

ORDINANCE NO. 2023-11

AN ORDINANCE AMENDING CHAPTER 9, PLANNING AND DEVELOPMENT REGULATIONS, OF THE CITY OF WIMBERLEY CODE OF ORDINANCES, BY AMENDING THE REGULATION OF HISTORIC PROPERTIES AND DISTRICTS AND CREATING A PROCEDURE FOR THE DESIGNATION OF HISTORIC LANDMARKS AND HISTORIC DISTRICTS; REPEALING ALL ORDINANCES OR SECTIONS OF ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Texas Local Government Code Chapter 211 (the “Code”) specifically authorizes zoning functions and procedures for municipalities; and

WHEREAS, Section 211.003(b) of the Code 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, Section 211.005(a) of the Code authorizes the governing body of a municipality to divide the municipality into districts, within which the governing body may regulate the erection, construction, reconstruction, alteration, repair, or use of buildings, other structures, or land and within which zoning regulation must be uniform for each class or kind of building in a district; however, zoning regulations may vary from district to district; and

WHEREAS, the City Council of the City of Wimberley (the “City Council”) believes that the protection and perpetuation of landmarks and districts of historical significance is necessary to promote the economic, cultural, and educational welfare of the residents of the City; and

WHEREAS, the City Council hereby finds and declares that as a matter of public policy the protection, enhancement, and perpetuation of landmarks and districts of historical and cultural importance and significance is necessary to promote the economic, cultural, educational, and general welfare of the public; and

WHEREAS, the City Council hereby finds and declares that the adoption of the regulations provided for in this ordinance will (a) protect and enhance the landmarks and districts which represent distinctive elements of Wimberley’s historic, architectural, and cultural heritage; (b) foster civic pride in the accomplishments of the past; (c) protect and enhance Wimberley’s attractiveness to visitors and the support and stimulus to the economy thereby provided; (d) insure the harmonious, orderly, and efficient growth and development of the city that is sensitive to its historic resources; and (e) promote economic prosperity and welfare of the community by encouraging the most appropriate use of historic properties within the city; and

WHEREAS, pursuant to the Code, the City Council has given due public notice of hearings related to the designation of historical landmarks and historical districts and the regulations proposed in such an ordinance.

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

Section 1 Amending Sec 9.02.008 Definitions and Interpretations.

Add the following definitions to Sec.9.02.008 Definitions and Interpretations:

Adverse Effect. Historic property is present and proposed project as planned will alter or destroy its historic characteristics or integrity.

Architectural Details. Small details like moldings, carved woodwork, etc. that add character to a building.

Alteration. Any act or process that changes one or more historic, architectural, or physical features of an area, site, place, and/or structure including, but not limited to the erection, construction, reconstruction, or removal of any structure.

Applicant. A person seeking a designation or authorization under this Chapter or the person's designated and duly authorized agent or representative, including but not limited to the property owner, occupant of the site, the Planning and Zoning Commission or City Council.

Certificate of Appropriateness. An order issued by the Planning and Zoning Commission indicating approval of plans for alteration, construction, or removal affecting a designated landmark or property within a designated district.

Design Guidelines. Guidelines of appropriateness or compatibility of building design within a community or historic district.

Design review. The decision-making process conducted by the Planning and Zoning Commission or an appointed historic preservation officer that is guided by established terms.

Determination of Significance. A determination based on the importance of a historic property as defined by criteria found in Sec. 9.03.255(f).

Economic Hardship. An onerous and excessive financial burden, not created by the owner, which destroys reasonable and beneficial use of the property. For commercial properties the ability to make a reasonable income does not mean the highest and best use.

Exterior Architectural Feature. The architectural style and general arrangement of such portion of the exterior of a structure as is open to the view from a public way.

Historic District. A contiguous or non-contiguous geographically and locally defined area that possesses a significant concentration, linkage, or continuity of buildings, objects, sites, structures, or landscapes united by past events, periods, or styles of architecture, and that, by reason of such factors, constitute a distinct section of the City designated by the City pursuant to this Division.

Historic Landmark. Any site, building, structure, or landscape of historic significance designated by

the City pursuant to this Division.

Historic Preservation. The protection, reconstruction, rehabilitation, repair and restoration of places and structures of historic, architectural, or archaeological significance.

Historic Resource. Any building, structure, object or site that is 50 years or older or any resource that has been identified as a high or medium priority because of its unique history or architectural characteristics.

Integrity. The authenticity of a property's historic identity, evidenced by survival of physical characteristics that existed during the property's historic or prehistoric period.

Inventory. A list of historic properties that have been identified and evaluated as meeting specified criteria of significance.

National Register of Historic Places. The nation's official list of buildings, districts, and sites (including structures and objects) significant in American history and culture, architecture, archeology, and engineering maintained by the National Park Service and administered on a state-wide basis by the Texas Historical Commission. Restrictions on these properties exist only when there is an undertaking that uses federal funds or that requires a federal permit or license.

Object. A physical item associated with a specific setting or environment that is movable by nature or design, such as statuary in a designed landscape. The term object is used to distinguish from buildings and structures those constructions that are primarily artistic in nature or are relatively small in scale and simply constructed.

Ordinary Maintenance. The repair of any exterior or architectural feature of a landmark or property within a historic district which does not involve a change to the architectural or historic value, style, or general design. In-kind replacement or repair is included in this definition of ordinary maintenance.

Owner. The individual, corporation, partnership, or other legal entity in whom is vested the ownership, dominion, or title of property and who is responsible for payment of ad valorem taxes on that property; including a Lessor or Lessee if responsible for payment of ad valorem taxes.

Preservation. The stabilization of an historic building, its materials and features in their present condition to prevent future deterioration. Preservation focuses on the maintenance and repair of existing historic materials and retention of a property's form as it has evolved over time.

Reconstruction. The act or process of reproducing by new construction the exact form and detail of a vanished building as it appeared at a specific period of time.

Recorded Texas Historical Landmark. A state designation for buildings important for their historical associations and which have retained a high degree of their original historic fabric. They must be at least 50 years of age and retain their original exterior appearance. State historical landmarks receive greater legal protection than National Register of Historic Places designations.

Rehabilitation. The act or process of returning a property to a state of utility through repair or alteration that makes possible an efficient contemporary use while preserving those portions or features of the property that are significant to its historical, architectural, and cultural values.

Restoration. Returning a property to a state indicative of a particular period of time in its history, while removing evidence of other periods.

Site. The location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historical, cultural, or archaeological value regardless of the value of any existing structure.

State Archaeological Landmark. A designation made by the Texas Historical Commission and, in the case of privately owned property, with the landowner's permission. Although called "archaeological" landmarks, this designation can include buildings as well as archaeological sites. For a building to be designated as a State Archaeological Landmark, it must first be listed on the National Register of Historic Places. Damage to a State Archaeological Landmark is subject to criminal, not civil, penalties.

Structure. A term used to distinguish specific types of functional constructions from buildings that are usually made for purposes other than creating shelter.

Zoning. The City's adopted zoning code and regulations.

Section 2. Amending 9.03.253(f) Powers and Duties

Add the following:

(3) Review and act on the designation of Landmarks and the delineation of Districts, subject to approval by the City Council. Monitor and report to the Texas Historical Commission all actions affecting any Recorded Texas Historic Landmark, State Archaeological Landmark, National Register property and any locally designated Landmark, as deemed necessary. Review and take action on all Certificates of Appropriateness applications for compliance with adopted Design Guidelines pursuant to this Division. Review and take action on all appeals on action taken regarding the administrative review of Certificates of Appropriateness applications for compliance with adopted Design Guidelines pursuant to this Division. Develop, prepare and adopt specific Design Guidelines which shall be ratified by the City Council, for use in the review of all Certificates of Appropriateness applications. Recommend to City Council the acquisition of endangered Landmarks by demolition where its preservation is essential to the purpose of this Article and where private preservation is not feasible. Provide comment to the Texas Historical Commission on any federal undertakings (projects utilizing federal funds or requiring a federal permit) pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended

Section 3. Chapter 9 of the Wimberley Code of ordinances is hereby amended to add: Section 9.03.225 Historic Preservation Overlay District; HD (Historic Districts) HL (Historic Landmarks)

(a) *General Purpose and Description.* The Historic Overlay Districts are intended to protect and

enhance the landmarks and districts which represent distinctive elements of Wimberley's historic, architectural, and cultural heritage; to foster civic pride in the accomplishments of the past; to protect and enhance Wimberley's attractiveness to visitors and the support and stimulus to the economy thereby provided; to insure the harmonious, orderly, and efficient growth and development of the city that is sensitive to its historic resources; and to promote economic prosperity and welfare of the community by encouraging the most appropriate use of historic properties within the city.

- (b) *Limits of Overlay.* Application of this overlay shall be limited to properties within a given boundary as described by a legal description and/or illustrated in an attached map.
- (c) *Permitted uses.* Permitted uses shall be governed by the underlying zoning.
- (d) *Site Development Standards.* The site development standards are the same as the underlying zoning except for the additional requirements and conditions as described in the specific Historic District Design Guidelines.
- (e) *City Administrator.* The City Administrator or its designee shall appoint a qualified person to serve as Historic Preservation Officer (HPO).
 - (1) Administer these regulations and advise the Commission on matters submitted to it.
 - (2) Receive and review applications pursuant to this Division to ensure their completeness.
 - (3) Review and forward with any recommendation's applications for Certificates of Appropriateness subject to review by the Commission pursuant to the Design Guidelines.
 - (4) Review and take action on all applications that qualify for Administrative Review pursuant to the Design Guidelines.
- (f) *Criteria for Designation of Local Historic Landmarks and Districts.* To be considered for historic designation of individual Landmark or Historic District will meet the following criteria.
 - (1) An individual Landmark will meet the criteria of a Determination of Significance if it is at least fifty (50) years old and it substantially complies with two or more of the following:
 - a. Possesses significance in history, architecture, archeology, and culture.
 - b. Is associated with events that have made a significant contribution to the broad patterns of local, regional, state, or national history.
 - c. Represents the work of a master designer, builder, or craftsman.
 - d. Embodies the distinctive characteristics of a type, period, or method of construction.
 - e. Represents an established and familiar visual feature of the city.
 - f. Associated with an antiquated use due to technological or social changes, such as, but not limited to, a blacksmith's shop or railroad trestle.
 - (2) A Historic District may be designated if it substantially complies with both of the

following:

- a. Contains properties and an environmental setting which meet two or more of the criteria for designation of a landmark, and;
- b. Constitutes a distinct section of the city.

(g) *Designation of Historic Landmarks and Historic Districts Overlays.* The process for designation of Overlay Districts shall follow the process as outlined in Sec. 9.03.255.

(h) *Minimum Maintenance Standards.* No owner or person with an interest in real property designated as a Landmark or a property located within a District shall permit the property to fall into a serious state of disrepair so as to result in the significant deterioration of any exterior architectural feature which would, in the judgment of the HPO, create a detrimental effect upon the historic character of the Landmark or District. Examples of serious disrepair or significant deterioration include:

- (1) Deterioration of exterior walls, foundations, or other vertical support that causes leaning, sagging, splitting, listing, or buckling.
- (2) Deterioration of external chimneys that causes leaning, sagging, splitting, listing, or buckling.
- (3) Deterioration or crumbling of exterior plaster finishes, surfaces or mortars.
- (4) Ineffective waterproofing of exterior walls, roofs, and foundations, including broken windows or doors.
- (5) Defective protection or lack of weather protection for exterior wall and roof coverings, including lack of paint, or weathering due to lack of paint or other protective covering.
- (6) Rotting, holes, and other forms of material decay.
- (7) Deterioration of exterior stairs, porches, handrails, window and door frames, cornices, entablatures, wall facings, and architectural details that causes delamination, instability, loss of shape and form, or crumbling.
- (8) Deterioration that has a detrimental effect upon the special character of the district as a whole or the unique attributes and character of the contributing structure.
- (9) Deterioration of any exterior feature so as to create or permit the creation of any hazardous or unsafe conditions to life, health, or other property.

(i) *Ordinary Maintenance.* Nothing in these regulations shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of a landmark or property within a historic district which does not involve a change in design, material, or outward appearance that require the issuance of a building permit. In-kind repair/replacement and repainting is included in this definition of ordinary maintenance unless painting involves an exterior masonry surface that was not previously painted. The HPO shall be in charge of making the decisions as to what is "ordinary maintenance."

(j) *Certificates of Appropriateness for Alterations or New Construction Affecting Landmarks or Historic Districts.* No person shall carry out any construction, reconstruction, alteration, restoration, rehabilitation, or relocation of any Landmark or any property within a 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 Landmark or any property within a District without a Certificate of Appropriateness application. The application must be reviewed and approved by the City Administrator or Commission prior to the issuance of any building permit involving any Landmark or property located within a District. The application shall be required in addition to, and not in lieu of, any required building permit.

(k) *Review Criteria for Certificates of Appropriateness for Alterations or New Construction Affecting Landmarks or Historic Districts.* In considering an application for a Certificate of Appropriateness, the HPO and the Planning and Zoning Commission shall review it for compliance with *The Secretary of the Interior's Standards for Rehabilitation* and any applicable adopted Design Guidelines approved by the City Council.

(l) *Procedure for Certificates of Appropriateness for Alterations or New Construction Affecting Landmarks or Historic Districts.* The procedure for obtaining a Certificate of Appropriateness may be initiated by the individual property owner(s) of the subject Landmark or for a property located within a District. The application must be submitted for review and approved by the HPO or the Commission prior to the commencement of any work. An application for Certificate of Appropriateness shall be made on forms as prescribed by the City and shall be filed along with fees in accordance with the City's fee schedule.

(1) Design review affecting Landmarks and properties located in Districts.

- a. Upon receipt of a completed Certificate of Appropriateness application as determined by the HPO, the HPO shall review the application for a preliminary determination of compliance with the Secretary of the Interior's Standards for Rehabilitation and any applicable adopted Design Guidelines. If the application meets the Secretary of Interior's Standards or the Design Guidelines the City Administrator may administratively approve the C of A if the proposed work falls within the scope laid out in the Design Guidelines of work eligible for administrative approval.
- b. Upon receipt of a completed Certificate of Appropriateness and a preliminary determination of compliance, the HPO shall schedule a public hearing at a regularly scheduled Commission meeting of all work that is not subject to administrative approval as determined in the Design Guidelines.
- c. The Commission shall review the application at a regularly scheduled meeting. At that time, the applicant shall have an opportunity to be heard, present testimony and evidence to demonstrate that the proposed work complies with the Secretary of the Interior's Standards for Rehabilitation and any adopted Design Guidelines. Other interested parties and technical experts may also present testimony or documentary evidence which will become part of a record. The burden of proof shall be upon the applicant.
- d. The Commission may take action to approve, postpone requesting additional information or deny the application.
- e. If approved, the HPO shall issue a Certificate of Appropriateness to the applicant with the written findings of fact, and any specific conditions of

approval (if any) supporting the decision. No subsequent changes shall be made to the approved design without the prior review and approval of the HPO. An applicant shall have one (1) year from the date of issuance of a Certificate of Appropriateness to secure a building permit for the specified improvements or it shall become null and void.

- f. If the Commission finds the proposed work will have an Adverse Effect on the Landmark, or property located within a District, or if the proposed work is inconsistent with the Secretary of the Interior's Standards for Rehabilitation or any applicable adopted Design Guidelines, the Commission shall advise the applicant at the hearing of the disapproval of the application and of any changes to the application which are necessary to approval of the same. The HPO shall provide the applicant in writing of the disapproval of the application and of any changes to the application which are necessary for approval of the same. A Certificate of Appropriateness application that has been denied may not be resubmitted without incorporating changes to the application which are necessary for approval of the same.
- g. The applicant may appeal the decision to the City Council. Appeal requests shall be filed in writing to the HPO within ten (10) days of the Commission's decision.
- h. The City Council shall give notice, follow publication procedure, hold hearings, and make its decision in the same manner as provided in the general zoning regulations of the city.

(m) *Demolition of Landmarks or Property within a Historic District.* It is the intent of this and succeeding sections to preserve the historic and architectural resources of the city through limitations on demolition and removal of Landmarks to the extent it is economically feasible, practical, and necessary. The demolition or removal of historic buildings, structures and sites in the city diminishes the character of the city's historic Districts and it is strongly discouraged. Instead, the city recommends and supports preservation, rehabilitation and relocation within a Historic District. It is recognized however that structural deterioration, economic hardship and other factors not entirely within the control of the property owner may result in the necessary demolition or removal of a historic building structure or site.

- (1) Removal or repair of hazardous or dangerous Landmarks.
 - a. If the City's building official determines a Landmark to be structurally unsound and a hazardous or dangerous building pursuant to any appropriate regulation, the building official shall be required to provide written notice to the HPO and the Commission of the ordered removal or repair of the Landmark prior to taking such action.
 - b. Upon notification of the City building official the owner shall take immediate steps to comply with the building officials directives, including but not limited to the placement of a security fence around the subject structure in such a manner as to protect the public from danger.
 - c. The HPO shall convene experts such as architects and structural engineers familiar with historic buildings to assess the situation and

suggest alternatives to demolition.

(n) *Certificates of Appropriateness for Demolition Affecting Landmarks or Historic Districts.*

No person shall carry out the demolition of a Landmark or property within a District, including secondary buildings and landscape features that are not previously deemed a hazardous or dangerous building by the building official, or without the review and approval of a Certificate of Appropriateness for Demolition application by the Commission. The application shall be required in addition to, and not in lieu of, any required building permit. All demolition permits require a sixty-day stay of demolition to allow for exploration of options to preserve the structure.

(1) In the absence of a determination by the City's building official of the subject property as a hazardous or dangerous building, the Commission may consider an application for a Certificate of Appropriateness for Demolition of a Landmark or property located within a District, only if it meets compliance with one of the following:

- a. The subject property of the application is not a recognized Landmark.
- b. The subject building, structure or object is not an accessory building and/or landscape features that is integral to the historic interpretation or integrity of the Landmark.
- c. The applicant is requesting a Certificate of Appropriateness for Demolition of a Landmark on the basis of Economic Hardship pursuant to (o) and (p) of this section.
- d. The subject building, structure or object has lost its architectural significance and integrity over time for reasons not entirely within the control of the current or previous property owner(s).

(o) *Procedure for Certificates of Appropriateness for Demolition Affecting Landmarks or Historic Districts.* The procedure for obtaining a Certificate of Appropriateness for Demolition may be initiated by the individual property owner(s) of the subject Landmark or property within a District. The application must be submitted to the HPO for review and approval by the Commission prior to the commencement of any work.

(1) The application shall contain:

- a. Name, address, telephone number of applicant, and physical address of the individual property.
- b. Site plan of the individual property or map indicating the area of the proposed demolition showing all affected buildings and/or structures on the site.
- c. Photographs of existing conditions as well as any historical photographs, if available.
- d. All future development plans for the property, if available.
- e. Any other information which the Commission may deem necessary.

(2) An individual property that is under review by the City for a Certificate of Appropriateness for Demolition shall be protected by and subject to all of the

provisions governing demolition, minimum maintenance standards and penalties until a final decision by the Commission Becomes effective.

(3) The procedure for a Certificate of Appropriateness for Demolition application involving a claim of Economic Hardship shall be as follows:

- a. Upon receipt of a completed Certificate of Appropriateness for Demolition application, the HPO shall review the application for a preliminary determination of compliance with the standards for Economic Hardship and the criteria for review.
- b. Upon receipt of a completed Certificate of Appropriateness involving a claim of Economic Hardship and a preliminary determination of compliance, the HPO shall schedule a public hearing at a regularly scheduled Commission Meeting. The owner shall be required to stabilize and secure the property subject to the penalties of this Article until a final decision by the Commission becomes effective.
- c. The Commission shall conduct its initial review of the application at a regularly scheduled meeting. At that time, the applicant shall have an opportunity to be heard, present testimony and evidence to demonstrate that standards for Economic Hardship and the criteria for review have been met. Other interested parties and technical experts may also present testimony or documentary evidence which will become part of a record. The burden of proof shall be upon the applicant.
- d. In considering the application, the Commission shall take action to postpone the application to establish a Stay of Demolition period, during which time the owner shall allow the city to post a sign stating that the property is subject to demolition. Said sign shall be at least three feet by two feet 3 X 2 readable from a point of public access and state that more information may be obtained from the HPO for the duration of the stay. The owner shall conduct in good faith with the city local preservation organizations and interested parties a diligent effort to seek an alternative that will result in the rehabilitation of the Landmark. Negotiations may include but are not limited to such actions to utilize various preservation incentive programs to sell or lease the Landmark or facilitate proceedings for the city to acquire the Landmark under its power of eminent domain, if appropriate, and financially possible. If negotiations are successful, the Certificate for Demolition application shall be considered withdrawn, and all associated applications closed.
- e. At the end of the one hundred and eighty (180) days, if prior negotiations are unsuccessful and the request for demolition stands, the HPO shall schedule a second public hearing on the application at the next available regularly scheduled Commission meeting.
- f. At the end of the second hearing, the Commission may take action to approve, postpone requesting additional information or deny the application. If no hearing has been scheduled within sixty (60) working

days of the end of the stay period, a Certificate of Appropriateness shall be deemed issued and the HPO shall advise the applicant in writing.

- g. If approved, the HPO shall issue a Certificate of Appropriateness to the applicant with the written findings of fact, and any specific conditions of approval (if any) supporting the decision. The approval shall be valid for one (1) year from the hearing date of the Commission's final decision. The historic property shall immediately be removed from the city's inventory of historic properties and the official zoning maps of the city.
- h. Prior to demolition, the city may as a condition of approval require the owner to provide documentation of the demolished historic property at the owner's expense in accordance with the standards of the Historic American Building Survey (HABS). Such documentation may include photographs, floor plans, measured drawings, an archeological survey, or other information as specified.
- i. Approval for the demolition of a structure may be conditioned upon the construction of an acceptable replacement structure, or landscape or park plan. A bond or other financial guarantee in the amount of the cost of the replacement structure may be required in order to assure the construction of the replacement structure, or park, or landscape plan.
- j. The city may also require the owner to incorporate an appropriate memorialization of the building, structure, or site such as a photographic display or plaque into any proposed future development project on the property.
- k. Denial of a Certificate of Appropriateness application for Demolition involving Economic Hardship shall prevent the owner from demolishing the property or reapplying for another Certificate of Appropriateness application for Demolition for a period of three (3) years from the hearing date of the Commission's final decision unless substantial changes in circumstances have occurred other than resale of the property or those caused by acts beyond the control of the owner. It shall be the responsibility of the owner to stabilize and maintain the minimum maintenance standards for the property so as not to create a hazardous or dangerous building.
- l. The owner may appeal the decision of the Commission to the City Council. Appeal requests shall be filed in writing to the HPO within ten (10) days of the Commission's decision. The City Council shall give notice, follow publication procedure, hold hearings, and make its decision in the same manner as provided in the general zoning regulations of the city.

(p) *Economic Hardship involving Certificates of Appropriateness for Demolition Affecting Landmarks or property within a Historic District.* No Certificate of Appropriateness for Demolition involving a claim of Economic Hardship may be approved, nor shall a

demolition permit be issued by the city unless the owner proves compliance with the following standards for Economic Hardship:

- (1) The property is incapable of earning a reasonable return in its current or rehabilitated state, 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.
- (3) Earnest and reasonable efforts to find a purchaser interested in acquiring the property and preserving it have failed.
- (4) The structure cannot be moved or relocated to another site similar site or within the district.
- (5) The criteria for review in considering claims of economic hardship for non-income producing properties can be adopted by the Commission. Non-income properties shall consist of owner-occupied single-family dwellings and non-income producing institutional properties. All standards for review shall be made available to the owner prior to the hearing. The information to be considered by the city may include but not be limited to the following:
 - a. Purchase date price and financing arrangements
 - b. Current market value
 - c. Form of ownership
 - d. Type of occupancy
 - e. Cost estimates of demolition and post demolition plans for development.
 - f. Maintenance and operating costs
 - g. Inspection report by licensed architect or structural engineer having experience working with historic properties.
 - h. Costs and engineering feasibility for rehabilitation
 - i. Property tax information
 - j. Rental rates and gross income from the property
 - k. Other additional information as deemed appropriate.
- (6) Claims of Economic Hardship by the owner shall not be based on conditions resulting from:
 - a. Evidence of demolition by neglect or other willful and negligent acts by the owner
 - b. Purchasing the property for substantially more than market value at the time of purchase
 - c. Failure to perform normal maintenance and repairs.
 - d. Failure to diligently solicit and retain tenants.

e. Failure to provide normal tenant improvements.

(q) *Enforcement.* All work performed pursuant to a certificate of appropriateness issued under these regulations shall conform to any requirements included therein. It shall be the duty of the City building official to inspect periodically any such work to assure compliance. In the event work is not being performed in accordance with the certificate of appropriateness, or upon notification of such fact by the Commission and verification by the HPO, the City building official shall issue a stop work order and all work shall immediately cease. The property owner shall then be required to apply for a hearing before the Commission to explain the non-compliance. No further work shall be undertaken on the project if a stop work is in effect until a decision is rendered by the Commission on the application.

(r) *Penalties.* It shall be unlawful to construct, reconstruct, significantly alter, restore, or demolish any building or structure designated as a Landmark or in a designated District in violation of the provisions of these regulations. The City in addition to other remedies may institute any appropriate action or proceeding to prevent such unlawful construction reconstruction significant alteration or demolition to restrain correct or abate such violation or to prevent any illegal act business or maintenance in and about such premises including acquisition of the property.

(1) Any person, firm or corporation violating any provision of this division shall be guilty of a class C misdemeanor punishable by a fine of not less than two hundred and fifty dollars (\$250.00 or more than two thousand dollars (\$2,000.00). Each day the violation continues shall be considered a separate offense. Such remedy under this section is in addition to the abatement restitution.

Section 4. Severability Clause

Should any paragraph, phrase, sentence, or clause of this ordinance be determined to be unconstitutional, said determination shall not affect the remaining paragraphs, phrases, sentences or clauses which shall remain in full force and effect.

Section 5. Effective Date

This ordinance shall become effective after passage and publication as required by law.

PASSED AND APPROVED on First Reading this 18th day of May, 2023, by a vote of ____ (Ayes) to ____ (Nays) ____ (Abstain) vote of the City Council of the City of Wimberley, Texas.

PASSED AND APPROVED on Second Reading this 1st day of June, 2023, by a vote of ____ (Ayes) to ____ (Nays) ____ (Abstain) vote of the City Council of the City of Wimberley, Texas.

Gina Fulkerson, Mayor

ATTEST:

Tammy Heller, City Secretary

APPROVED AS TO FORM:

City Attorney

