CITY OF SAN ANTONIO
DEVELOPMENT SERVICES DEPARTMENT
P.O.BOX 839966 I SAN ANTONIO TEXAS 78283-3966

ACCREDITED

RULE INTERPRETATION DETERMINATION

Determination #: **RID 2014-003**

Title: Initiation of Designation of Historic Landmarks

Drafted by: DSD Policy Administration and the Office of Historic Preservation

Rule in Question: Section 35-606 (b) Designation of Historic Landmarks, subsection (1) Initiation. "Any person, the historic and design review commission, zoning commission, the historic preservation officer, or the city council may initiate a historic landmark designation by filing an application with the historic preservation officer." The rule in question is related to historic **landmark** designation, not the designation of historic **districts**.

Department Action: The Director concurs with the staff position, clarifying the process and procedures for initiating historic landmark designations and harmonizing the process with the associated zoning procedures. The Director also concurs that related sections of the Unified Development Code (UDC) be reviewed and considered for future amendments to both codify this clarification and achieve consistency with state law.

Shannon Shea Miller, AICP
Historic Preservation Officer

5.23.14
Date

Roderick Sanchez, AICP, CBO
Development Services Director

5-30-14
Date

Effective Date of Determination: Immediately

Please note RIDs often result in direct or related UDC amendments to codify the clarification addressed within the RID. RIDs can also be superseded by subsequent RIDs or UDC amendments. The Development Services Department will remove RIDs from the website when they are no longer valid.

Staff Analysis: The process of designating properties as historic landmarks* is a function of zoning regulation. Designation involves applying a historic zoning overlay to the subject property; therefore, the designation process must follow the state statute (Chapter 211 of the Texas Local Government Code) and municipal ordinance regulations governing zoning amendments (Section 35-421 of the UDC). The city code is clear that rezoning may only be initiated with a property owner's consent or by the city council.

UDC language regarding property owner concurrence with landmark designation requests in Section 35-606 (a) is consistent with the above paragraph:

> *(a) **Authority**. Requests for landmark designation may only be made by or with the concurrence of the property owner. In instances where a property owner does not consent to the landmark designation, the historic preservation officer shall request a resolution from city council to proceed with the designation process prior to any zoning commission hearing.*

However, Section 35-606 (b)(1) outlines an initiation process that can be interpreted as inconsistent with Section 35-606 (a):

> *(b)(1) **Initiation**. Any person, the historic and design review commission, zoning commission, the historic preservation officer, or the city council may initiate a historic landmark designation by filing an application with the historic preservation officer. 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 historic preservation for processing. Owner consent for historic landmark designation shall be required unless a city council resolution to proceed with the designation has been approved.*

Specifically, the "owner consent" statement in 35-606 (b)(1) is accurate, but the subsection does not outline the method by which a person other than an owner can initiate a request to the Historic and Design Review Commission for a resolution from city council to proceed with the designation process. The UDC is silent on the ability of individuals or entities not listed in 35-606 (b)(1) to bring items to the attention of the city for potential historic designation. This includes community organizations that do not hold title to a property but have an interest in preserving potentially historic sites. The UDC should provide clarity between procedures for owners of property who wish to pursue historic landmark designation as well as equally interested non-owners.

Staff Position: To provide for clarity and consistency throughout the UDC, including the appeal process, and ensuring consistency relative to the zoning process, staff finds that the procedures for initiating historic landmark designation for those who do not own the subject property should be as follows:

Person or Entity who does not own the Subject Property

1. File a review form, other than the official Landmark Application form. This is a request for HDRC review only and will not initiate the formal landmark zoning process.

2. The Office of Historic Preservation (OHP) will process the request for review and schedule on the Historic and Design Review Commission (HDRC) agenda.
3. If the HDRC disagrees with the proposal, a resolution from city council for landmark designation will not be sought.
4. If the HDRC agrees with the proposal, the OHP will seek concurrence from the property owner:
    a. If the subject property owner is in favor of the designation and authorizes a rezoning, the request may proceed as an owner initiated rezoning case in accordance with Sections 35-421 and 35-606 of the UDC. The HDRC shall be the applicant for all purposes.
    b. If the subject property owner is not in favor of the designation, the OHP shall process the HDRC request to City Council for consideration of a resolution to initiate the designation. The HDRC shall be the applicant for all purposes. If City Council approves the resolution directing the landmark designation/rezoning case to proceed, the request then moves forward through the rezoning process in accordance with Sections 35-421 and 35-606 of the UDC.

This RID serves as an outline of the process until such time as the pertinent sections of the UDC may be amended accordingly. The OHP will prepare necessary administrative materials (applications, forms, etc) to adhere to the above process as needed, including procedures to identify property owner concurrence. Such procedures may be similar to administrative procedures currently employed by DSD's Zoning Section to confirm property owner concurrence of rezoning applications.

The process for property owner initiated landmark designation remains as currently administered.

* This RID addresses the process for initiation of historic **landmark** designation (Section 35-606), but is not intended to address the initiation of historic **district** designation (Section 35-605) which is not in need of clarification.