

## Chapter 10.5

### HERITAGE PRESERVATION

**ARTICLE I. IN GENERAL, Sections 01 through 25 are hereby reserved.**

**ARTICLE II. HERITAGE PRESERVATION.**

**Section 26. Declaration of public policy and purpose.**

The Chaska City Council hereby declares as a matter of public policy that the preservation, protection, perpetuation and use of areas, places, buildings, structures and other objects having a special historical interest and value is in the public interest and is required in the interest of the health, prosperity, safety and welfare of the community. To this end, the Heritage Preservation Commission is created and charged with the stewardship of Chaska's heritage.

The purposes of this ordinance are to:

- 1) Safeguard the heritage of the City of Chaska by preserving historic properties and districts that reflect elements of its cultural, social, economic, political and architectural history;
- 2) Protect and enhance the City of Chaska's appeal and attraction to residents, visitors and tourists;
- 3) Enhance the visual and aesthetic character, diversity and interest of the City of Chaska;
- 4) Foster civic pride in the beauty and notable accomplishments of the past;
- 5) To strengthen the local economy;
- 6) To stabilize and improve property values in historic districts;
- 7) To promote the preservation and continued use of historic properties for the education and general welfare of the people of the City of Chaska; and
- 8) To encourage new buildings and development which will be harmonious with the existing historic buildings and neighborhoods but will not necessarily be of the same architectural style, the purpose being to develop the Historic District as a vital living area in which each succeeding generation may build with the quality and sensitivity of past generations.

**Section 27. Definitions.**

- 1) "Alteration" means work that changes the detail of a resource but does not change its basic size or shape.
- 2) "Commission" means a Heritage Preservation Commission created by the City Council.
- 3) "Demolition" means the razing or destruction, whether entirely or in part, of a resource and includes, but is not limited to, demolition by neglect. Destruction by fire when arson by the

owner or the owner's agent is proven shall be considered demolition.

- 4) "Denial" means the written rejection of a permit application for work that is inappropriate or that adversely affects a resource.
- 5) "Designation Study" means a study and report prepared to determine whether a property is worthy of designation as a historic district or historic resource.
- 6) "Historic District" means an area, or group of areas not necessarily having contiguous boundaries, that contain one resource or a group of resources that are related by history, architecture, archeology, engineering or culture.
- 7) "Historic preservation" means the identification, evaluation, designation, and protection of resources significant in history, architecture, archeology, engineering, or culture.
- 8) "Historic resource" means a publicly or privately owned building, structure, site, object, feature, or open space that is significant in the history, architecture, archeology, engineering, or culture of Chaska, the State of Minnesota, or of the United States; and is locally or nationally designated as historic.
- 9) "Resource" means one or more publicly or privately owned historic or non-historic buildings, structures, sites, objects, features or open spaces located within a historic district.
- 10) "Site alteration permit" means the written approval of a permit application for work that is appropriate and that does not adversely affect a resource.

### **Section 28. Historic District.**

- 1) The Chaska Historic District is hereby established and is bounded and described as follows:  
Lots 1 and 10, Block 44; Lot 5, Block 37, except the westerly 50 feet thereof; the east one-half of Block 37; the west one-half of Blocks 20, 29 and 36; the east one-half of Block 21; and all of Block 28 (City Square), according to the map or plat thereof on file in the Office of the County Recorder, Carver County, Minnesota.
- 2) The City Council may at any time establish by ordinance additional historic districts, modify boundaries of an existing historic district, or may eliminate an existing historic district.

### **Section 29. Heritage Preservation Commission.**

- 1) *Creation and Composition.* The Heritage Preservation Commission is hereby established (hereinafter referred to as the "Commission"), which shall consist of seven (7) voting members to be appointed by the City Council. Any member appointed to serve on the Heritage Preservation Commission shall be a resident of Chaska and shall have a demonstrated interest in historic preservation. The composition of the Commission shall

include, if available, at least two (2) preservation-related professionals, including the professions of history, architecture, architectural history, archaeology, planning, real estate, design, building trades, landscape architecture, or law. Whenever possible, at least two (2) members should own or reside in a historic property or should own or reside in property in an historic district. In addition, one member must be a designated representative of the Carver County Historical society, if available.

- 2) The members of the **Heritage Preservation Commission** shall be appointed for three (3) year terms, and each member shall be eligible to serve for three (3) consecutive terms. Said terms shall be staggered. Additional terms may be served by a Commissioner if sufficient applications are not received by interested residents. Vacancies shall be filled by the City Council within sixty (60) days of the vacancy occurring. The term of a Commissioner may be terminated and a new member appointed in the event the Commissioner fails to attend any three (3) consecutive meetings or in the event of failure to attend any four (4) meetings in any twelve (12) month period. (Ord. No. 846, 12-20-10)
- 3) *Pay.* Members of the Commission shall serve without pay.
- 4) *Organization.* The City Council shall elect from the Commission's membership a Chair and Vice-Chair who shall serve for the terms of one (1) year. Each will be eligible for re-election. The Chair shall preside over the Commission. The Vice-Chair shall, in the absence or disability of the Chair, perform the duties of the Chair.
- 5) *Quorum.* Four (4) members of the Commission shall constitute a quorum for the transaction of business.
- 6) *Voting.* Each member of the Commission shall be entitled to one (1) vote. The concurring affirmative vote of a majority of members present at the meeting of the Commission shall constitute approval of plans before it for review, or for the adoption of any resolution, motion or other action of the Commission. A majority of the members present may reject approval of plans before it for review.
- 7) *Rules and Regulations.* The Commission shall make by-laws, not inconsistent with local or state law, as it deems advisable and necessary for the conduct of its affairs and for the purpose of carrying out the intent of this Ordinance. Such rules shall provide for the time and place of regular meetings and for the calling of special meetings.
- 8) *Meetings.* The Commission shall hold regular meetings, but no less than four (4) per year. In addition, the Commission shall meet at its earliest convenience, when called by the Chair, to review such building permits or applications as are referred to it by the City Building Official or Director of Planning. All meetings of the Commission shall be open to the public; and a public record shall be kept of the Commission's resolutions, proceedings and actions.
- 9) *Staff Assistance.* To accomplish the intent and purpose of this ordinance, the City of Chaska shall provide the Commission with adequate staff support and supplies.

### **Section 30. Powers and Duties of Commission.**

- 1) The Commission shall issue a site alteration permit(s) or denial for all new construction, reconstruction, or exterior restoration, alteration, color change, or any other exterior work on any historic resource or any resource located within an historic district.
- 2) The Commission shall issue a site alteration permit, notice to proceed or denial for the moving or demolition of any historic resource or any resource located within an historic district.
- 3) The Commission shall conduct a survey and maintain a roster of historic resources located within historic districts which shall include a description of the characteristics of the resources which justified its designation, and a description of the particular features that should be preserved, and shall include the location and boundaries of the resource.
- 4) The Commission shall recommend to City Council the designation of additional historic resources or historic districts from resources chosen according to the criteria listed in section 31(3) which, when designated, shall be subject to all the provisions of this Ordinance.
- 5) The Commission shall review and comment to City Council on land use, housing and redevelopment, municipal improvement and other types of planning and programs undertaken by any agency of city, county or state governments, as they relate to historic resources in the City of Chaska.
- 6) The Commission shall work for the continuing education of the citizens of the City of Chaska with respect to the civic and architectural heritage of the City. It shall keep current and public a register of designated and proposed Heritage Preservation sites and areas, along with the plans and programs that pertain to them.
- 7) The Commission may survey all areas to determine needed and desirable improvements of older buildings throughout the city, acting in a resource and advisory capacity to owners of historic resources regarding their preservation, restoration, and rehabilitation.
- 8) The Commission may make recommendations to City Council on the acceptance of grants and gifts given for heritage preservation purposes.
- 9) The Commission may review and make recommendations to City Council on proposed amendments to the Zoning Ordinance as it relates to historic resources or historic districts.
- 10) The Commission shall make recommendations to City Council on proposed amendments to this Ordinance.
- 11) The Commission shall prepare an annual report by October 30<sup>th</sup> for the submission to City Council and the Minnesota State Historic Preservation Office concerning the work of the Commission during the preceding year.
- 12) The Commission shall be informed about and provide information to the public and City staff on the use of various federal, state, local and private funding sources available to promote historic resource preservation and other incentives for preservation of historic resources,

including legislation, regulations and codes which encourage the use and adaptive re-use of historic properties.

- 13) The Commission may make recommendations to City Council that designated properties or historic resources be acquired by purchase, gift or by eminent domain.
- 14) The Commission may take such actions as are reasonable and necessary for the administration and enforcement of this Ordinance.
- 15) Variances – Due to peculiar conditions of design and construction in historic neighborhoods it may be in the public interest to retain a neighborhood’s historic appearance by making variances to normal requirements of the Zoning Ordinance. Where it is deemed that such variances will not adversely affect neighboring properties, the Commission shall recommend to the Planning Commission that such variance to standard requirements be made.
- 16) Exceptions to Uniform Building Code – Due to peculiar conditions of design and construction of historic buildings it may be in the public interest to retain the economic viability of a historic building by making exceptions to normal requirements. Where it is deemed that such exceptions will be no more hazardous based on life safety, fire safety and sanitation than the existing building, the Commission shall recommend to the Director of Planning that such exceptions to standard requirements be made.

### **Section 31. Designation Criteria and Procedures.**

- 1) *Purpose.* This section is established to promote the preservation of historic resources by providing the Commission with authority to recommend the designation of historic resources and historic districts to the City Council and to adopt design guidelines for designated properties. Once designated by the City Council, such historic resources and districts shall be subject to all provisions of this Ordinance.
- 2) *Designation procedures.* The City Council, on recommendation of the Commission, may, after notice and public hearing as described in section 35, designate resources, other landmarks and historic districts.
- 3) *Criteria.* The following criteria shall be considered in determining whether a property is worthy of designation as a landmark or historic district because of its historical, cultural architectural, archaeological, or engineering significance:
  - a) has significant character, interest, or value as part of the development, heritage or cultural characteristics of the city, state or county; or
  - b) is the site of a significant historic event; or
  - c) is associated with the life of a person or persons who significantly contributed to the city’s culture and development; or
  - d) embodies those distinguishing characteristics of an engineering specimen or an

architectural style, period, form or treatment; or

- e) contains elements of design, detail, materials, or craftsmanship which represent a significant innovation; or
  - f) portrays the environment in an era of history characterized by a distinctive architectural style; or
  - g) is the work of an architect or master builder whose individual work has influenced the city's development; or
  - h) owing to its unique location or singular physical characteristics, represents an established and familiar visual feature of a neighborhood or city.
- 4) *Nomination of Property.* Nomination of a resource to be considered for designation for preservation shall be submitted to the Director of Planning. For the purpose of this Ordinance, any person may nominate any building, structure, object, site, or district for preservation. The Director of Planning shall forward complete applications to the Commission.
- 5) *Commission decision on nomination.* The Commission shall review all complete nomination applications to determine whether the nominated resource is worthy of preservation. All applications shall include property boundaries and a program for the preservation of the resource, which shall follow the Secretary of the Interior's Standards for Treatment of Historic Properties. If the Commission determines that a nominated property appears to meet at least one of the criteria for designation contained in section 31(3), the Commission may direct the planning director to commence a designation study of the resource.
- 6) *State Historic Preservation Office review.* All proposed designations that the Commission deems worthy of preservation shall be submitted to the State Historic Preservation Office (SHPO) for a sixty (60) day review period. SHPO's comments on the proposed designation shall be sent to the City Council for consideration.
- 7) *Planning Commission review.* All proposed designations that the Commission deems worthy of preservation shall be submitted to the Planning Commission for a sixty (60) day review period. Comments from the Planning Commission shall include, but not limited to, the relationship of the proposed designated resource to the Comprehensive Plan and Zoning Ordinance, the effect of the proposed designation upon the surrounding neighborhood and any other planning considerations which may be relevant to the proposed designation.
- 8) *Commission review.* Following completion of the designation study the Commission shall hold a public hearing as described in section 35 to consider the proposed designation. In making its recommendation to City Council, the Commission shall consider the designation criteria contained in section 31(3), the information contained in the designation study, the State Historic Preservation Officer's comments, the Planning Commission's comments, and all testimony received at the public hearing relating to the designation.

- 9) *City Council designation.* The Commission shall forward its recommendations, together with its findings of significance and eligibility, and with the comments of the Planning Commission and of the State Historic Preservation Office, to the City Council. The City Council, upon the request of the Commission, may, by ordinance, designate a heritage preservation site. Such an ordinance shall require a two-thirds vote of all City Council members to be effective.
- 10) *Recording of Preservation Sites.* The City Clerk shall record with the Carver County recorder the legal description of all buildings, lands, or areas designated as Heritage Preservation Sites by the Council, and shall send a copy to the Building Official.
- 11) *Design Guidelines.* The Commission shall adopt design guidelines for historic resources and historic districts. Prior to adoption, the Director of Planning shall submit all proposed design guidelines to the State Historic Preservation Officer for review and comment within sixty (60) days.

### **Section 32. Regulation of Construction and Alteration.**

- 1) *Permit.* A Site Alteration Permit shall be obtained before new construction, alterations or repair, including color and signage change, or any other work that will effect the exterior appearance of a historic resource or a resource located in a historic district.
- 2) *Application.* An owner of a historic resource or a resource located in an historic district shall apply to the Director of Planning for a Site Alteration Permit, including all information that the Director of Planning and the Commission determine is necessary for a complete application, including, but not limited to, photographs of the existing structure, plans and written description fully describing the proposed work. Following receipt of a complete application and all supporting documentation, the Director of Planning shall refer the application and all required supporting material to the Commission.
- 3) *Commission Review.* The Commission shall hold a public hearing on each complete application for a Site Alteration Permit as provided in section 35. The Commission may approve, approve with conditions, or deny such plans. All findings and decisions of the Commission shall be final, subject to appeal to the City Council as specified in section 34.
- 4) *Matters considered.* In reviewing new construction and site alteration plans, the Commission shall give consideration to:
  - a) The historic and architectural significance of the resource and its relationship to the historical integrity of the surrounding area.
  - b) The general compatibility of the architectural style, arrangement, texture, color, arrangement of color, and materials used on existing and proposed structures with the character of the historic resource and its site or the historic district.
  - c) Any applicable design guidelines adopted by the Commission.

d) Secretary of the Interior's Standards for Treatment of Historic Properties. These standards are as follows:

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

5) *Findings.* Before approving any Site Alteration Permit, the Commission shall make findings that the alteration will not materially impair the integrity of the historic resource or historic district and is consistent with the applicable design guidelines adopted by the Commission, or if design guidelines have not been adopted, is consistent with the recommendations contained in the Secretary of the Interior's Standards for Treatment of Historic Properties. (Amended 02-03-03)

6) *Action by Commission.* If the Commission approves plan(s), it shall direct the Building Official to make a notation on the building permit and process the application. If the Commission denies plan(s), it shall immediately inform the Building Official in writing. The Commission shall furnish the permit applicant with a copy of the decision together with

recommendations for changes necessary before the Commission will reconsider the permit application.

- 7) *Minor Classes of Work.* Applications and plans for minor classes of work shall be approved by the Planning Director, as delegated by the Commission, when the work is in conformance with the approved guidelines and is on the list of minor classes of work prepared by the Heritage Preservation Commission. Review of minor classes of work is beneficial in expediting the permitting process where appropriate.
- 8) *Limitations.* If within 60 days from the filing of a Site Alteration Permit application the Commission has neither approved or denied the Site Alteration Permit application, the plans and permit application shall be deemed to have been approved by the Commission, and if all other requirements of the City have been met, the Building Official shall authorize a permit for the proposed work. By vote of the Commission and notification of the Building Official, the 60-day period may be extended by 15 days in cases where professional study or recommendation is required and the 60-day period is not sufficient to do the work.

### **Section 33. Regulation of Demolition and Relocation.**

- 1) *Purpose.* The demolition or relocation of individual resources or resources within an historic district shall be discouraged. The Commission may, however, after careful consideration of the effect of the move on the resource in question and on the entire historic district, issue a Site Alteration Permit for moving or demolition of a resource.
- 2) *Action by Commission.* Upon receiving an application concerning the demolition or relocation of a historic resource or resource located in an historic district, the Commission within sixty (60) days after receipt of the application shall either approve or deny such application, or find that the preservation and protection of historic places and the public interest will best be served by postponing the demolition or alteration for a designated period, which shall not exceed one hundred eighty (180) days from the receipt of the application, and notify the applicant of such postponement.
- 3) *Public hearing.* In all applications involving the demolition or relocation of a resource or historic resource, provision shall be made for a public hearing as set forth in this article.
- 4) *Engineer study.* In any case involving the demolition or relocation of a resource or historic resource, before granting approval or requiring a postponement, the Commission may call on the City Engineer to provide them with a report on the state of repair and structural stability of the structure under consideration.
- 5) *Alternative undertakings.* Within the period of postponement of such demolition of any building, the Commission shall take steps to ascertain what the City Council can or may do to preserve such building, including consultation with private civic groups and interested private citizens and including investigation of the potential use of the power of eminent domain when the preservation of a given building is clearly in the interest of the general welfare of the community and of certain historic and architectural significance. The Commission may also require a reuse study be completed, at the owner's expense, to determine potential reuses of the building proposed to be demolished.

- 6) *Primary matters considered.* The Commission shall use the following primary criteria for review of a Site Alteration Permit for relocating or demolition. At least one of the following requirements must be met in order for the Commission to approve relocating or demolition of a historic resource.
- a) Retention of the resource constitutes a hazard to public safety that cannot be eliminated by economic means available to the owner, including the sale of the structure on its present site to any purchaser willing to preserve the structure.
  - b) Preservation of the resource is a deterrent to a major improvement program that will be of substantial benefit to the community.
  - c) Retaining the resource will cause an undue and unreasonable financial hardship to the owner, taking into account the financial resources available to the owner including the sale of the structure to any purchaser willing to preserve the building.
  - d) Retaining the resource is not in the interest of the majority of the community.
- 7) *Secondary matters considered.* If the primary criteria have been met for a historic resource or if the Commission is reviewing the relocation or demolition of a resource, then the Commission may consider any or all of the following secondary criteria in deciding whether to approve or deny the application:
- a) The merit of the structure to be demolished.
  - b) The effect of the demolition on the surrounding buildings.
  - c) The effect of the demolition on the historic district as a whole.
  - d) The value or usefulness of the proposed replacement structure to the community, and the appropriateness of its design to the historic district.
  - e) If the lot is to be left open, the impact of open space in that location and on the district as a whole.
  - f) The effect of the demolition on the local economy.
  - g) Whether the demolition will foster civic beauty.
  - h) Whether the demolition will stabilize and improve property values in the district.
  - i) The effect of the demolition on safeguarding the heritage of the City, State, or Nation.
  - j) The effect of the demolition on promotion of the district for the education, pleasure, and welfare of the citizens of the City.

- 8) *Findings.* Before approving any demolition, partial demolition, or relocation, the Commission shall make findings that the request is necessary to correct an unsafe or dangerous condition on the property, is necessary for a major redevelopment that is of substantial benefit to the community, or that there are no reasonable alternatives to the destruction. In determining whether reasonable alternatives exist, the Commission shall consider, but not be limited to, the integrity of the property and the economic value or usefulness of the existing structure, including its current use, costs of renovation and feasible alternative uses.
- 9) *Action by Commission.* If the Commission approves the demolition or relocation, it shall direct the Building Official to process the application ten (10) days after Commission approval in order to provide a period of time within which a party may appeal the Commission's decision to the City Council. The Commission may require that the exterior and interior of the historic resource be recorded, at the owner's expense, according to the documentation standards of the Historic American Buildings Survey (HABS).

In case of disapproval, the Commission shall state the reasons therefore in a written statement to the applicant and make recommendations in regard to appropriateness of design, arrangement, texture, material, color and the like of the property involved.

#### **Section 34. Appeals to the City Council.**

All decisions of the Heritage Preservation Commission ~~except designations and historic variances~~ (amended by Ordinance No. 792 in October of 2006) shall be final subject to appeal to the City Council. Any affected party may initiate appeals by filing the appeal with the Director of Planning. All appeals shall be filed within ten (10) working days of the date of the Commission's order and decision. A copy of the notice of appeal and statement setting forth the grounds for the appeal shall be transmitted to City Council and a copy sent to the Commission. City Council may overturn the Commission's order and decision by a majority vote of all members of the City Council. The Commission, in any written order denying a permit application, shall advise the applicant of the applicant's right to appeal to the City Council and shall include this section in all such orders.

#### **Section 35. Public Hearings.**

Public hearings shall be published in the City's official newspaper at least ten (10) days prior to the date of the hearing, and notice of the hearing shall be mailed at least ten (10) days before the day of the hearing to all owners of record of the property or properties in question and to all owners of property situated wholly or partly within 350 feet of the Heritage Preservation Site.

#### **Section 36. Annual Report.**

The Commission shall submit to City Council an annual report summarizing the work of the Commission during the previous calendar year. This report shall be submitted by October 30 of each year.

The annual report should list conferences or workshops attended by the Commission and staff, summarize applications heard by the Commission and their disposition, report any educational programs undertaken in the past year, note in detail any significant precedents set during the past year, and state the Commission's plans for the coming year.

Copies of the annual report shall also be submitted to the Director of Planning, Building Official, and the State Historic Preservation Officer.

The Planning Director shall submit a summary of all Site Alteration Permits, if any, to the Commission on an annual basis.

### **Section 37. Emergency Repair.**

In emergency situations where immediate repair is needed to protect the safety of a building or structure and its inhabitants, the Director of Planning and Building Official may approve the repair without prior Commission action. In the case of an emergency repair permit issued pursuant to this Section, the Director of Planning shall notify the Commission of the action and specify the facts or conditions constituting the emergency situation.

### **Section 38. Enforcement.**

In case any building or structure subject to the regulation of this ordinance is to be constructed, altered, repaired, converted, moved, or subjected to demolition in violation of this Ordinance, the Director of Planning, in addition to any other remedies, may:

- 1) Institute civil action for injunctive relief to stop, prevent, or abate a violation of this ordinance.
- 2) Issue a stop work order to prevent a continuing violation of this Ordinance.

A person, individual, partnership, firm, corporation, organization, institution or agency of government that violates this Ordinance shall be guilty of a misdemeanor and may be punished under Section 08 of Chapter 1 of the Code of Ordinances.

A person, individual, partnership, firm, corporation, organization, institution or agency of government that violates this Ordinance may be ordered by the court to pay the cost to restore or replicate a resource unlawfully constructed, altered, repaired, converted, moved, or subjected to demolition.

### **Section 39. Severability.**

- 1) *Severability of text.* If any portion of this chapter is determined to be invalid or unconstitutional by a court of competent jurisdiction, that portion shall be deemed severed from the regulations, and such determination shall not affect the validity of the remainder of the chapter.

- 2) *Severability of application.* If the application of any provision of this chapter to a particular property is determined to be invalid or unconstitutional by a court of competent jurisdiction, such determination shall not affect the application of said provision to any other property.

**Section 40. Effective Date.**

This Ordinance shall be in full force and effect from and after its passage, adoption and publication according to law.

Passed and adopted by the City Council of the City of Chaska, Minnesota, this 15<sup>th</sup> day of July, 2002.