the city’s significant historic, cultural, and architectural resources at future points in time. All, that is, except for the amendment to extend the regulatory control of the ordinance over properties nominated for designation as historic. The Board should make this amendment one of its top priorities if and when the temporary, amended ordinance is permanently adopted by the City Council after its four year trial period, in order to avoid any further risk of the loss of the significant characteristics of nominated property by the actions of spiteful and unwilling owners of such property.
CHAPTER SIX: RECOMMENDATIONS CONCERNING THE CREATION OF A GERMAN-TEXAS HILL COUNTRY HERITAGE AREA

I. Explanation and Analysis of a "Heritage Area"

The creation of a heritage area to encompass the area of the Texas Hill Country settled by the German immigrants of the Adelsverein and the German immigrants who followed them is a method that could eventually be used to help both protect the historic, architectural, cultural, and scenic resources of the encompassed area within the Hill Country and further promote tourism and other economic opportunities in the area. Combining the efforts and resources of the historical communities of New Braunfels, Boerne, Fredericksburg, Kerrville, Comfort, Blanco, Johnson City, Bandera, and other smaller, primarily German-settled communities in the Hill Country area of Texas could generate huge increases in tourism to these communities and result in large economic windfalls for both historic sites and commercial businesses. Joint educational and promotional campaigns and joint programming could even be coordinated between the newly created heritage area and the LBJ Heartland Network, a small heritage area already in the boundaries of the German-Texas Hill Country that concentrates on promoting the historic, cultural, and natural resources of the area where President Lyndon Baines Johnson began and ended his political career. However, the potential damage that could be done to the significant historic, cultural, architectural, agricultural, and scenic resources of the area in general and to those of Fredericksburg in particular is significant if protective regulations for these resources are not in place at the time of the creation of the heritage area.

377 Julia Jarrell, Executive Director, LBJ Heartland Network, conversation with author, Stonewall, Texas, 4 January 1996.
A heritage area is defined as an area that shares "a distinctive sense of place unified by large-scale resources" such as rivers and lakes, historic roads, or a common culture. They usually include both urban and rural settlements, and they most often are comprised of multiple government jurisdictions.

Heritage areas encourage both the protection of environmental, scenic, [historic] and cultural resources and sustainable development for tourism and other economic opportunities. They educate residents and visitors about community history, traditions, and the environment, and provide outdoor recreation.

Finally a heritage area is governed by a coalition of private and public sector entities that engage in coordinating promotional and resource protection efforts on a regional management scale.

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379 Ibid.

380 Ibid.
II. The Benefits of the Creation of a Heritage Area for the German-Texas Hill Country

The area of the Texas Hill Country settled by the German immigrants in the mid-nineteenth century certainly qualifies for the status of a heritage area. The region is united by a common history, culture, and geography. Furthermore, New Braunfels, Bandera, Kerrville, and Boerne, cities on the boundaries of the German-Texas Hill Country area, each offer significant historic, scenic, and recreational resources that are already major attractions for tourists to these cities. All of these cities are known throughout Texas for their nearby lakes and/or the creeks, or rivers that run through them, all of which provide excellent boating, tubing, and fishing opportunities. New Braunfels in particular is famous for its man-made water parks, two rivers, and nearby Canyon Lake, all of which help make tourism an extremely important part of the city’s economy. All of these cities are also known for the scenic hills among which they are nestled, and the wild flowers that cover these hills and valleys in the spring time. Finally, with the exception of Kerrville, each one of these cities along the edges of the German-Texas Hill Country successfully markets its historic and cultural resources, so that these resources also serve as a vital aspect of the large, tourism-based part of their economies.

The fame of Fredericksburg’s quaint Germanic atmosphere, its significant historic and architectural resources, its peaches, and its scenic surroundings also have resulted in tourism playing a major role in Fredericksburg’s economy. However, unlike New Braunfels, Boerne, and Kerrville, Fredericksburg is not located on a major interstate highway. Thus, Fredericksburg and, more importantly, its neighboring historic communities in Gillespie County could definitely increase the annual number of visitors to its historic sites and cultural events by joining in promotional programs with the other major tourist cities in the German-Texas Hill Country and siphoning off tourists from the other cities’ interstate highway tourist traffic.
However, the goal of this coalition of Adelsverein communities into a heritage area would not only be to promote tourism in general, but also to educate people on the importance of various historic, cultural, and scenic/natural sites in the area and why they should be visited, appreciated, and understood in their overall context by tourists and natives alike. By combining the efforts and resources of preservation organizations, historic site museums, cultural event sponsors, and local governments to concentrate on getting information out about all the historic, cultural, architectural, and natural resources, a much larger audience can be reached, and an emphasis on the historic development of the entire area, the context of these resources, can be achieved. A series of heritage area tourist passes could even be initiated that would give people admission into a series of historic sites, state parks, or architectural tours in and around participating communities. This type of package deal would have the advantage of sharing the wealth of tourism among many of the communities participating in the heritage area. It would also give people an idea of the overall historic and cultural development, natural resource development and general environment, or the architectural development of the entire area (a part of the overall story of the German-Texas Hill Country), rather than having these people only develop a limited idea of the area by visiting just one or two outlying cities.381

It is hoped that these education campaigns on the existence and importance of the historic, cultural, architectural, and scenic/natural resources of the area would also bring about a new appreciation of the historic built and scenic/natural environments of their communities and the Hill Country area as a whole among area citizens, so that they will join in supporting the efforts to preserve these environments. The increases in tourism that should result in the heritage area’s

381 Heritage passes have worked very successfully in England and are beginning to be used in heritage areas in the United States with success according to William McCloud, Assistant Director, Heritage Tourism Program, National Trust for Historic Preservation, conversation with author, Washington, D.C., 9 August 1995.
education and marketing campaigns of the region’s significant historic and architectural resources will also hopefully make people desire to preserve certain endangered examples of these resources as a way to market their tourist-oriented business.

It is also desired that the additional tourism generated by such education and marketing campaigns will make local governments even more firmly commit to supporting and even expanding local regulation of historic, cultural, and architectural resources and to encouraging private efforts to promote the cause of preservation and heritage education. Large businesses wishing to relocate or establish themselves in a new area might also be motivated to locate their operations in the area because of the unique atmosphere and high quality of life offered by the Hill Country and promoted by the efforts of the heritage area. Finally, it is hoped that many of the smaller towns in the German-Texas Hill Country area, which are struggling to survive economically as communities but which have significant historic and architectural resources (such as Stonewall, Sisterdale, and Comfort), can receive great economic benefit from tourism as a result of the regional marketing campaigns and heritage pass programs.
III. The Potential Danger of the Creation of A Heritage Area

However, along with the many benefits that could occur, a very real danger could also result from the creation of a German-Texas heritage area in the Hill Country. The citizens, business people, and governments of the old Adelsverein settlement communities could become blinded by the economic possibilities of increased tourism that could result from the efforts of the heritage area. As a result, they might initiate the creation of the heritage area without first having adequate protections in place for the very historic, cultural, architectural, and scenic/natural resources they wish to promote for generations to come. At the present time, Fredericksburg simply does not have the regulatory mechanisms in place to adequately protect the very historic, architectural, cultural, agricultural, and scenic resources that attract the many tourists who visit the city each year. How much greater would the alteration or destruction of these resources be with a increase in tourism generated by the efforts of the potential heritage area given Fredericksburg’s current lax level of historic preservation regulation and lack of growth management mechanisms? Thus, unless the city both amended the current historic preservation ordinance along the lines of the amended ordinance presented in this thesis and developed a growth management plan such as the growth phasing program suggested in Chapter Four, Fredericksburg’s participation in any heritage area could destroy the very resources the city intended to promote to its increased economic advantage. In fact, even with the amended ordinance and a long-term growth management plan in place, preservationists in Fredericksburg should hesitate to join such a heritage area without first extending the protections of the amended ordinance to properties that are nominated for historic designation. This added and extremely

necessary amendment would help insure that owners enticed by greater profits from increased tourism would not be able to make detrimental but commercially advantageous changes to their nominated properties that could not gain approval under the criteria for the approval of certificates of appropriateness under the amended ordinance.

The dangers of increased tourism to historic, cultural, architectural, agricultural, and scenic resources are even greater for the smaller communities in the area, many of which are unincorporated and therefore have no ability to protect themselves through municipal regulations. The tiny, unincorporated communities of Stonewall and Luckenbach, both located in Gillespie County and in the boundaries of the small heritage area known as the LBJ Heartland Network, have worked hard to preserve the historic architectural resources in their surrounding areas and to market them as rural historic sites for tourists. Although the level of tourist visitation of these sites generated by the efforts of the LBJ Heartland Network is relatively small, Stonewall and Luckenbach’s participation in a heritage area for the German-Texas Hill Country could result in a huge increase in tourism to these sites, especially if they become part of a heritage pass program. This potential increase in tourism, however, could also lead to the creation of souvenir shops and tourist-oriented businesses in other historic buildings and structures in or around these communities, with the possibility that these businesses could significantly alter the historic character of these buildings. Increased tourism could result in the eventual replacement of much of the hilly, scenic orchard and ranch lands surrounding these two tiny communities and the many others in the area like them with residential subdivisions and fast food restaurants. With a lack

[383] The LBJ Heartland Network, the Stonewall Heritage Society, and the Gillespie County Historical Society have worked with residents of Stonewall and Luckenbach and their surrounding areas to complete the rehabilitations of several historic area school houses and promote these as rural historic tourist sites, according to Bernice Weinheimer, President, Stonewall Heritage Society, Gillespie County, Texas, conversation with author, Stonewall, Texas, 30 August 1995.
of any option to create municipal historic regulations due to the lack of incorporation, the
economic boom resulting from participation in any German-Texas Hill Country heritage area by
these two unincorporated towns and other towns like them in the area could and probably would
be coupled with disastrous results for their historic architectural, agricultural and scenic
resources.

Thus, ultimately, the creation of a German-Texas Hill Country heritage area could be
fantastic mechanism to increase awareness, visitation, and appreciation of the area's significant
historic, architectural, cultural, and natural/scenic resources. It could also result in an economic
windfall to area communities due to increased tourism. However, the potential exists for the
premature creation of this economically promising heritage area without some forms of adequate
protections for these significant resources being in place. The realization of this potential could,
in turn, result in substantial losses to these resources, particularly to those located in or around
small, unincorporated towns within the area. In order to avoid such devastating, potential losses,
the coalition of private and public sector entities that must work together to establish the heritage
area and implement its programs must first make certain that as many methods of protection of
these varied resources are in place as possible before the programs and campaigns of the heritage
area are begun.

The local governments of each municipality in the proposed heritage area must enact
historic preservation ordinances and/or insure that their preservation ordinances are strong enough
to protect designated resources from the detrimental onslaught of economic boom experienced by
Fredericksburg.\textsuperscript{384} Preservationists in the unincorporated communities in the area must enlist

\textsuperscript{384} The State of Texas recognizes two types of municipalities in statutory law: \textit{general law cities} (under 5,000 in population) and \textit{home rule cities} (over 5,000 in population that adopt a city charter). Both general law and home rule cities may adopt zoning laws and, therefore, preservation ordinances." (emphasis kept) \textit{THC}, p. 3.
the aid of their county’s County Historical Commissions, which act as the local government arm of the Texas Historical Commission at the county level,\footnote{Texas Historical Commission, \textit{Texas Preservation Handbook for County Historical Commissions} (Austin, Texas: Texas Historical Commission, 1994), p. 33.} to help them register qualifying resources in the area on the National Register of Historic Places and designate these resources as Recorded Texas Historic Landmarks.\footnote{Recorded Texas Historic Landmark designation confers roughly the same protections offered by registration on the National Register of Historic Places. Persons wishing to change the exterior appearance of a Recorded Texas Historic Landmark, including relocation and demolition, must notify the Texas Historical Commission at least sixty days before the desired change is to take place. Once notified, the Commission may then negotiate for and encourage the preservation of the Landmark, but the Commission is ultimately powerless to stop the change from occurring. Texas Historical Commission, \textit{Texas Preservation Handbook for County Historical Commissions} (Austin, Texas: Texas Historical Commission, 1994), pp. 40-41.} Furthermore, historic and natural landscape preservation proponents and local municipal governments should strive to create some method of growth management for the cities in the area, in order to limit the harmful effects of sprawl on the surrounding scenic and agricultural lands. In rural areas with unincorporated communities, help from the Texas Parks and Wildlife Department and the Hill Country Foundation (the regional land trust) could be enlisted to help educate local scenic and/or agricultural land owners on the benefits of conservation easements and encourage them to donate such easements for the protection of their lands from destructive development.

Such massive efforts to insure that as many regulatory measures as possible are in place in the proposed heritage area will not gain success easily, given the anti-regulatory ideology prevalent in the area and state regulations prohibiting certain provisions of municipal zoning ordinances to apply to municipal extraterritorial jurisdictions.\footnote{See Chapter Four.} Consequently, the process of initiating the beneficial operations of a heritage area in the German-Texas Hill Country could
be delayed for some time, and some communities, including Fredericksburg, may have to be excluded from membership until they implement tough regulatory historic preservation ordinances and achieve some success at comprehensive growth management planning or conservation easement donation. In the long run, however, the additional delay in implementing the creation of a heritage area for the German-Texas Hill Country will be worth while to all participating communities. The regulations and protections initiated during the delay period will help insure that the historic, cultural, architectural, and scenic/natural resources that the heritage area will promote will exist well into the future as continuing sources of interest and attraction for tourists and locals alike.
CONCLUSION

As noted in Chapter One, the poverty and isolation that Fredericksburg, Texas, experienced until the mid-twentieth century allowed the city to retain its German cultural heritage and many of its nineteenth and early twentieth-century structures, including a number of fachwerk (combination wooden beam and stone) buildings constructed by its original Adelsverein settlers. However, Fredericksburg’s "quaint" German atmosphere and its location within commuting distance of Austin and San Antonio have caused tremendous increases in tourism and growth over the last twenty years. As a result, the city proposed a basic historic preservation ordinance in 1987 which was based on Texas Historical Commission recommendations and the ordinances of surrounding communities. The ordinance was significantly weakened in the process of enactment, however, in order to gain public acceptance in the face of strong property rights-based opposition. Under the current ordinance, the mandated Historic Review Board is a purely advisory body, with no power to enforce its recommendations once initial reviews of proposed changes to or demolitions of historic structures have been made. Furthermore, the City has only designated one historic district since 1987, with no properties currently designated outside of this district’s boundaries.

The weakness of the present ordinance has allowed many of the city’s historic buildings to be altered in ways that compromise their historic structures or characters. The inability of the Historic Review Board to prohibit proposed new construction or the relocation of structures within the historic district has led to the construction of new buildings that detract from the historic and cultural character of the city’s recognized historic area. With the town’s steady growth in population and tourism and the resulting economic attractiveness of starting new tourist-oriented businesses in historic or pseudo-historic buildings, the threat to Fredericksburg’s
historic built environment continues to grow. Fortunately, the City Council recently recognized the weakness of the city's historic preservation ordinance in the face of this real threat to the city's historic resources, and it authorized the Historic Review Board to begin work on proposals to strengthen the present ordinance. However, the Historic Review Board member in charge of drafting these proposals will be unable to carry out this responsibility at any time in the near future. Thus, no changes will be made to the Fredericksburg historic preservation ordinance for quite some time.

Another problem generated by the increase in population currently being experienced by Fredericksburg is the loss of the city's surrounding agricultural lands and scenic hills to commercial and residential development sprawl. This sprawl has the potential to cause a significant drain of municipal coffers because of the cost the city must sustain in providing utilities and services to the new developments. It also threatens to reduce the revenues and livelihoods generated by tourists coming to the city to experience the scenic hills, the bucolic atmosphere, and the area's famed peaches through the destruction of prime orchard and ranch lands and the defacement of the beautiful hills. Unfortunately, the problem of sprawl has not yet been recognized as critical by municipal officials or a majority of the citizens of Fredericksburg.

In order to combat the threats to the historic and natural resources in and around Fredericksburg through an effective use of government regulation, one must overcome significant feelings against such regulation that exist within the community. Recent political and legal battles between local landowners and the U.S. Environmental Protection Agency, the National Park Service, and the State of Texas have strengthened citizen opposition to government regulation of private property. This opposition makes the attempt at having local citizens accept increased historic preservation regulation in the form of an amended historic preservation ordinance rather challenging to say the least. Furthermore, the profit to be obtained by landowners who sell their
agricultural lands or scenic hills to developers, along with state laws that prevent lands within municipalities' extraterritorial jurisdictions from coming under most of the municipalities' zoning regulations, make the formulation of government regulations that can successfully bring sprawl under control extremely difficult.

The purpose of this thesis is to offer legal means of preventing further destruction of both the city's historic resources and the historic and scenic landscape that surrounds and help define Fredericksburg, because of the increasing tourism and population growth the city continues to sustain. However, these means have been developed with the political realities of the situation in Fredericksburg in mind, so that they are intended to be the most practical yet publicly acceptable solutions available to solve the city's problems with the loss of its significant historic, cultural, architectural, and scenic/natural resources. Strategies have also been formulated to go along with the regulatory solutions offered that could be used to help the proponents of historic preservation and landscape protection gain acceptance for the proposed regulations among the citizens of the city and the surrounding area.

The historic preservation ordinance contained in Chapter Two is proposed by this author as a viable means of balancing the regulatory provisions necessary to adequately preserve Fredericksburg's designated historic properties with the need to quell citizen fears of excessive. The preamble to the proposed ordinance states the legal justification for the city's ability to regulate designated properties under state law and state and federal judicial interpretation. It, along with Section 12.201, also offers an explanation of the socially, economically, and educationally beneficial reasons that motivate the need for the amended historic preservation

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388 Please see Appendix B for reference to the specific sections of the amended ordinance mentioned in this conclusion.
ordinance. The presence of both a legal justification of historic preservation regulation and an explanation of the benefits offered by such regulation are sorely lacking in the current ordinance.

Section 12.203 mandates that the Historic Review Board conform to the requirements maintained for such bodies by the Texas Historical Commission for cities that desire to receive the designation and the accompanying economic and technical benefits of certified local government status. In doing so, this section transforms the Historic Review Board from a purely advisory body to a municipal board that has the power to enforce the expanded regulatory powers granted the city in subsequent sections of the amended ordinance. Section 12.203 also mandates that the Board sees to the creation of an historic preservation plan for the city as a component of each new comprehensive plan devised for Fredericksburg and that the Board periodically reviews and recommends preservation-promoting amendments to the Fredericksburg Code of Ordinances and the City of Fredericksburg Zoning Ordinance. Both of these provisions are designed to insure that the city actively promotes historic preservation in every realm of its operation, a crucial concept in historic preservation regulation that receives only four words of mention in the current ordinance.

Section 12.204 creates the part-time municipal position of City Historic Preservation Officer and requires that the person selected for the position have expertise in historic preservation or architectural history as well as other qualifications necessary to serve as a part-time City Inspector under the City Building Official. The expertise of the City Historic Preservation Officer (CHPO) helps assure that more preservation-friendly decisions and enforcement will be carried out than is currently being conducted by the City Building Official in his capacity as an equivalent to the proposed CHPO under the current ordinance. Having a CHPO not only is a requirement for certified local government (CLG) status under Texas Historical Commission (THC) regulations, but is also crucial for the adequate administration and
enforcement of the provisions of the amended ordinance. The qualifications of the CHPO are written in a way that may allow a citizen of Fredericksburg to qualify for the position, since it will be more acceptable to the people of the city if the CHPO is a native who knows the community and the needs of its people, rather than an outsider.

Section 12.205 expands the criteria used for the designation of historic landmarks and historic districts to conform with criteria for designation mandated by the National Register of Historic Places, thereby allowing the amended ordinance to satisfy another requirement for CLG status. Subsection 12.205.1 also mandates that an historic district proposed for designation must have the approval of fifty-one percent of the owners of property within the potential district before it can be designated as such, thereby guaranteeing Fredericksburg property owners that historic district designation can be rejected by simple, democratic majority rule. Section 12.206 then establishes detailed regulations concerning how concerned parties are to be informed of public designation proceedings, exactly how a series of public meetings must be held and what actions must take place in order to designate a property or properties as historic, and how a property owner or owners may appeal a designation or a lack of designation. These regulations are intended to both satisfy CLG requirements and to assure the citizens of Fredericksburg that the members of the government who have the power to designate properties as historic can learn of the desires of affected property owners and can be held publicly responsible for their actions, especially if their actions seem contrary to the public will.

Section 12.207 is intended to assure government regulation-anxious citizens that the designation of a property as historic cannot change or affect the usage of that property under the city’s zoning ordinance. Section 12.208 is written to provide a legal mechanism to protect the owners of certain designated properties, so that these owners do not have to be held continually, legally responsible for the protection and preservation of designated properties that have lost their
historical, architectural, or cultural significance through no fault of the owners themselves (such as through an accident or natural disaster). It is recommended that the checks against excessive regulation of private property written into Sections 12.205-12.208 be aggressively publicized as a means of winning the support of skeptical citizens for the adoption of the amended historic preservation ordinance by the City Council.

Section 12.209 contains the majority of the expanded regulatory powers granted the city in the amended ordinance, and it is the ordinance’s main tool for minimalizing the harmful effects the increasing tourist and population growth of the city is having on its designated historic resources. The certificate of appropriateness procedures and requirements established in this section are designed to insure that all new construction, reconstruction, maintenance, repair, restoration, installation, and alteration conducted on designated historic landmarks or within designated historic districts will not be detrimental to the structure and/or significant character of these landmarks and historic districts. Subsection 12.209.3 is specifically written to prevent all but the most essential demolitions of historic landmarks and contributing properties within historic districts to occur. Strict enforcement procedures contained in subsection 12.209.5 are designed to discourage property owners from trying to illegally avoid the certificate of appropriateness process.

However, the provisions of subsection 12.209.1 are meant to assure wary owners of designated properties and other citizens that the Board will work diligently to conform to the financial and other needs of property owners in making its decisions on certificate of appropriateness applications. The appeals process written into the procedures outlined in subsection 12.209.2 are also meant as a mechanism by which overly excessive rulings on certificates of appropriateness applications may be overturned, thereby helping to assuage local fears that the powers of certificate of appropriateness application review granted to the Historic
Review Board will be misused. Similarly, Sections 12.210 and 12.211 are intended to provide relief to owners of designated properties who might be suffering from economic or other serious hardship because of the prohibitions against significant exterior changes to designated properties contained in Section 12.209. No similar and extremely necessary safeguards exist within the city’s current ordinance. Once again, it is recommended that the safeguards against excessive regulation in Sections 12.209-12.211 be aggressively marketed to the populace in order to help eliminate citizens’ fears and thereby gain further public support for the adoption of the amended ordinance.

Not only are Sections 12.210 and 12.211 intended to reduce citizen concerns over government regulation of private property, but they are also intended to reduce the risk that the city will be found guilty of a regulatory taking in a suit brought against an aggrieved applicant who went through the processes outlined in either or both of the sections without success. The economic hardship application procedure contained in Section 12.210 is also necessary for Fredericksburg to receive CLG status from the THC.

Sections 12.213 and 12.214 are designed to work with the provisions of Section 12.209 in helping to protect designated resources from detrimental change by enabling the Historic Review Board to stop the demolition of designated properties through neglect and to help stop the use of the city’s public safety laws by malicious owners to force the demolition of designated historic resources. Again, similar sections are lacking in the present ordinance, but are necessary to prevent the destruction of designated properties in times of future economic depressions within the community. Section 12.215 is also intended to help accomplish the goal of protecting historic resources manifested in the provisions of Sections 12.209, 12.210, and 12.211 by giving the Board authority to recommend that the city acquire ownership and control of endangered designated resources.
Two other sections crucial to the protections offered historically designated properties in the amended ordinance are the applicability and enforcement provisions contained in Section 12.216 and the penalty and remedy provisions contained in Section 12.217. Section 12.216 extends the regulatory powers of the ordinance over designated properties owned by the City of Fredericksburg, and it delegates enforcement responsibilities to specific city officials, a delegation of responsibility that is woefully lacking in the current ordinance. Section 12.217 offers stiff penalties as a discouragement to any owners of designated properties or their hired workers who might desire to make detrimental changes to Fredericksburg’s historic resources. Section 12.218, on the other hand, is designed to insure that the ordinance and protections offered to the city’s historic resources by its provisions do not become null and void if any of the sections in the ordinance are declared unconstitutional by a court of competent jurisdiction. This section is a necessity in such a litigious age and in a city and state where such a high level of concern over possibly detrimental government regulation of private property exists.

Finally, Section 12.219’s expiration date for the temporarily amended ordinance is intended to provide the proponents of the amended ordinance a major tool in the fight to achieve initial adoption of the ordinance by the City Council in the face of property rights-based opposition from local citizens. Section 12.219 gives the ordinance a four year "trial period," which should be a short enough time period of enforcement so that citizens worried about potential abuses that could result from the enactment of the ordinance will be willing to give the ordinance a trial run without feeling they are committing themselves to something that could irreversibly harm themselves and their neighbors. This trial period should also provide enough time to allow the enforcement of the ordinance to start producing the benefits of historic preservation regulation promised by the ordinance’s proponents. Hopefully, the benefits that will be produced by the amended ordinance will be substantial enough to overcome any opposition
that might still exist within the community at the end of the temporary enforcement of the ordinance. If such is the case, then Fredericksburg can permanently enact this strong historic preservation ordinance that will adequately protect its historic resources from increased tourism and population growth, provide technical and financial assistance to preservation projects in the city through the privileges offered CLGs by the THC, and well serve the needs and desires of the citizens of Fredericksburg.

A method to decrease the cost to the taxpayer of the increased historic preservation regulation mandated by the amended ordinance is offered in Part I of Chapter Three in the form of a temporary amendment to the city’s hotel occupancy tax. The amendment takes advantage of a provision of the Texas Tax Code that allows the City of Fredericksburg to allocate a certain percentage of the revenues generated by the municipal hotel occupancy tax to the Historic Review Board for the support of tourism-generating programs involving historic preservation. Such an amendment would not only decrease the tax revenues necessary to support historic preservation regulation in Fredericksburg under the amended ordinance, it would also help increase the profits generated from tourism in the city to the benefit of the city and its citizens. Thus, this temporary amendment to the city tax code could help make the temporarily amended historic preservation ordinance more acceptable to the people of Fredericksburg, and it should be enacted out of a sense of equity to help make the tourists who enjoy the historic resources of the city help pay to insure the continued preservation of these resources.

Parts II through IV of Chapter Three deals with the many actions and changes that are needed to bring both the regulations and aims of the city’s signage ordinance, zoning ordinance, building code, and fire safety code into a significant measure of conformity with the regulations and aims of the proposed amended historic preservation ordinance. Part II contains an amendment to the city’s signage ordinance that will extend the jurisdiction of the Historic Review
Board to review all proposed work to signs under the certificate of appropriateness procedures in the temporary, amended ordinance to include all signs in all designated historic districts and on all designated historic landmarks. This amendment will allow the amended historic preservation ordinance and the signage ordinance to be complementary rather than contradictory, thereby further advancing the cause of historic preservation in the city.

It is argued in Part III of Chapter Three that spatial requirements for setbacks, building heights, etc., written into the zoning categories of properties located within designated historic districts must be changed to more closely mirror the historic preservation-oriented design guidelines developed for these properties by the Historic Review Board. These changes will eliminate the potential for anti-preservation property owners to play one set of spatial regulations off of another to avoid conformance with the aims of the amended preservation ordinance. The chapter also recommended that special off-street parking requirements for designated historic properties already in the zoning ordinance be extended to all relevant designated historic properties. This action will reduce the likelihood of the destruction of an historic resource in order to satisfy rigid off-street parking standards. Finally, the chapter strongly urged the city to adopt the *National Existing Structures Code* as a means of eliminating the municipal regulations concerning building and fire safety that make it virtually impossible to substantially rehabilitate buildings and structures in a manner sympathetic to the preservation of their historic structures and characters.

Chapter Four focuses first on how Fredericksburg’s problems with sprawl directly affect the cause of historic preservation within the city itself and then concentrates on methods that could be utilized to combat sprawl and save the surrounding area’s historic agricultural lands and scenic beauty. The chapter offers a solution to the problem through the formulation and implementation of a growth phasing program for the city that would channel growth into
designated areas within Fredericksburg's extraterritorial jurisdiction. However, as the chapter points out, the significant public opposition that would first have to be overcome in order to begin the formulation of the program makes the idea a long term solution at a time when immediate solutions are necessary. Thus, the short term solution of amending the city's comprehensive plan, subdivision ordinance, and planned unit development regulations is recommended to 1) allow the use of cluster zoning in new developments within the city limits in order for developers to comply with municipal regulations prohibiting the development of hills designated as scenic, and 2) to strongly encourage the use of similar cluster zoning techniques in subdivisions planning to develop scenic hills located within the city's extraterritorial jurisdiction in order to avoid the loss of these hills' visual beauty.

Admittedly, this short term solution merits more study than can be provided in this thesis, especially in light of the strict state laws prohibiting the extension of most provisions of Fredericksburg's zoning ordinance into the city's extraterritorial jurisdiction. The lucrative opportunity the traditionally poor land owners around Fredericksburg see in the ability to sell their agricultural and scenic land for unlimited development is yet another source of public objection to this short term solution that limits the chances of success of such a solution. However, the second short term solution proposed in Chapter Four, the encouragement of land owners in the surrounding area to donate conservation easements as a method of decreasing income, property, and estate taxes, does have a fair chance at helping to preserve the historic and scenic landscape surrounding the city. The state's conservation easement program offers both immediate and long term financial benefits to land owners, and it does not smack of any form of involuntary and/or excessive government regulation of private property. Thus, this second, short term solution offers the most viable, least antagonistic, solution for slowing the destructive
advancement of sprawl around Fredericksburg until such time as its citizens can be convinced to support the formulation of a growth phasing plan for the city.

Chapter Five proposes further amendments to the temporary, amended ordinance once it is permanently enacted that will be necessary to deal with the anticipated problems and needs of preservation regulation in Fredericksburg that will develop in the years to come. Increases in the membership of the Historic Review Board and the expansion of the office of City Historic Preservation Officer are urged to insure that the ordinance will be properly administered and enforced as the number of designated properties grows. The chapter recommends the creation of application fees for certificate of appropriateness applications to help the city pay for the increasing cost involved in the administration of the amended ordinance, and it urges the formulation and addition of municipal tax incentives to the ordinance to encourage the proper rehabilitation of designated properties that cannot qualify for other existing federal tax incentives. The last and most crucial amendment recommended by this chapter is the one that would extended full application of the ordinance’s certificate of appropriateness requirements to properties once they are nominated for designation. This amendment would protect potentially eligible properties from having their significant characteristics destroyed by malicious property owners who are bent on seeing that their properties are not designated as historic, or who wish to complete desired but detrimental changes to their property that they know will not be allowed once the property becomes designated.

Finally, Chapter Six first examines the potential economic and historic preservation-related benefits to be derived by Fredericksburg and other Adelsverein communities were these towns to create some form of German-Texas Hill Country heritage area. The chapter then focuses on the many threats to the significant historic,
cultural, architectural, and scenic/natural resources of the area posed by the premature promotion of the heritage area to tourists before the highest possible levels of protection for these resources are firmly in place. As Chapter Six points out, Fredericksburg’s current historic preservation ordinance cannot protect the city’s resources from the destructive pressures being imposed by the city’s current level of tourism and population growth, much less protect the same resources from an anticipated increase in tourism and population growth generated by the creation of some form of Adelsverein heritage area. Only with the protections offered by the adoption of the proposed amended ordinance or some similarly constructed ordinance could Fredericksburg legitimately and safely seek to become involved in the creation and/or promotion of such a heritage area.

The many people who visit Fredericksburg each year to experience its quaint Germanic culture, its numerous historic buildings, its beautiful, rural setting, and its peaches make the tourist industry a vital part of the local economy. These same assets also make the city attractive to more and more people who wish to move to Fredericksburg and experience its high quality of life permanently. However, the city and its citizens are destroying the very assets that attract both visitors and new residents alike in the desire by local businesses to capitalize on the use of historic or pseudo-historic buildings to help increase their sales and in the push to build new houses and commercial centers to cater to new residents. Clearly, the time to act to stop this destruction is now, before a significant portion of the city and surrounding area’s cultural, architectural, scenic, and historic resources is lost forever. It is hoped that the submission of a more sympathetically edited version of the amended historic preservation ordinance and the other recommendations contained in this thesis to several key members of Fredericksburg’s Historic Review Board and several members of area and state-wide landscape protection and historic preservation organizations and agencies will help inspire Fredericksburg to deal with the major threats that exist to the livelihood and social welfare of the community. The public officials and
concerned citizens of Fredericksburg have seen that the historic preservation regulation focusing upon voluntary compliance under the current ordinance simply does not work. They must now realize that the time has arrived for an increase in the city’s regulatory power to save the historic, cultural, architectural, and scenic resources of the city and surrounding area, formulated and administered in such a way as to engender the respect, support, and cooperation of the citizens of the community for these necessary regulatory measures.
APPENDIX A: CURRENT FREDERICKSBURG HISTORIC PRESERVATION ORDINANCE
ARTICLE 12.200  HISTORIC PRESERVATION

§ 12.201  Adoption

There is hereby adopted the Historic Preservation Ordinance of Fredericksburg, Texas. (Chapter 14-1/2, Section 14-1/2-1, Code of 1965)

§ 12.202  Definitions

Historic district. "Historic district" is defined as an area which has outstanding historical and cultural significance in the state, region or community, within which the buildings, structures, accessory buildings, fences, or other appurtenances are of basic and vital importance for the development of culture and tourism because of their association with history, including:

(a) Historic structures, sites or areas within which the buildings, structures, appurtenances, and places exemplify the cultural, political, economic or social history of the state, region or community.

(b) Historic structures, sites or areas that are identified with the lives of historic personages or with important events in state, regional or local history.

(c) Structures or areas that embody the distinguishing characteristics of an architectural type specimen as to color, proportion, form and architectural details.

Historic landmark. "Historic landmark" is defined as a place which has 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 the development of tourism. (Chapter 14-1/2, Section 14-1/2-2, Code of 1965)

§ 12.203  Designation of Historic Districts and Historic Landmarks

(a)  Historic Districts

(1) Zoning Designation. The city council may, from time to time, designate certain areas in the City of Fredericksburg as historic districts, and define, amend or
eliminate the boundaries of same. Such districts shall bear the word "Historic" in their zoning designation. Such designation shall be in addition to any other zoning district designation established in the zoning ordinance. All zoning maps shall reflect the historic district by the letter "H" as a suffix to the use designated.

(2) Criteria. In making the designation of an area as an historic district, the city council shall consider one (1) or more of the following criteria:

(A) Character, interest or value as part of the development, heritage or cultural characteristics of the City of Fredericksburg;

(B) Location as the site of an historical event;

(C) Embodiment of distinguishing characteristics of an architectural type or specimen;

(D) Relationship to other distinctive buildings, sites, districts or structures which are historically significant and preserved, or which are eligible for preservation;

(E) Unique location of singular physical characteristics representing an established and familiar visual feature of a neighborhood, community or the city;

(F) Value as an aspect of community sentiment or public pride;

(G) Identification with a person or persons who significantly contributed to the development or culture of the city.

(b) Historic Landmarks

(1) Zoning designation. The city council may, from time to time, designate certain places in the City of Fredericksburg as historic landmarks. Such places shall bear the word "Historic" in their zoning designation. Such designation shall be in addition to any other zoning district designation established in the zoning ordinance. All zoning maps shall reflect the historic landmark by the letter "H" as a suffix to the use designated.

(2) Criteria. In making the designation of a place as an historic landmark, the city council shall follow the procedures set forth in subsection (a)(2) of this section.

(Chapter 14-1/2, Section 14-1/2-3, Code of 1965)

§ 12.204 Historic Review Board

(a) Creation of board. There is hereby created an Historic Review Board of the City of Fredericksburg, Texas, hereinafter called the "board," consisting of seven (7) members appointed by the city council.

(b) Term of appointment. Each member of the board shall be appointed for a term of three (3) years, except that of the members of the first board to be appointed, two (2) shall be appointed to serve for two (2) years, and two (2) for one year. The term shall expire on the first day of July of the appropriate year. Any vacancy on the board shall be filled by the
city council for the remainder of the expired term. Any member of the board who fails to attend at least seventy-five percent (75%) of all regular meetings of the board within any twelve (12) month period shall be removed from the board, unless such failure to attend was the result of illness or other acceptable excuse as determined by the city council.

(c) **Qualifications.** Each member of the board shall be

1. a resident of the City of Fredericksburg, Texas, or
2. a resident of Gillespie County, Texas who owns an historic landmark or real property located within an historic district.

The board shall include at least one (1) representative from each of the following organizations: Gillespie County Historical Society and Fredericksburg Heritage Federation. Not less than two (2) members of the board shall reside in an historic landmark or within an historic district. Not less than one (1) member of the board shall have a license, degree, or professional experience in the field of architecture, architectural history, history, historic preservation or historic restoration. All members shall be persons who in the opinion of the city council have demonstrated interest and knowledge in the historical preservation of Fredericksburg.

(d) **Chairman and vice chairman of the board.** The chairman and vice chairman of the board shall be elected annually by a majority of the members of the board, and shall serve a term of one (1) year or until their successors are elected.

(e) **Functions of board.** The board shall act in an advisory capacity only, and shall have no power to bind the city by contract or otherwise. It shall be the function of the board to advise the building official concerning all applications for certificates of review in historic districts or historic landmarks.

(f) **Secretary of board.** The building official or his/her representative shall act as secretary of the board and shall attend and keep the minutes of all meetings.

(g) **Ex officio members.** The following members or their representatives shall serve on the board as ex officio members:

1. Building Official;
2. City Secretary; and
3. City Attorney.

Ex officio members shall have no right to vote, but shall assist the board in its various functions.

(h) **Meetings.** The board shall meet at least once a month at a regularly scheduled time. Special meetings may be called upon request of the chairman or the vice chairman, or upon written request of four (4) members, or upon notice from the building official that a matter requires the consideration of the board. All meetings shall have advance notice posted in accordance with the Texas Open Meetings Law. Five (5) members shall constitute a quorum, and action taken at a meeting shall require the affirmative vote of a majority of the members present and voting at such meeting. (Chapter 14-1/2, Section 14-1/2-4, Code of 1965)
§ 12.205 Certificate of Review

(a) No person or entity shall install, construct, reconstruct, alter, change, restore, remove or demolish any exterior architectural feature of any historic landmark or of any building or structure located within an historic district unless application is made for a certificate of review and such a certificate is granted by the building official.

(b) The applicant shall submit to the building official an application in writing for a certificate of review which includes data and information as required by the building official, including but not limited to the following:

1. Name of applicant and property owner.
2. Mailing address of applicant and permanent address of property owner.
3. Location of property to be altered or repaired.
4. A detailed description of the nature of the proposed external alteration or repair to be completed.
5. The intended and desired starting date and completion date of the alterations or repairs to be made.
6. A drawing or sketch of the proposed external alteration, if applicable.

(c) Applications that are incomplete or not in compliance with the city building code, restrictions and other city ordinances shall be returned to the applicant for completion and compliance.

(d) If the building official determines that the application involves ordinary repair or maintenance, or alteration, change, restoration or removal of any exterior architectural feature of a building or structure which does not involve significant changes in the architectural or historic value, style, general design or appearance, he/she shall within seven (7) days approve the application and forward a copy of the application and approval to the chairman of the board, or to the vice chairman of the board if the chairman is not available. The chairman or vice chairman of the board shall within three (3) business days either approve the building official’s decision or call for a meeting of the board to consider the application. If the chairman or vice chairman of the board does not take any action within three (3) business days, it shall be deemed that such person has approved the building official’s decision.

(e) If the building official determines that the application involves an alteration, change, restoration, removal or demolition of an external architectural feature of a building or structure which involves a significant change in the architectural or historic value, style, general design or appearance, he/she shall refer the application to the board and call for a meeting of the board to consider the application.

(f) The board shall hold a meeting to consider the application within forty (40) days after receipt of a completed application. The applicant shall be given written notice of the time and place of the meeting. Notice of the meeting shall be published in the official newspaper of the city at least five (5) days prior to such meeting. The board may hold any additional meetings it considers necessary to carry out its responsibilities under this article. The applicant or his/her agent shall attend at least one (1) meeting of the board during which his/her application is considered. The board shall make its recommendation to the building
official within sixty (60) days after receipt of a completed application unless the board and the applicant mutually agree to extend the period of review. If action is not taken within sixty (60) days after receipt of a completed application, it shall be deemed that the board recommends approval of the application.

(g) Anything in this article to the contrary notwithstanding, the board shall make its recommendation to the building official within one hundred twenty (120) days after receipt of a completed application for a permit to demolish an historic landmark or a building within an historic district, or to move an historic landmark, or to move a building into or out of an historic district.

(h) The board shall forward its report and recommendation to the building official. Upon receipt of the report of the board, the building official shall within three (3) days issue a certificate of review to the applicant. (Chapter 14-1/2, Section 14-1/2-5, Code of 1965)

§ 12.206 Criteria To Be Used

In determining the recommendation and action on an application for a certificate of review, the building official and historic review board shall consider the following matters:

(a) The effect of the proposed change upon the general historic, cultural and architectural nature of the district or landmark.

(b) The appropriateness of exterior architectural features which can be seen from a public street, alley, or walkway.

(c) The general design, arrangement, texture and material of the building or structure and the relation of such factors to similar features of buildings or structures in the district. The criteria shall not be the aesthetic appeal to the board of the structure or the proposed remodeling but rather its conformity to the general character of the particular historic area involved.

(d) All signs shall be in keeping with the character of the historic district or landmark.

(e) The value of the historic district or landmark as an area of unique interest and character shall not be impaired.

(f) The general and specific Standards for Rehabilitation and Guidelines for Applying the Standards for Rehabilitation, as issued by the Secretary of the Interior.

(g) The importance of finding a way to meet the current needs of the property owner, and the importance of approving plans that will be economically reasonable for the property owner to carry out. (Chapter 14-1/2, Section 14-1/2-6, Code of 1965)

§ 12.207 Annual Report

(a) The board shall make an annual report to the city council on the state of historic preservation in the city and shall include in the report a summary of its activities for the past year and a proposed program for the next year.

(b) The board shall have the further responsibility of recommending to the city council, planning and zoning commission, and city departments the adoption of policies, the sources of funds, and designation of historic districts and historic landmarks that may further the city's preservation effort. (Chapter 14-1/2, Section 14-1/2-7, Code of 1965)
§ 12.208 Signs in Historic District

(a) Signs other than those signs deemed exempt under Section 3.1105 to be placed in the historic district shall be subject to the review requirements of this article.

(b) Businesses located in the historic district shall have the option to erect a medallion or shield sign in lieu of the ground sign requirements of Section 3.1107(b)(3) or (c)(5). Any such sign shall not exceed sixteen (16) square feet of sign area, shall be mounted no more than nine feet (9') above the adjacent ground, and shall be erected wholly on private property. (Ordinance adopting Code)

§ 12.209 Violations; Penalties

(a) It shall be unlawful to construct, reconstruct, structurally alter, remodel, renovate, relocate, restore, demolish, raze or maintain any building, structure, accessory building, fence or other appurtenance in an historic district or historic landmark in violation of the provisions of this article, and property city officials, or their duly authorized representatives, in addition to other remedies, may institute any appropriate action or proceeding to prevent such unlawful construction, reconstruction, structural alteration, remodeling, renovation, restoration, relocation, demolition, razing or maintenance, to restrain, correct or abate such violation, to prevent any illegal act, conduct, business or maintenance in and about such premises. Each day such violation continues shall constitute a separate violation.

(b) Any person, firm or corporation violating any provision of this article shall be guilty of a misdemeanor, and each shall be deemed guilty of a separate offense for each day or portion thereof during which any violation hereof is committed, continued or permitted, and upon conviction any such violation shall be punishable by a fine not to exceed two hundred dollars ($200.00). (Chapter 14-1/2, Section 14-1/2-8, Code of 1965)
APPENDIX B: TEMPORARY AMENDED HISTORIC PRESERVATION ORDINANCE
AN ORDINANCE TEMPORARILY AMENDING CHAPTER 12 ARTICLE 12.200 OF THE CODE OF ORDINANCES OF THE CITY OF FREDERICKSBURG, TEXAS (HISTORIC PRESERVATION); TEMPORARILY REPEALING ALL ORDINANCES IN CONFLICT; ESTABLISHING AN EFFECTIVE DATE; AND ESTABLISHING AN EXPIRATION DATE FOR THE TEMPORARY ORDINANCE UNLESS PERMANENTLY ADOPTED BY CITY COUNCIL

WHEREAS, the Constitution of the State of Texas, 1876, expressed the obligation of the government to preserve the evidence of Texas' historical heritage (Texas Constitution Act XVI. Sections 38, 39, and 45, providing respectively for the Commissioner of Insurance, Statistics, and History; Appropriations for Historical Memorials; and Historical Records, Rolls, and Documents); and

WHEREAS, the first session of the Texas legislature following the adoption of the Constitution of 1876 created the Department of Insurance, Statistics, and History (8 Gammel's Laws pp. 1055, 1061); and

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

WHEREAS, CH. 211 TEXAS LOCAL GOVERNMENT CODE, Section 211.003 provides that in the case of designated places and areas of historical, cultural, or architectural importance and significance, the governing body of a municipality may regulate the construction, reconstruction, alteration, or razing of buildings and other structures; and

WHEREAS, CH. 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 regulations must be uniformed for each class or kind of building in a district; however, zoning regulations may vary from district to district; and

WHEREAS, the court in Connor v. City of University Park, 142 S.W. 2d 706 (Tex.Civ. App.-Dallas 1940, writ ref'd) held that "aesthetic considerations" are legitimate concerns in the regulation of land use years before historic preservation was included through amendment as part of the Municipal Zoning Authority, and the court in City of Dallas v. Crownrich, 506 S.W. 2d, 654 (Tex.Civ.App.-Tyler 1974, writ ref'd n.r.e.) confirmed the legality of municipal historic preservation regulation through zoning laws under the powers granted municipalities in Texas, and the United States Supreme Court in Penn Central Transportation Co. v. City of New York, 438 U.S. 104 (1978) reaffirmed its decisions in Village of Belle Terre v. Boraas, 416 U.S. 1, 9-10 (1974), Young v. American Mini Theaters, Inc., 427 U.S. 50 (1976), and City of New Orleans v. Dukes, 427 U.S. 297 (1976) that State and city enactment of land use regulations designed to enhance the quality of life through the preservation of the heritage and character of a city and its desirable aesthetic features is legal under the Constitution of the United States; and

WHEREAS, the City Council of the City of Fredericksburg recognizes the vital
importance that its residents place on the preservation and maintenance of the municipality’s unique historical, cultural, and architectural heritage as evidenced by the many historic structures and properties, all of which maintain cultural and neighborhood identity while encouraging tourism and industry, which are significant economic activities and sources of revenue for the municipality and its residents; and

WHEREAS, the City Council recognizes that the requirement of preserving the historical, cultural, and architectural heritage of the municipality is necessary because changes increasingly threaten to destroy buildings, structures, and areas having important historical, cultural, architectural, and community values, which, when damaged, altered, or destroyed, cannot be replaced; and

WHEREAS, it is the intent of the City Council to preserve the historical, cultural, and architectural heritage of the municipality while fully recognizing that fundamental property rights, guaranteed by the Constitution, emphasized by the Congress, and upheld by the Courts, must be protected.

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

That Chapter 12, Article 12.200 of the Code of Ordinances of the City of Fredericksburg is hereby temporarily amended in its entirety, pursuant to CH. 211 TEXAS LOCAL GOVERNMENT CODE, and shall henceforth read as follows:

ARTICLE 12.200 HISTORIC PRESERVATION

§ 12.201 Purpose and Intent

The City Council hereby recognizes that the City of Fredericksburg has become nationally and internationally known for its historic, architectural, and cultural resources and its beautiful setting in the Texas Hill Country. Fredericksburg’s distinct qualities have proven increasingly attractive to residents, businesses, and tourists alike.

As a matter of public policy, the protection, enhancement, and perpetuation of landmarks or historic districts of historical, cultural, and architectural merit are necessary to promote the economic, cultural, educational, and general welfare of the public. The City Council recognizes that the City of Fredericksburg 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. The provisions of this historic preservation ordinance are designed to achieve the following goals:

(1) To preserve, protect, and enhance significant sites and structures that represent or reflect distinctive and important elements of the city’s and/or State’s architectural, cultural, social, economic, ethnic, and political history and that impart a distinctive aspect to the City;

(2) To foster civic pride in the accomplishments of the past and strengthen civic pride through historic preservation;
(3) To promote the economic prosperity and welfare of the community by conserving the value of landmark buildings through stabilization, restoration or rehabilitation, and by encouraging the most appropriate use of such property within the city;

(4) To protect and enhance Fredericksburg’s attractiveness to visitors and the support and stimulus to the economy thereby provided;

(5) To ensure the harmonious, orderly, and efficient growth and development of the City;

(6) To provide a review process for the appropriate preservation and development of important cultural, architectural, and historic resources; and

(7) To maintain a generally harmonious outward appearance of both historic and modern structures through complementarily of scale, form, proportion, texture, and material.

§ 12.202 Definitions

The following definitions shall apply only to Article 12.200.

ALTERATION: Any construction or change of the exterior of a building, object, site, or structure designated as an historic landmark or located within an historic district. For buildings, objects, sites, and structures, alteration shall include, but is not limited to, the changing of roofing or siding materials; changing, eliminating, or adding doors, door frames, windows, window frames, shutters, fences, railings, porches, balconies, signs, or other ornamentation. Alteration shall not include ordinary maintenance or repair.

BUILDING: A building is a structure created to shelter people or things, such as a house, barn, church, hotel, warehouse, or similar structure, including an historically related complex, such as a courthouse and jail or a house and barn.

CERTIFICATE OF APPROPRIATENESS: A signed and dated document evidencing the approval of the Historic Review Board for work proposed by an applicant.

COMPREHENSIVE PLAN: A document or series of documents prepared by or for the Planning and Zoning Commission setting forth policies for the future of Fredericksburg.

CONSTRUCTION: The act of adding an addition to an existing building or structure or the erection of a new principal or accessory building or structure on a lot or property.

CONTRIBUTING: A building, object, site, or structure located in an historic district that contributes to the district’s historic, cultural, or architectural significance through location, design, setting, materials, workmanship, feeling, and association, and that shall be afforded the same considerations as an historic landmark. Such a property is classified as contributing on all city zoning maps and in the design guidelines for the historic district in which it is located.
DEMOLITION: An act or process that destroys or razes in whole or in part a site, structure, building, or object, or permanently impairs its structural or historic integrity.

DESIGN GUIDELINES: Guidelines that are adopted by the Historic Review Board and are meant to be used to help protect, perpetuate, and enhance the historic, cultural, or architectural character of a building, object, site, or structure.

ECONOMIC HARDSHIPS: An economic burden imposed upon an owner that is unduly excessive and prevents a realization of a reasonable return upon the value of the property.

ENDANGERED: Threatened by deterioration, damage, or irretrievable, irreplaceable loss due to neglect, disuse, disrepair, instability, lack of financial resources, and/or impending demolition.

HISTORIC DISTRICT: An area, urban or rural, defined as an "historic district" by City Council, State, or Federal authority and that may contain within definable geographic boundaries one or more historic landmarks, including their accessory buildings, fences, and other appurtenances, and natural resources having historical or cultural significance, and that may have within its boundaries other buildings or structures, that, while not of such historic, architectural, or cultural significance as to be designated landmarks, nevertheless contribute to the overall visual setting of or characteristics of the historic landmark or landmarks located within the district.

HISTORIC LANDMARK: A building, object, site, or structure that is of value in preserving the historic, cultural, or architectural heritage, or an outstanding example of design or craftsmanship, or a site closely related to an important personage, act, or event in history. Such properties should be preserved and protected from modifications that detract from their historical character or significance.

HISTORIC PRESERVATION: The identification, evaluation, recordation, documentation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, and reconstruction of historic building, structures, sites, or objects, or any combination of the foregoing activities.

HISTORIC PRESERVATION PLAN: A document that integrates the various preservation activities in the city and gives them coherence and direction, as well as relates the community’s preservation efforts to community development planning as a whole.

HISTORIC REVIEW BOARD: The Historic Review Board of the City of Fredericksburg reestablished and continued by this ordinance.

INVENTORY: A systematic listing of cultural, historical, or architectural resources prepared by a city, state, or federal government or a recognized local historic authority, following standards set forth by city, state, and federal regulations for evaluation of cultural properties.

NON-CONTRIBUTING: A building, object, site, or structure that, though located within the boundaries of an historic district, does not contribute to the historic, cultural, or architectural character thereof and that is classified as not contributing on all city zoning maps and in the design guidelines for the historic district in which it is located. Such designation is meant to provide greater latitude for the utilization of the property, but all modifications shall conform to
the design guidelines and all regulations of this ordinance unless otherwise exempted.

OBJECT: An object is a material thing of functional, aesthetic, cultural, or historic value that may be, by nature or design, movable yet related to a specific setting or environment.

ORDINARY MAINTENANCE AND REPAIR: Any work, the purpose and effect of which is to correct any deterioration or decay of or damage to a building, object, site, or structure, or any part thereof, and to restore the same, as nearly as may be practical, to its condition prior to such deterioration, decay, or damage, using the same materials or materials available that are as close as possible to the original. Any such work must comply with all applicable codes and ordinances of the City of Fredericksburg. Ordinary maintenance and repair does not include a change in design, material, or outward appearance other than a change in color; it does include in-kind replacement and repair.

REASONABLE RETURN: A reasonable profit or capital appreciation that may accrue from the use or ownership of a building, object, site, or structure as the result of an investment or labor.

RECONSTRUCTION: The act or process of reassembling, reproducing, or replacing by new construction, the form detail, and appearance of a building, object, or structure and its setting as it appeared at a particular period of time by means of the removal of later work, the replacement of missing earlier work, or the use of original materials.

REHABILITATION: The act or process of returning a building, object, site, or structure to a state of utility through repair, remodeling, or alteration that makes possible an efficient contemporary use while preserving those portions or features of the building, object, site, or structure that are significant to its historic, architectural, and cultural values.

RELOCATION: Any change of the location of a building, object, or structure in its present setting or to another setting.

RESOURCE: A source or collection of buildings, objects, sites, structures, or areas that exemplify the cultural, social, economic, political, or architectural history of the nation, state, or city.

RESTORATION: The act or process of accurately recovering the form and details of a building, object, site, or structure and its setting as it appeared at a period of time by means of the removal of later work or by the replacement of missing earlier work.

SITE: The location of a significant event, an historic activity, or a structure or group of structures, whether standing, ruined, or vanished, where the location itself maintains historical or cultural value, regardless of the value of any existing structure.

STABILIZATION: The act or process of applying measures designed to reestablish a weather-resistant enclosure and the structural stability of an unsafe or deteriorated building, object, site, or structure while maintaining the essential form as it exists at present.

STRUCTURE: Anything constructed or erected that requires location on the ground, or is attached to something having location on the ground, including, without limitation, buildings.
UNUSUAL AND COMPELLING CIRCUMSTANCES: Those uncommon and extremely rare instances, factually detailed, that would warrant the Historic Review Board approval of a certificate of appropriateness application due to the evidence presented.

§ 12.203 Historic Review Board

(a) Reestablishment of Board. There is hereby reestablished and continued the Historic Review Board of the City of Fredericksburg, Texas, herein after called the Board, consisting of seven (7) members appointed by the City Council.

(b) Qualifications. Each member of the Board shall be

(1) a resident of the City of Fredericksburg, Texas, or

(2) a resident of Gillespie County, Texas.

The Board as a whole shall generally represent the ethnic makeup of the City of Fredericksburg. The City Council shall make appointments that will enable the City of Fredericksburg to obtain and maintain "certified local government" status under the rules of the U.S. Historic Preservation Act of 1966, as amended, and Title 13, Cultural Resources, Part II, Chapter 15, 13 Antiquities Code of Texas 15.6, as amended. The Board shall include at least one (1) representative from each of the following organizations: Gillespie County Historical Society and Fredericksburg Heritage Federation. No fewer than two (2) members of the Board shall reside in and/or own a city-designated historic landmark or a building or structure within a city-designated historic district. Not less than one (1) member of the Board shall have a license, degree, or professional experience in the field of architecture, architectural history, or historic preservation. Not less than one (1) member of the Board shall be a historian. Not less than one (1) shall be a licensed real estate broker. A single member of the Board may meet more than one (1) but not more than two (2) of the residential, organizational membership, and occupational requirements of the overall membership of the Board. All board members, regardless of background, shall have a known and demonstrated interest, competence, or knowledge in historic preservation within the City of Fredericksburg.

(c) Term of Appointment. Each member of the Board shall be appointed for a term of three (3) years, except that of the first Board to be appointed under the amended ordinance, two (2) shall be appointed to serve for two (2) years, and two (2) for one (1) year. The term shall expire on the first day of July of the appropriate year. Any vacancy on the Board shall be filled by the City Council for the remainder of the absent member’s term. Any member of the Board who fails to attend at least seventy-five percent (75%) of all regular meetings of the Board within any twelve (12) month period shall be removed from the Board, unless such failure to attend was the result of illness or other acceptable excuse as determined by the City Council.

(d) Chairman and Vice-Chairman. A majority of the members of the Board shall elect a chairman and vice-chairman from among those members who have served at least one (1) year as Board members. No person shall serve more than two (2) consecutive City Council appointed terms in the same office.
(e) **Secretary of the Board.** The Secretary of the City of Fredericksburg or his/her representative shall act as Secretary of the Board and shall attend and keep the minutes of all meetings.

(f) **Ex Officio Members.** The following persons, or their designated representatives shall serve as ex officio members:

1. The Building Official of the City of Fredericksburg;
2. The Secretary of the City of Fredericksburg; and
3. The Attorney of the City of Fredericksburg.

(g) **Voting Rights.** Ex officio members shall have no right to vote, but shall act in an advisory capacity, participating fully in discussions and assisting the Board in its various functions.

(h) **Duties and Functions.** The Board shall be empowered to carry out the following duties and functions:

1. Make recommendations for employment of staff and professional consultants as necessary to carry out the duties of the Board;
2. Prepare rules and procedures as necessary to carry out the business of the Board, which shall be ratified by the City Council;
3. Adopt criteria for the designation of historic, architectural, and cultural landmarks and the delineation of historic districts, which shall be ratified by the City Council;
4. Conduct surveys to identify historically, culturally, and architecturally significant buildings, objects, sites, structures, and areas that exemplify the cultural, social, economic, political, or architectural history of the city or state and to maintain an inventory of all locally designated landmarks and all properties located in historic districts within the city;
5. Investigate and recommend to the City Council the designation of areas having special historic, cultural, or architectural value as historic districts;
6. Investigate and recommend to the City Council the designation of buildings, objects, sites, structures, or clusters having special historic, cultural, or architectural value as landmarks;
7. Prepare specific design guidelines for the restoration, rehabilitation, alteration, construction, reconstruction, or relocation of landmarks or buildings, objects, sites, and structures within historic districts;
8. Prepare guidelines for signage, street furniture, appurtenances, advertising devices, and landscaping for each historic district and for landmarks;
(9) Prepare specific design guidelines for the review of certificate of appropriateness applications for work affecting the exterior appearances of landmarks or buildings, objects, sites, or structures within historic districts;

(10) Hold public hearings and review applications for certificates of appropriateness for construction, reconstruction, alteration, relocation, or demolition affecting designated landmarks, or buildings, objects, sites, or structures within historic districts, and issue or deny certificates of appropriateness for such actions;

(11) Testify before all boards and commissions on any matter affecting historically, culturally, or architecturally significant areas, buildings, objects, sites, structures, clusters, or historic districts;

(12) Review periodically the Fredericksburg Code of Ordinances and the City of Fredericksburg Zoning Ordinance and recommend to the City Council, the Planning and Zoning Commission, and/or any other city boards, commissions, or agencies any amendments appropriate for the preservation and protection of landmarks or buildings, objects, sites, and structures within historic districts;

(13) Prepare an historic preservation plan for the City which shall:

(13.1) Formulate a program for private and public action which will state the role of various city agencies in the preservation of landmarks and buildings, objects, sites, and structures within historic districts;

(13.2) Make recommendations to the city government concerning the acquisition and use of funds to promote the preservation and/or purchase of landmarks and the preservation of historic districts from federal sources, state sources, foundation sources, and local private sources;

(13.3) Recommend to the proper local agencies incentives to be offered to encourage historic preservation; and

(13.4) Formulate amendments to the Historic Preservation Ordinance necessary to further the stated purpose and intent of said ordinance.

The historic preservation plan shall be presented to the Planning and Zoning Commission, along with a timetable for the adoption of the provisions of the plan, for consideration and recommendation by the Commission to the City Council for inclusion in the comprehensive plan for the City of Fredericksburg. The historic preservation plan shall be updated by the Historic Review Board for consideration for inclusion within every subsequent comprehensive plan commissioned for the City of Fredericksburg;
(14) Review all proposed National Register nominations within the city of Fredericksburg upon recommendation of the city’s Historic Preservation Officer;

(15) Inform and educate the citizens of Fredericksburg concerning the historical, cultural, and architectural heritage of the city and increase public awareness of historic, cultural, and architectural preservation by developing and participating in public education programs;

(16) Recommend the acquisition of a landmark or a building, object, site, or structure within an historic district by the city government where its preservation is essential to the purpose of this ordinance and where private preservation is not feasible;

(17) Review and make recommendations concerning proposed tax increment districts and special assessment districts that would affect designated landmarks or historic districts;

(18) Recommend conferral of recognition upon the owners of landmarks or buildings, objects, sites, or structures within historic districts by means of certificates, markers, or plaques;

(19) Create committees from among its membership and delegate to these committees responsibilities to carry out the purposes of this ordinance;

(20) Maintain written minutes which record all actions taken by the Commission and the reasons for taking such actions;

(21) Prepare and submit annually to the City Council a report summarizing the work of the Board during the previous calendar year; and

(22) Revise and adopt, within one (1) year after passage of this ordinance and with the assistance of the Historic Preservation Officer, city legal staff, and the Texas Historical Commission detailed rules of procedure of the conduct of its meetings that are consistent with both Chapter 12, Article 12.200 of the Fredericksburg Code of Ordinances and with the rules of procedure necessary to obtain and maintain "certified local government" status under the provisions of the U.S. Historic Preservation Act of 1966, as amended, and Title 13, Cultural Resources, Part II, Chapter 15, 13 Antiquities Code of Texas 15.6, as amended.

(i) Meetings of the Board. The Board shall meet at least once a month at a regularly scheduled time with advance notice posted according to the Texas Open Meetings Act. Additional meetings may be called by the Chairman, or upon written request of three members, or upon notice from the Historic Preservation Officer, the Building Official, or his/her representative that a matter requires urgent consideration of the Board. All meetings of the Board shall be open to the public in accordance with the Texas Open Meetings Act. Minutes of the Board’s proceedings showing the vote shall be filed in the office of the City Historic Preservation Officer and shall be a public record.
(j) Meetings of Board Committees. All decisions of committees shall be subject to ratification by the Board at its next regularly scheduled meeting. Minutes of committee proceedings showing the vote shall be filed in office of the Historic Preservation Officer and shall be a public record.

(k) Quorum. Five (5) members of the Board shall constitute a quorum, and action taken at a meeting of the Board shall require the affirmative vote of a majority of the members present and voting at such a meeting unless the specific action being taken requires the affirmative vote of a two-thirds (2/3) majority of the members present and voting on the action as specified by certain provisions of this ordinance. A simple majority of the members of a committee shall constitute a quorum, and action taken at a meeting shall require the affirmative vote of a majority of the members present and voting at such a meeting.

(l) Conflicts of Interest. No member of the Board shall vote on any matter that materially affects the property, income, or business interest of that member or gives the appearance of a conflict of interest.

§ 12.204 CITY HISTORIC PRESERVATION OFFICER

The City Council shall, upon recommendation by the Historic Review Board and the City Building Official, appoint a qualified individual to serve as City Historic Preservation Officer. The Historic Preservation Officer shall administer this historic preservation ordinance and shall advise the Historic Review Board on each application that shall come before the Board. This person shall have expertise in historic preservation or architectural history as well as other qualifications necessary to serve as a City Inspector under the City Building Official.

In addition to serving as representative of the Board, the City Historic Preservation Officer has responsibility for coordinating the city’s preservation activities with those of state and federal agencies and with local, state, and national preservation organizations in the private sector.

The City Historic Preservation Officer shall recommend to the Board buildings, objects, sites, structures, and districts for designation as landmarks or historic districts in accordance with the criteria established by this ordinance.

The City Historic Preservation Officer may also recommend to the Board buildings, objects, sites, structures, and districts for nomination to the National Register of Historic Places. Such recommendations shall be guided by the criteria established in the National Historic Preservation Act of 1966, as amended.

In addition to completing the duties and functions of City Historic Preservation Officer, the individual hired as the City Historic Preservation Officer shall carry out the duties of a City Building Inspector on a part time basis under the direction of the City Building Official. However, the duties of City Historic Preservation Officer shall control the time, energy, and loyalty of the appointed individual above his/her duties as part time Building Inspector. In order to avoid a conflict of interest, the individual hired as the City Historic Preservation Officer shall not issue permits, certificates of appropriateness, or violations or stop-work orders as both the City Historic Preservation Officer and a Building Inspector on the same work project for the same owner or applicant.
§ 12.205 Criteria and Process for Recommending the Designation of Historic Landmarks and Historic Districts

§ 12.205.1 Criteria for the Designation of Historic Landmarks and Historic Districts

A historic landmark or district may be designated if it:

(a) Possesses value as a visible example or reminder of the history or cultural heritage of the community, county, state, or nation;

(b) Is the site of a significant local, county, state, or national event in history;

(c) Is an archaeological site that reveals information about the history or prehistory of the area;

(d) Is identified with a person or persons who significantly contributed to the development of the community, county, state, or nation;

(e) Is identified as the work of a master builder, designer, or architect whose individual work has influenced the development of the community, county, state, or nation;

(f) Embodies distinguishing characteristics of an architectural style valuable for the study of a period, type, method of construction, or use of indigenous materials;

(g) Possesses historical, architectural, or cultural character as a particularly fine or unique example of a utilitarian structure, including, but not limited to, barns or other agricultural outbuildings, stables, bridges, gas stations, and other commercial structures;

(h) Is a unique location or possesses singular physical characteristics representing an established and familiar visual feature of a neighborhood, community, or the city;

(i) Represents a resource, whether natural or man-made, that greatly contributes to the character or image of a defined neighborhood or community area.

(j) Possesses historical, architectural, or cultural integrity of location, design, materials, and workmanship;

(k) Embodies character as a geographically definable area possessing a significant concentration, linkage, or continuity of historically, architecturally, or culturally significant sites, buildings, objects, or structures united by past events or aesthetically by plan or physical development; and

(l) Possesses character as an established and geographically definable
neighborhood, united by culture, architectural style, or physical plan and development.

Additional Criteria for the designation of historic districts: Before a proposed historic district may be recommended to the Board for designation by the City Historic Preservation Officer, documentary evidence must be obtained which proves that at least fifty-one percent (51%) of the owners of property located within the boundaries of the proposed historic district concur with the recommendation for the designation of the proposed historic district.

§ 12.205.2 Process for Recommending the Designation of Historic Landmarks and Historic Districts

Requests for designation shall be made on a form obtained from the City Historic Preservation Officer. Completed request forms shall be returned to the Office of the City Historic Preservation Officer for processing. The City Historic Preservation Officer shall recommend to the Board buildings, objects, sites, structures, and districts for designation as landmarks or historic districts in accordance with the criteria established in § 12.205.1 of this ordinance. Approved recommendations for landmark or historic district designations are then made by the Board to the City Council through the Planning and Zoning Commission. In the event the Board does not recommend an applicant’s request for designation of a resource, the applicant may petition the Planning and Zoning Commission for a hearing at the next scheduled meeting of the Planning and Zoning Commission.

§ 12.206 Designation of Historic Landmarks and Historic Districts

The City Council may designate by ordinance certain areas in the City of Fredericksburg as historic districts and certain places, buildings, objects, sites, structures, or clusters as historic landmarks. The following provisions pertaining to the designation of historic landmarks and historic districts constitute a part of the comprehensive zoning plan of the City of Fredericksburg.

§ 12.206.1 Historic Landmarks

(a) Property owners of proposed historic landmarks shall be sent written notice by certified mail, return receipt requested, informing them that their properties have been recommended for designation, stating the reasons for recommendation, and indicating the date, time, and place of the public hearing of the Board to consider the recommended designation. Such notice shall be sent at least thirty (30) days prior to the public hearing of the Board and shall be sent to both the registered property owners’ last known address as it appears in the Official Public Records of Real Property of Gillespie County and the street addresses of the properties recommended for designation. At the Board’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.

(b) Upon recommendation of designation by a two-thirds (2/3) vote of the Board, the proposed historic landmark designation shall be submitted to the Planning and Zoning Commission within
thirty (30) days from the date of the formal submittal of the designation request by the Board. The Planning and Zoning Commission shall give public notice and conduct its hearing on the proposed designation within forty-five (45) days of the receipt of such recommendation from the Board. 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 Fredericksburg. The Planning and Zoning Commission shall make its recommendation to the City Council within forty-five (45) days subsequent to the hearing on the proposed designation.

(c) The City Council shall schedule a hearing on the Planning and Zoning Commission’s recommendation to be held within forty-five (45) days of receipt of the recommendation of the Planning and Zoning Commission. The City Council shall give public notice, follow the publication procedure, hold its public hearing, and make its determination on the proposed designation in the same manner and within the same time limit as provided in the general zoning ordinance of the City of Fredericksburg.

(d) Upon designation of a building, object, site, or structure as an historic landmark by the affirmative majority vote of the City Council, the City Council shall cause the designation to be recorded in the Official Public Records of Real Property of Gillespie County, the tax records of the City of Fredericksburg, and the Gillespie Appraisal District as well as the official zoning maps of the City of Fredericksburg. Such designation shall be in addition to any other zoning district designation established in the zoning ordinance. All zoning maps shall reflect the historic landmark by the letter "H" as a suffix to the use designated. The City Secretary shall send written notice of the fact of designation by certified mail, return receipt requested, to the owner(s) of the designated landmark within ten (10) days after the designation of the landmark by the City Council.

§ 12.206.2 Historic Districts

(a) All owners of property within a proposed historic district shall be sent written notice by certified mail, return receipt requested, informing them that their properties have been recommended for designation, stating the reasons for recommendation, and indicating the date, time, and place of the public hearing of the Board to consider the recommended designation. Such notice shall be sent at least thirty (30) days prior to the public hearing of the Board and shall be sent to both the registered property owners’ last known addresses as they appear in the Official Public Records of Real Property of Gillespie County and the street addresses of the properties recommended for designation. Notice of the proposed designation of an historic district shall be published in a newspaper having general circulation within the city at least (30) days prior to the public hearing of the Board to consider the recommended designation and shall indicate the date, time, and place of the said public hearing of the Board. At the Board’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.

(b) Upon recommendation of designation by a two-thirds (2/3) vote of the Board, the proposed historic district designation shall be submitted to the Planning and Zoning Commission within thirty (30) days from the date of the formal submittal of the designation request. The Planning and Zoning Commission shall give public notice and conduct its hearing on the proposed
designation within forty-five (45) days of the receipt of such recommendation from the Board. 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 Fredericksburg. The Planning and Zoning Commission shall make its recommendation to the City Council within forty-five (45) days subsequent to the hearing on the proposed designation.

(c) The City Council shall schedule a hearing on the Planning and Zoning Commission's recommendation to be held within forty-five (45) days of receipt of the recommendation of the Planning and Zoning Commission. The City Council shall give public notice, follow the publication procedure, hold its public hearing, and make its determination on the proposed designation in the same manner and within the same time limit as provided in the general zoning ordinance of the of the City of Fredericksburg.

(d) Upon designation of an historic district by the majority vote of the City Council, the City Council shall cause the designation to be recorded in the Official Public Records of Real Property of Gillespie County, the tax records of the City of Fredericksburg, and the Gillespie Appraisal District as well as the official zoning maps of the City of Fredericksburg. Such designation shall be in addition to any other zoning district designation established in the zoning ordinance. All zoning maps shall reflect the historic district by the letters "HD-C" as a prefix to the use designated for the properties within the historic district determined to be contributing to the general character of the historic district by the nominating document completed for process of nominating the historic district and by the letters "HD-NC" as a prefix to the use designation for the properties within the historic district determined to be non-contributing to the general character of the historic district by the nominating document completed for process of nominating the historic district. The City Secretary shall send written notice of the fact of designation by certified mail, return receipt requested, to the owners of all the properties located within the designated historic district within ten (10) days after the designation of the historic district by the City Council.

§ 12.207 Uses of Property Designated Historic

Nothing contained in this ordinance or in the designation of property as being an historic landmark or an historic district shall affect the present legal use of property. Use classifications as to all such property shall continue to be governed by the zoning ordinance of the City of Fredericksburg and the procedures therein established. In no case, however, shall any use be permitted that requires the demolition, relocation, or alteration of historic landmarks or of any buildings or structures in an historic district so as to adversely affect the character of the district or historic landmark, except upon compliance with the terms of this ordinance.

No provision herein shall be construed as prohibiting a property owner from continuing to use property for a nonconforming use as that term is defined in the City of Fredericksburg Zoning Ordinance, § 5.100.
§ 12.208 Removal of Designation

Upon recommendation of the Board based upon new and compelling evidence and negative evaluation according to the same criteria and following the same procedures set forth herein for designation, a designation made under § 12.205 may be removed by the City Council following the recommendation of the Board.

§ 12.209 Certificates of Appropriateness

No person shall carry out any construction, reconstruction, alteration, installation, maintenance, repair, restoration, rehabilitation, demolition, or relocation of any historic landmark or any property within a historic district, nor shall any person add, remove, or make any material change in the light fixtures, signs, sidewalks, fences, steps, paving, 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 an historic district without first obtaining a certificate of appropriateness for any such action from the Historic Review Board or a permit to carry out work deemed ordinary repair and maintenance, which excuses an applicant from obtaining a certificate of appropriateness, from the City Historic Preservation Officer.

§ 12.209.1 Criteria for Approval of a Certificate of Appropriateness

In considering an application for a certificate of appropriateness, the City Historic Preservation Officer (hereafter referred to as the "Officer") and the Board shall be aware of the importance of finding a way to meet the current needs of the property owner. The Officer and the Board shall also recognize the importance of approving plans that are economically reasonable for the property owner to carry out.

The design guidelines authorized in § 12.203(h)(9) and adopted by the Historic Review Board, Article 3.1000 Signs, as temporarily amended, and, where applicable, the following from The Secretary of the Interior’s Standards for the Rehabilitation of Historic Buildings, shall guide the Officer and the Board in its considerations of applications for certificates of appropriateness.

(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, that seek to create a false set of development (such as adding conjectural features or architectural elements from other structures and properties), and that 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, 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 archaeological resources affected by, or adjacent to, any project.

(i) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural, or cultural material, and such design is compatible with the size, scale, material, and character of the property, neighborhood, or environment.

(j) Wherever 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.

Copies of the design guidelines adopted by the Board and The Secretary of the Interior's Standards shall be kept at the office of the City Historic Preservation Officer and shall made available to the property owners of historic landmarks or within historic districts.

§ 12.209.2 Certificate of Appropriateness Application Procedure

(a) Prior to the commencement of any work requiring a certificate of appropriateness the owner shall file a complete application for such a certificate with the City Historic Preservation Officer. All applicants are strongly encouraged to first talk to the Officer about the work planned for any designated resource, so that the Officer may advise the owner on which criteria the owner should follow regarding the information to be included within the application. Applications for the approval of all work not related to ordinary maintenance and repair shall contain the following:
(1) The name, address, and telephone number of the owner(s) of the property for which the application is being made;

(2) A detailed description of the proposed work;

(3) The intended starting date and completion date of the proposed work;

(4) Historic photographs of the property to be affected, if available;

(5) Elevation drawings of the proposed changes, if available;

(6) Samples of the materials to be used;

(7) If the proposal includes signs or lettering, a scale drawing showing the type of lettering to be used, all dimensions, a description of materials to be used, the method of illumination (if any, and a plan showing the sign’s location on the property;

(8) Any other information which the City Historic Preservation Officer or the Board may deem necessary in order to visualize the proposed work.

Applications for the approval of all work intended to carry out only ordinary maintenance, and repair shall also include all of the previous information, with the exception of numbers (5) and (7).

Applications shall not be accepted until the application is determined by the Officer to be complete and correct. Nor shall applications which are not in compliance with the city building code, restrictions, or other city ordinances be accepted. They shall instead be returned to the applicant for compliance.

(b) The City Historic Preservation Officer shall determine which applications for certificates of appropriateness are in fact for work strictly involving ordinary maintenance and repair. Those activities which constitute ordinary maintenance and repair include but are not restricted to:

(1) Maintenance in the form of surface cleaning using a nonabrasive cleaning method which will in no way harm the material(s) being cleaned;

(2) Repainting;

(3) Repair using the same material and design as the original;

(4) Reroofing, using the same type of material;

(5) Repair of sidewalks and driveways using the same type of materials.

If the City Historic Preservation Officer does determine that the application for the certificate of appropriateness is in fact for work strictly involving ordinary maintenance and repair and that, using the guidelines required in § 12.209.2, the maintenance and repair work proposed will not
harm or alter the exterior appearance or the historic, cultural, or architectural character of the designated resource, then the Officer shall within seven (7) days of receiving the application recommend the excuse of the applicant from any further obligation of receiving a certificate of appropriateness from the Board and shall forward a copy of the application and his/her signed permit for the work with a recommendation for excuse to the Chairman of the Board or the Vice-Chairman of the Board if the Chairman is unavailable. The Chairman or Vice-chairman of the Board shall within three (3) business days either approve the Officer’s recommendation and sign off on the permit to allow the ordinary maintenance and repair or schedule the decision to be considered by the Board at its next regularly scheduled meeting. If the Chairman or Vice-Chairman does not take any action within three (3) business days, it shall be deemed that such person has approved the Officer’s decision, and the Officer’s signed permit allowing the maintenance and repair work to be carried out shall suffice to excuse the applicant from receiving a certificate of appropriateness for the work.

No work involving ordinary maintenance and repair shall be carried out on any historic landmark or on any property within an historic district without a permit specifically allowing such work signed by the City Historic Preservation Officer as well as by the Chairman or Vice-Chairman of the Board (if possible) in lieu of a certificate of appropriateness. No building permit shall be issued for the proposed ordinary maintenance and repair (if required) unless the applicant first receives a permit from the Officer authorizing the ordinary maintenance and repair work. Furthermore, the permit required for ordinary maintenance and repair 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 Fredericksburg.

(c) The City Historic Preservation Officer shall submit all completed applications for certificates of appropriateness which he/she determines are not for the completion of ordinary maintenance and repair to the Board for review.

(d) The Board shall review the application at a regularly scheduled meeting within sixty (60) days from the date the completed application is received by the City Historic Preservation Officer. An opportunity will be provided for the applicant to be heard during the review of the application at the Board meeting. The Commission shall approve, deny, or approve with modifications the application within forty-five (45) days after the review meeting. In the event the Board does not act within ninety (90) days of the receipt of the application by the City Historic Preservation Officer or fails to approve, deny, or approve with modifications the application within forty-five (45) days after the review meeting, the application shall be deemed approved by the Board. A certificate of appropriateness shall be issued by the City Historic Preservation Officer, acting as the representative of the Board, showing the filing date and the failure to take action on the application within ninety (90) or within forty-five (45) days after the review meeting.

(e) The applicant may withdraw the application on or before the day of the Board’s review of the application and may resubmit it at a later time if additional time is required for the preparation of information or for research requested by the Board. Such withdrawal by the applicant shall release the Board of its obligation to make a decision on the application. Upon resubmission of the application, the Board shall again review the application at a regularly scheduled meeting within sixty (60) days from the date of the refiling of such an application with the City Historic Preservation Officer.
(f) The Board may delay the hearing on an application for thirty (30) days or until the next scheduled meeting of the Board, whichever is shorter, if the Board feels additional information is absolutely necessary and required in order to evaluate an application in a fair manner. Such a delay of shall suspend the forty-five (45) day time period during which the Board must deny, approve, or approve with conditions the application until a complete hearing is held on the application at the next meeting at which it has been rescheduled for a hearing.

(g) All decisions of the Board shall be in writing. The Board’s decision shall state its findings pertaining to the approval, denial, or modification of the application. A denial may indicate what changes in the proposed actions would meet the conditions for protecting the distinctive character of the landmark or historic district. A copy shall be sent to the applicant by registered mail. Additional copies shall be filed as part of the public record on that property and distributed to the Office of the City Historic Preservation Officer and all appropriate city departments, commissions, and agencies.

(h) An applicant for a certificate of appropriateness dissatisfied with the action of the Board relating to the issuance or denial of a certificate of appropriateness 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 to the appellant, follow publication procedure, and hold a hearing in the same manner as provided in the City of Fredericksburg Zoning Ordinance. The appellant shall have the right to attend the hearing and the right to be heard as to his/her reasons for filing the appeal. In making its decision, the City Council shall consider the same criteria for the approval of a certificate of appropriateness as did the Board, established in § 12.209.2 of this ordinance; the written report of the Board pertaining to the denial of the certificate to the applicant; and any other matters presented at the hearing on the appeal. If the City Council approves the application, it shall direct the Board to issue a certificate of appropriateness for the work requested to the applicant. If the Board disapproves the application, it shall direct the Board not to issue a certificate of application to the applicant.

(i) No building, demolition, or signage permit shall be issued for any of the work requiring a certificate of appropriateness until a certificate of appropriateness has first been issued by the Board. The certificate of appropriateness required by this ordinance shall be in addition to and not in lieu of any type of building, demolition, or signage permit that may be required by any other ordinance of the City of Fredericksburg.

§ 12.209.3 Certificate of Appropriateness Requirements for Demolitions

A permit for the demolition of an historic landmark or property within an historic district, including secondary buildings and landscape features, shall not be granted by the Building Official or an other city official, without the issuance of a certificate of appropriateness by the Board, as provided for in § 12.209, Subsections 12.209.1 and 12.209.2, of this ordinance. Applications for certificates of appropriateness for demolitions of properties designated "non-contributing" within an historic district shall be subject to the criteria for approval and application procedures as outlined in § 12.209, Subsections 12.209.1 and 12.209.2. However, since the demolition of a historic landmark or a property designated as "contributing" within an historic district constitutes an irreplaceable loss to the quality and character of the City of Fredericksburg, requirements in
addition to those listed in § 12.209, Subsections 12.209.1 and 12.209.2, are to be met in cases of applications for certificates of appropriateness for demolitions for historic landmarks and properties designated as "contributing" within historic districts.

Whenever an application for a certificate of appropriateness for the demolition of an historic landmark or a property designated "contributing" within an historic district, which is complete according to the requirements in Subsection 12.209.2(a), is submitted to the City Historic Preservation Officer, the Officer shall submit the application to the Board for review. However, the Board shall not hold a public hearing to review the application for sixty (60) days from the date the application is received by the City Historic Preservation Officer. This time period is intended to permit the City Historic Preservation Officer to discuss the proposed demolition informally with the property owner, other city officials, and local preservation organizations, to see if an alternative to demolition can be found before a formal consideration of the application by the Board. The City Historic Preservation Officer shall prepare a report to the Board analyzing alternatives to demolition, and request from other city departments, commissions, or agencies information necessary for the preparation of this report.

If within this sixty (60) day period any one of the following four events shall occur, the Board may defer hearing the application for six months, and it shall be considered to have been withdrawn by the applicant during such six-month period: (1) the owner shall enter into a binding contract for the sale of the property; (2) approved arrangements shall be made for the structure to be moved to an approved new location; (3) loans or grants from public or private resources have been secured which eliminate the need for demolition; or (4) building code modifications or changes in applicable zoning ordinance provision, including variances, have been secured which eliminate the need for demolition. But if within the sixty (60) day period none of the four events summarized above shall have occurred, the Board shall schedule a hearing of the application following the expiration of the sixty (60) day period to be held within sixty days of the expiration date of the first sixty (60) day period required for negotiations with the City Historic Preservation Officer. The application will then be subject to the application procedures required in Subsections 12.209.2(d)-(f), with the date of the expiration of the sixty (60) day period required for negotiations with the City Historic Preservation Officer replacing the initial date the City Historic Preservation Officer received the application and with modifications to Subsections (f), and to the Criteria for Approval required in Subsection 12.209.1. After the expiration of the initial sixty (60) day negotiation period without the occurrence of any one of the four events summarized above, the City Historic Preservation Officer shall also request the Building Official to prepare a report on the state of repair and structural stability of the building or structure for which an application to demolish has been filed. This report shall be presented to the City Historic Preservation Officer prior to the date of the Board's hearing on the demolition permit application, and it shall become part of the administrative record on the application.

In Subsection 12.209(f), the Board may delay the hearing on an application for the demolition of an historic landmark or a property designated as "contributing" within an historic district for thirty (30) days in order to assure itself that one of the four possibilities summarized above which the City Historic Preservation Officer endeavored to make occur has not in fact become a possibility in regards to eliminating the need for the demolition of the property in question given the additional time since the conclusion of initial negotiations. The presence of such a possibility is information which is absolutely necessary and required in order to evaluate an application in
a fair manner. Such a delay of shall suspend the forty-five (45) day time period during which the Board must deny, approve, or approve with conditions the application until a complete hearing is held on the application at the next meeting at which it has been rescheduled for a hearing.

§ 12.209.4 Refiling of Applications for Certificates of Appropriateness

When an application for a certificate of appropriateness is denied by the Historic Review Board, or the City Council on appeal, no new application of like nature shall be accepted by the City Historic Preservation Officer or scheduled for a hearing by the Board for a period of twelve (12) months following the date of denial. However, upon receipt of a written request by the original applicant describing substantially changed conditions since the prior consideration of the application to justify an earlier consideration of the application, the Board may waive the mandatory delay period and authorize the acceptance of a new application.

§ 12.209.5 Enforcement of Work Performed Pursuant to a Certificate of Appropriateness

All work performed pursuant to a Certificate of Appropriateness shall conform to the work approved of or approved of with modifications by the Board in granting the certificate of appropriateness and to all other requirements included herein. It shall be the duty of the City Historic Preservation Officer to periodically inspect any such work to assure compliance. If work is found that is not performed in accordance with the certificate of appropriateness issued, or upon notification of such fact by the Board and verification by the Building Official, the Building Official shall issue a stop-work order, and all work shall immediately cease. No further work shall be undertaken on a project while a stop-work order is in effect, and the person(s) found to be responsible for the violation of the work approved or approved with modifications in the certificated of appropriateness granted shall be subject to the penalties and remedies available under § 12.217 of this ordinance.

§ 12.210 Economic Hardship Application Procedure

(a) After receiving written notification from the Board of the denial of certificate of appropriateness, an applicant may commence the hardship process. No building, demolition, or signage permit shall be issued unless the Board makes a finding that a hardship exists for the applicant.

(b) When a claim of economic hardship is made based on the effect of this ordinance, the owner must prove by clear and convincing evidence that:

(1) The property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;

(2) 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
(3) Efforts to find a purchaser interested in acquiring the property and preserving it have failed;

The applicant shall submit all materials deemed sufficient by the applicant to satisfy the previous three requirements, along with the applicant’s name, address, and telephone number, to the City Historic Preservation Officer, who shall in turn submit the application to the Board for review;

(c) The applicant shall consult in good faith with the Board, 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 Board.

(d) The Board shall hold a public hearing on the application within sixty (60) days from the date the application for an economic hardship waiver is received by the City Historic Preservation Officer. An opportunity will be provided for the applicant to be heard during the review of the application at the Board meeting. Following the hearing, the Board has thirty (30) days in which to acknowledge the existence of an economic hardship and grant a certificate of appropriateness for the work originally requested or to deny the existence of an economic hardship and reaffirm its decision to deny the original application for a certificate of appropriateness. In the event that the Board does not act within ninety (90) days of the receipt of the application, a certificate of appropriateness shall be issued by the City Historic Preservation Officer, acting as the representative of the Board, acknowledging the existence of an economic hardship, showing the filing date, and showing the failure to take action on the application within ninety (90) days after the review meeting;

(e) All decisions of the Board shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the City Historic Preservation Officer and the City Secretary for public inspection. The Board’s decision shall state the reasons for granting or denying the economic hardship application for a certificate of appropriateness;

(f) An applicant for a certificate of appropriateness dissatisfied with the action of the Board relating to the issuance or denial of a certificate of appropriateness after a hearing on the applicant’s economic hardship application shall have the right to appeal to the City Council within thirty (30) days after the receipt of notification of such action. The City Council shall give notice to the appellant, follow publication procedure, and hold a hearing in the same manner as provided in the City of Fredericksburg Zoning Ordinance. The appellant shall have the right to attend the hearing and to be heard as to his/her reasons for filing the appeal. In making its decision, the City Council shall consider the written report of the Board pertaining to the issuance or denial of the hardship application for the certificate to the applicant. If the City Council approves the application, it shall direct the Board to issue a certificate of appropriateness for the work requested to the applicant. The Board shall then comply with the ruling of the City Council and issue the certificate of appropriateness to the applicant.
§ 12.211 Unusual and Compelling Circumstances Application Procedures for the Approval of a Certificate of Appropriateness for the Demolition or Removal of an Historic Landmark or a Property Designated "Contributing" Within an Historic District

(a) When an applicant for a certificate of appropriateness for the demolition or removal of an historic landmark or a property designated as "contributing" within an historic district fails to prove an unreasonable economic hardship under the application procedure allowed in § 12.210, the applicant may provide the City Historic Preservation Officer additional information which may show unusual and compelling circumstances in order to receive a certificate of appropriateness for the proposed demolition or removal. The City Historic Preservation Officer shall submit the information (the application) to the Board for review;

(b) The Board shall hold a public hearing on the application within sixty (60) days from the date the application is received by the City Historic Preservation Officer. An opportunity will be provided for the applicant to be heard during the review of the application at the Board meeting. Following the hearing, the Board has thirty (30) days in which to acknowledge the existence of unusual and compelling circumstances and grant a certificate of appropriateness for the work originally requested or to deny the existence of unusual and compelling circumstances and reaffirm its decision to deny the original application for a certificate of appropriateness. In the event that the Board does not act within ninety (90) days of the receipt of the application, a certificate of appropriateness shall be issued by the City Historic Preservation Officer, acting as the representative of the Board, acknowledging the existence of unusual and compelling circumstances, showing the filing date, and showing the failure to take action on the application within ninety (90) days after the review meeting;

(c) The Board, using its best judgement, shall determine whether unusual and compelling circumstances exist and whether or not existing circumstances should override the need to protect the historic, cultural, or architectural significance from demolition by means of a denial of a certificate of appropriateness. In making its judgement, the Board shall be guided by the criteria set forth in § 12.209, Subsection 12.209.1, and by the following additional considerations:

(1) The historic or architectural significance of the building, object, site, or structure;

(2) The importance of the building, object, site, or structure to the integrity of an historic district (if applicable) or area;

(3) The difficulty or the impossibility of reproducing such a building, object, site, or structure because of its design, texture, material, detail, or unique location;

(4) Whether the building, object, site, or structure is one of the last remaining examples of its kind in the neighborhood, the county, or the region;

(5) Whether there are definite plans for the reuse of the property if the proposed demolition is carried out, and what effect such plans will have on the architectural, cultural, historical, social, or environmental character of the surrounding area as well as the economic impact of the new development;
(6) Whether reasonable measures can be taken to save the building, object, site, or structure from further deterioration, collapse, arson, vandalism, or neglect (here the Board may refer to the report completed by the Building Official on the state of repair and structural stability of the building or structure for which the application to demolish was initially filed, which is part of the administrative record on the original application for the certificate of appropriateness to demolish).

(d) All decisions of the Board shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the City Historic Preservation Officer and the City Secretary for public inspection. The Board’s decision shall state the reasons for granting or denying the unusual and compelling circumstances application for a certificate of appropriateness;

(e) An applicant for a certificate of appropriateness dissatisfied with the action of the Board relating to the issuance or denial of a certificate of appropriateness after a hearing on the applicant’s unusual and compelling circumstances application shall have the right to appeal to the City Council within thirty (30) days after the receipt of notification of such action. The City Council shall give notice to the appellant, follow publication procedure, and hold a hearing in the same manner as provided in the City of Fredericksburg Zoning Ordinance. The appellant shall have the right to attend the hearing and the right to be heard as to his/her reasons for filing the appeal. In making its decision, the City Council shall consider the written report of the Board pertaining to the issuance or denial of the unusual and compelling circumstances application for the certificate to the applicant. If the City Council approves the application, it shall direct the Board to issue a certificate of appropriateness for the work requested to the applicant. If the Board disapproves the application, it shall direct the Board not to issue a certificate of application to the applicant.

§ 12.212 Requirements Following the Issuance of a Certificate of Appropriateness for the Demolition or Removal of an Historic Landmark or a Property Designated as "Contributing" within an Historic District

(a) The owner(s) of a property who have been granted a certificate of appropriateness for the demolition or relocation of an historic landmark or a property designated as "contributing" within an historic district shall assist in and cooperate fully with the efforts of the City Historic Preservation Officer to gain as much knowledge as needed or possible about the particular building, object or structure and to fully document the property before the building, structure, or object is relocated or demolished.

(b) Following the demolition or removal of an historic landmark or of a property designated "contributing" within an historic district, the owner or other person having legal custody and control thereof shall:

(1) remove all traces of previous construction, including the foundation;
(2) grade, level, sod, and seed the lot to prevent erosion and improve drainage; and

(3) repair at his/her own expense any damage to public rights-of-way, including sidewalks, curbs, and streets that may have occurred in the course of removing the building, object, or structure and its appurtenances.

§ 12.213 Prevention of Demolition by Neglect

(a) All historic landmarks and all buildings, objects, sites, and structures within historic districts, whether occupied or not, shall be preserved against decay and deterioration and kept free from certain structural defects by the owner thereof or such other person(s) who may have legal custody and control thereof. The owner or other person(s) having such legal custody, in keeping with city’s minimum housing standards, shall repair such building, object, site, or structure if it is found to have any of the following defects:

(1) A deterioration or inadequate foundation. Defective or deteriorated flooring or floor supports or flooring or floor supports of insufficient size to carry imposed loads with safety;

(2) Members of walls, partitions, or other vertical supports that split, lean, list, or buckle due to defective material or deterioration. Members of walls, partitions, or other vertical supports that are of insufficient size to carry imposed loads with safety;

(3) Members of ceilings, roofs, ceiling and roof supports, or other horizontal members which sag, split, or buckle due to defective materials or deterioration. Members of ceilings, roofs, ceiling and roof supports, or other horizontal members that are of insufficient size to carry imposed loads with safety;

(4) Fireplaces or chimneys which list, bulge, or settle due to defective material or deterioration. Fireplaces or chimneys which are of insufficient size or strength to carry imposed with safety;

(5) Deterioration or ineffective waterproofing of exterior walls, roofs, foundations, or floors, including broken windows or doors. Defective protection or lack of weather protection for exterior wall coverings, including lack of paint or weathering due to lack of paint or other protective covering. Any fault or defect in the building which renders same structurally unsafe or not properly watertight;

(6) Deterioration of any other feature so as to create a hazardous condition which could lead to the claim that demolition is necessary for the public safety.

In addition, the owner or other person(s) having legal custody and control of an historic landmark or a building, site, object, or structure located within an historic district shall keep all property,
including vacant property, clear of all weeds, fallen trees or limbs, debris, abandoned vehicles, and all other refuse.

(b) The Board, on its own initiative, shall file a petition with the Building Official requesting that he/she proceed under the City of Fredericksburg's minimum housing and structural safety standards to require correction of defects or repairs to any structure covered by subsection (a) above so that such structure shall be preserved and protected in accordance with the purpose of this ordinance.

(c) If any historic landmark or any building, object, or structure within an historic district shall have to be demolished as a public safety hazard and the owner(s) shall have received two or more notices from a city inspector of building neglect in violation of this and any other city ordinance, no application for a certificate of appropriateness for a project on the property may be considered for a period of two years from the date of the demolition of the historic landmark or building, object, or structure within the historic district. Additionally, no permit for a curb cut needed for the operation of a surface parking lot shall be granted by any city office during this period.

§ 12.214 Public Safety Hazards and Emergency Securing Measures

No building, object, or structure designated a landmark or located within an historic district may be demolished in whole or in part as a hazard to public safety until the City Historic Preservation officer has been notified by the Building Official that an order for such demolition is being prepared, and the Board has had an opportunity to discuss with the Building Official and any and all other municipal officials involved the feasibility of emergency measures to secure the unsafe structure in such a manner as to preclude the possibility of injury to the public.

After emergency measures are undertaken, the City Historic Preservation Officer shall meet with the Building Official and any and all other municipal officials involved wishing to issue the order for demolition to review the condition of the structure and the development of plans for its rehabilitation. If within one (1) month the City Historic Preservation Officer, after consultation with the owner(s) of the property and the municipal legal staff, makes a report acceptable to the Board on the feasibility of a successful rehabilitation of the building, object, or structure, the Board shall make a recommendation to the Building Official that the demolition permit be rescinded on the condition that the owner(s) of the property complete the planned rehabilitation so that the building, object or structure complies with all applicable public safety standards. If, however, after one (1) month no feasible scheme for the further protection of the building, object, or structure has been developed in cooperation with the owner(s) of the property, the Board shall make a recommendation to the Building Official for an order of demolition.

§ 12.215 Procedure for Requesting Public Ownership or Control of Designated Properties

If the Board finds that a historic landmark or a property located within an historic district cannot be preserved and is in danger of being lost under the certificate of appropriateness procedures
set forth in Sections 12.209, 12.210, and 12.211, the Board shall recommend to the City Council that the endangered designated property be acquired by a gift, devise, or purchase by funds donated or granted by individuals, public groups, state agencies, or federal agencies.

§ 12.216 Applicability and Enforcement of the Ordinance in its Entirety

§ 12.216.1 Applicability

The provisions of this ordinance shall apply to all places, objects, sites, structures, or property within the current municipal limits of the City of Fredericksburg that are privately owned and owned by the City of Fredericksburg.

§ 12.216.2 Enforcement of the Ordinance in its Entirety

(a) Responsibilities of the City Historic Preservation Officer

Along with the enforcement of work performed pursuant to a certificate of appropriateness provided in subsection 12.209.5 of this ordinance, the City Historic Preservation Officer shall be responsible for conducting periodic exterior inspections of all historic landmarks and all property within every historic district, so that every property designated under this ordinance shall be inspected at least once per year, in order to promote compliance with all provisions of this historic preservation ordinance and swiftly remedy all violations of the provisions of this ordinance. All violations not covered in subsection 12.209.5 of this ordinance shall be reported by the City Historic Preservation Officer to the City Attorney, and the person(s) found to be responsible for the violation(s) shall be subject to the penalties and remedies available under § 12.217 of this ordinance.

(b) Responsibilities of the City Attorney

It shall be the duty of the Attorney of the City of Fredericksburg to legally pursue the conviction of all alleged violators of the provisions of this historic preservation ordinance to the full extent necessary and possible in a court of competent jurisdiction pursuant to the penalties and remedies available under § 12.217 of this ordinance.

§ 12.217 Penalties and Remedies

(a) Civil.

(1) Any person, firm, or corporation who constructs, reconstructs, alters, restores, renovates, relocates, stabilizes, repairs, or demolishes any building, object, site, or structure in violation of this ordinance shall be required to restore the building, object, site, or structure to its appearance or setting prior to the violation. An action to enforce this provision shall be brought by the City of Fredericksburg. This civil remedy shall be in addition to, and not in lieu of, any
criminal prosecution and penalty.

(2) If demolition or removal of an historic landmark or of any building, object, site, or structure located within an historic district occurs without a certificate of appropriateness for such action, then any permits on subject property will be denied for a period of three (3) years. In addition, the applicant shall not be entitled to have issued to him/her/it by any city office a permit allowing any curb cuts on subject property for a period of three (3) years from and after the date of such demolition or removal. Nor shall a parking lot for vehicles be operated on the site for a period of three (3) years from and after the date of such demolition or removal. The owner(s) of the site shall also 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 Board through the City Historic Preservation Officer shall cause to be filed a verified notice thereof in the Official Public Records of Real Property of Gillespie County, the tax records of the City of Fredericksburg, and the records of the Gillespie Appraisal District, and a temporary mark, “D/RPEN” (standing for Demolition/Removal Penalty), shall be placed on the subject property in the official zoning maps of the City of Fredericksburg for a period of three (3) years. Such restrictions shall then be binding on future owners of the property. The restrictions imposed shall be in addition to any fines imposed pursuant to the criminal penalties listed in subsection (b) below and the cumulative remedies listed in subsection (c) below.

(b) Criminal

Any persons, firm, or corporation violating any provision of this ordinance shall be guilty of a misdemeanor, and each shall be deemed guilty of a separate violation for each day during which any violation hereof is committed. Upon conviction, each violation shall be punishable by a fine not to exceed one thousand dollars ($1,000.00).

(c) Cumulative Remedies

The provisions of this Section shall apply in addition to other enforcement procedures or penalties which are available and applicable under the violation(s) of any and all other city ordinances.

§ 12.218 Severability

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable, and, if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation of any such unconstitutional phrase, clause, sentence, paragraph, or section.
§ 12.219  Expiration Date and Provisions for the Permanent
Adoption of this Temporary Amended Ordinance

(a) This ordinance, temporarily amending its entirety Article 12.200 Historic Preservation of
the Fredericksburg Code of Ordinances, shall expire thirty (30) days after the exact day that
marks the fourth anniversary of the enactment of this temporary amended historic preservation
ordinance by the City Council, on (month) (day), 20__, unless this temporary ordinance
is permanently enacted as an amendment in its entirety of Article 12.200 Historic Preservation
of the Fredericksburg Code of Ordinances upon the vote of the City Council at a public hearing
specifically held to evaluate the performance of and community satisfaction with this ordinance.
Said public hearing shall give the citizens of Fredericksburg, interested parties, and technical
experts the opportunity to present testimony in favor or against the permanent enactment of this
ordinance by the City Council. The City Council shall give public notice of the hearing, follow
publication procedure, hold its public hearing, and make its determination in the same manner
as provided in the general zoning ordinance of the City of Fredericksburg. Said public hearing
shall be held within thirty (30) days of the exact day which marks the fourth anniversary of the
enactment of this temporary ordinance by the City Council.

(b) If this temporary, amended ordinance is allowed to expire upon the vote of City Council, the
original Article 12.200 Historic Preservation of the Fredericksburg Code of Ordinances amended
by this ordinance shall reapply in its entirety and be enforced as the law controlling historic
preservation in the City of Fredericksburg immediately upon the expiration of this temporary,
amended ordinance.

(c) Upon the expiration of this temporary, amended ordinance and the reapplication of the
original Article 12.200, those persons serving as members of the Historic Review Board under
the requirements of § 12.203 of this temporary, amended ordinance shall continue to serve until
the expiration of their present terms and shall then be replaced, if necessary, by persons fulfilling
the requirements of § 12.204(c) of the original Article 12.200. However, the office of City
Historic Preservation Officer shall immediately be abolished, and the Building Official shall
resume his/her role in assisting the Historic Review Board as established by the original Article
12.200.

(d) All properties designated as historic landmarks or located within historic districts designated
under § 12.205 of this temporary, amended ordinance shall remain designated properties under
and subject to the provisions of the original Article 12.200 unless a property’s designation is
repealed by the City Council because of a lack of conformance to the criteria for designation
established in § 12.204(a)(2) or § 12.204(b)(2) of the original Article 12.200.
APPENDIX C: CITY OF FREDERICKSBURG
HOTEL OCCUPANCY TAX
ARTICLE 1.400 HOTEL OCCUPANCY TAX*

§ 1.401 Definitions

The following words, terms and phrases are, for the purposes of this article and except where the context clearly indicates a different meaning, defined as follows:

**Consideration.** The cost of the room, sleeping space, bed or dormitory space but shall not include the cost of any food served or personal services rendered to the occupant not related to cleaning and readying such room or space for occupancy, and shall not include any tax assessed for the occupancy thereof by any other governmental agency.

**Hotel.** Any building or buildings, trailer, or other facility in which the public may, for consideration, obtain sleeping accommodations. The term shall include hotels, motels, tourist homes, houses or courts, lodging houses, inns, rooming houses, trailer houses, trailer motels, dormitory space where bed space is rented to individuals or groups, apartments not occupied by permanent residents, as that term is hereinafter defined, and all other facilities where rooms or sleeping facilities or space are furnished for a consideration. As defined herein “hotel” shall not include hospitals, sanitariums or nursing homes.

**Occupancy.** The use or possession, or the right to the use or possession of any room, space or sleeping facility.

**Occupant.** Anyone who, for a consideration, uses, possesses, or has the right to use or possess any room or rooms, or sleeping space or facility in a hotel under any lease, access, license, contract or agreement.

**Permanent resident.** Any occupant who has or shall have the right of occupancy of any room or rooms or sleeping space or facility in a hotel for at least thirty (30) consecutive days during the current calendar year or preceding year. (Ordinance of 10-7-74, Section 1)

**Person.** Any individual, company, corporation, or association owning, operating, managing or controlling any hotel.

**Quarterly period.** The regular calendar quarters of the year, the first quarter being composed of the months of January, February, and March; the second quarter being the months of April, May, and June; the third quarter being the months of July, August, and September; and the fourth quarter being the months of October, November, and December.

**Tax Collector.** The tax collector of the City of Fredericksburg. (Chapter 20, Section 20-81, Code of 1965)

§ 1.402 Tax Levied; Amount; Exceptions

(a) There is hereby levied a tax upon the cost of occupancy of any room or space furnished by any hotel where such cost of occupancy is at the rate of two dollars ($2.00) or more per day, such tax to be equal to seven (7) percent of the consideration paid by the occupant of such room to such hotel, exclusive of other occupancy taxes imposed by other governmental agencies. (Ordinance 4-088, Section 1, adopted 11-14-88)

(b) No tax shall be imposed hereunder upon a permanent resident.

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*State Law reference—Authority to levy hotel occupancy tax, V.T.C.A., Tax Code, ch. 351.*

270
(c) No tax shall be imposed hereunder upon a corporation or association organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual. (Chapter 20, Section 20-82, Code of 1965)

§ 1.403 Collection of Tax

Every person owning, operating, managing or controlling any hotel shall collect the tax imposed by Section 1.402 hereof for the City of Fredericksburg. (Chapter 20, Section 20-83, Code of 1965)

§ 1.404 Filing of Quarterly Report

On the last day of the month following each quarterly period, every person required in Section 1.403 hereof to collect the tax imposed herein, shall file a report with the tax collector showing the consideration paid for all room occupancies in the preceding quarter, the amount of the tax collected on such occupancies, and any other information the tax collector may reasonably require. Such person shall pay the tax due on such occupancies at the time of filing such report. There shall also be furnished to the tax collector of the City of Fredericksburg at the time of payment of said tax a copy of the quarterly report filed with the State Comptroller in connection with the State of Texas hotel occupancy tax. (Chapter 20, Section 20-84, Code of 1965)

§ 1.405 Authority to Promulgate Rules and Regulations; Access to Books and Records

The tax collector shall have the power to make such rules and regulations as are reasonable and necessary to effectively collect the tax levied hereby, and shall, upon reasonable notice, have access to books and records necessary to enable him/her to determine the correctness of any report filed as required by this article and the amount of taxes due under the provisions of this article. (Chapter 20, Section 20-85, Code of 1965)

§ 1.406 Reimbursement for Cost of Collecting Tax

Every person required in Section 1.403 to collect the tax imposed by this article, may deduct and withhold from the payment to the tax collector, as reimbursement for the cost of collecting the tax, an amount not to exceed one (1) percent of the amount of tax collected and required to be reported to the tax collector. (Chapter 20, Section 20-86, Code of 1965)

§ 1.407 Failure to Collect Tax, Make Reports and Pay Tax

If any person required by the provision of this article to collect the tax imposed herein, or make reports as required herein, and pay to the tax collector the tax imposed herein, shall fail to collect such tax, file such report or pay such tax, or if any such person shall file a false report, such person shall be deemed guilty of a misdemeanor and upon conviction be punished by fine not to exceed two hundred dollars ($200.00) and shall pay to the tax collector the tax due, together with a penalty of five (5) percent of the tax due for each thirty (30) days that the same is not timely filed and shall forfeit the reimbursement for the cost of collecting the tax. (Chapter 20, Section 20-87, Code of 1965)

§ 1.408 Tax Applies to Extraterritorial Jurisdiction

The Hotel Occupancy Tax Ordinance of the City of Fredericksburg, as amended, and as may be amended, shall apply to all territory within the extraterritorial jurisdiction of the City of Fredericksburg as the same may exist from time to time, and the same shall be and is hereby imposed on all applicable persons within the said extraterritorial jurisdiction of the City of Fredericksburg. (Ordinance 5-047 adopted 10-28-91)

§ 1.409 State Tax Code Applicability

Administration of this article is to be done in accordance with state law provisions regarding hotel occupancy taxes found at V.T.C.A., Tax Code, ch. 351. (Ordinance adopting Code)
BIBLIOGRAPHY

Primary Sources

Interviews


Britton, Shelley, City Secretary, City of Fredericksburg, Texas. Conversation with author, Fredericksburg, Texas, 4 January 1996.


Cooper, Imogen R., AICP, Senior Planner, Department of Planning, Historic Preservation, and Urban Design Division, City of San Antonio. Conversation with author, San Antonio, Texas, 8 January 1996.

Faschnitz, Werner, Assistant City Attorney, Office of the City Attorney, City of San Antonio. Telephone conversation with author, 29 March 1996.


Jarrell, Julia, Executive Director, LBJ Heartland Network. Conversation with author, Stonewall, Texas, 4 January 1996.


Keene, John C., Professor of City and Regional Planning, Department of City and Regional Planning, Graduate School of Fine Arts, University of Pennsylvania. Telephone conversation with author, 4 April 1996.


Milam, Danielle, former President, Bexar Land Trust, Bexar County, Texas (now merged with the Hill Country Foundation). Telephone conversation with author, 12 February 1996.


Perryman, Don E., Planner, Department of Planning and Development, City of Austin, Texas. Conversation with author, Austin, Texas, 1 September 1995.

Reed, Anice, Director, Texas Main Street Program, Texas Historical Commission. Conversation with author, Austin, Texas, 1 September 1995.

Sanchez, Dr. Mario L., Project Coordinator, Los Caminos del Rio Heritage Project, Texas Historical Commission. Telephone conversation with author, 31 August 1995.


Tunnell, Curtis, Executive Director, Texas Historical Commission. Conversation with author, Austin, Texas, 31 August 1995.


Weinheimer, Jay, former City Attorney, City of Fredericksburg, Texas. Conversation with author, Fredericksburg, Texas, 30 August 1995.
Ordinances and Other Government Documents


Boerne, Texas. "City of Boerne Ordinance No. 91-05."


Dallas, Texas. City of Dallas Development Code.


Fort Worth, Texas. "City of Fort Worth Historic Preservation Ordinance."

Granbury, Texas. "City of Granbury Ordinance No. 94-483."


New Braunfels, Texas. New Braunfels Code of Ordinances, Chapter 27, Article VII and Chapter 27, Article VII (proposed amendments).


San Antonio, Texas. "City of San Antonio Historic Districts and Landmarks Ordinance (No. 64539)."


Table of Cases

City of Dallas v. Crownrich, 506 S.W. 2d, 654 (Tex.Civ.App.- Tyler 1974, writ ref'd n.r.e.).


Flores v. City of Boerne, 1195 U.S. Dist. LEXIS 3675.


Southern National Bank of Houston v. City of Austin, 582 S.W. 2d 229 (Tex.Civ.App.-Tyler 1979, writ ref'd n.r.e.).

Secondary Sources


