



**RULE INTERPRETATION DETERMINATION**


**Determination #:** 2019-008

**Title:** Landmark Designation Process and Impact of HB 2496

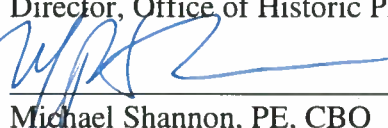
**Drafted by:** Office of Historic Preservation

**Rule in Question:** UDC Sections 35-606 Designation Process for Historic Landmarks; 35-453 Eligible Resources; and 35-403 Notice Requirements

**Department Action:** The Director(s) concur with the staff position, clarifying the process and procedures for designation of a historic landmark where there is owner opposition and recommends modifications to relevant sections of the Unified Development Code (UDC) to comply with HB 2496 which was passed during the 86<sup>th</sup> Legislature.

  
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Shanon Shea Miller, AICP  
Director, Office of Historic Preservation

1.15.20  
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Date

  
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Michael Shannon, PE, CBO  
Development Services Director

1/21/20  
\_\_\_\_\_  
Date

**Effective Date of Determination:** Immediate

*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 RIDs can also be superseded by subsequent RIDs or UDC amendments. The Development Services Department will remove RIDs from the website when they are no longer valid.*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 Texas Local Government Code authorizes municipalities to designate properties as local historic landmarks with and without the consent of the property owner.

Historic Designation is a function of zoning regulation and requires applying a historic zoning overlay to the subject property. Therefore, the designation process must follow Chapter 211 of the Texas Local Government Code and municipal ordinance regulations governing zoning amendments (Section 35-421 of the UDC).

The UDC is clear that a change in zoning may only be initiated by the property owner or by Resolution approved by City Council. Therefore, historic designation process is not initiated at the HDRC level; it is actually a two-step process requiring 1) Evaluation and

recommendation of an eligible historic landmark (Finding of Historic Significance) and 2) An authorized designation request to rezone the property to include a "HL" zoning overlay following procedures outlined in UDC Section 35-421.

UDC Section 35-606 authorizes anyone to request a review of historic significance by the HDRC. If the HDRC concurs that a property is eligible for historic designation, it may vote to recommend an eligible property to City Council for Resolution to proceed with a change in zoning. A property owner may also provide consent to landmark designation during this process which would not require a Resolution to proceed under 35-421.

The passage of HB 2496 placed new requirements that must be fulfilled in order to proceed with landmark designation of a property without owner consent. Designation cases not having owner consent may only advance through a three-fourths vote of either the HDRC or Zoning Commission. Additionally, property owned by religious organizations as defined by the Tax Code require owner consent to proceed with designation.

The legislation also requires the City to provide educational resources to property owners during the process. These requirements are captured in the notification provisions below.

The UDC also lacks clarity on the timeframes associated with the landmark designation process and process by which eligible properties are reviewed for historic significance and recommended by the HDRC. UDC Section 35-606, Designation Process for Historic Landmarks, includes some timeline requirements associated with the designation process, but these are limited to authorized requests to rezone with either owner consent or Resolution by Council and do not address timelines for decisions regarding evaluation and recommendation of eligibility by the HDRC.

**Staff Position and Interpretation:** To provide clarity ensure consistency relative to the zoning process, staff has provided the following policy positions, current code interpretations, and proposed updates to clarify the process:

**Initiation and Type of Request** – Evaluation and recommendation of an eligible historic landmark by the HDRC may be initiated in two ways:

1) Applications submitted by the **property owner** or applications with verified owner support for the designation request do not require City Council Resolution and may be recommended by a simple majority of the HDRC. This type of request shall be treated like a normal change in zoning request (to include a historic zoning overlay "HL") which requires recommendation by the HDRC prior to consideration by the Zoning Commission. UDC Section 35-606 already states that OHP staff is to file the change in zoning request and provide the recommendation of the HDRC within 45 days. This section requires a Zoning Commission recommendation within 60 days. The item shall subsequently be scheduled for City Council consideration within 60 days following action by the Zoning Commission. All other provisions of UDC Section 35-421 related to the change in zoning process shall be followed.

2) All other requests for evaluation and recommendation of an eligible landmark may be made by the HDRC, Zoning Commission, the Historic Preservation Officer, City Council, or by a third party **not representing the property owner**. This type of request does not initiate the landmark designation (change in zoning) process. Rather, a Request for Review of Historic Significance prompts a decision regarding the eligibility of any property under UDC Section 35-607. Requests prompted by City Officials or the Historic Preservation Officer shall be scheduled for a public hearing of the HDRC following the owner notification requirements below.

A Review of Historic Significance may also be submitted by a third party through a petition made available by the Office of Historic Preservation. Proposed updates to the process by which a third party may initiate review of historic significance for a property will be provided by OHP during the 2020 UDC Update Cycle.

**Notification** – For properties having been found by the Historic Preservation Officer to meet at least 3 of the eligibility criteria established in UDC Section 35-607, OHP provides a notice of eligibility which satisfies 35-453 to apply interim review controls. UDC Section 35-606 requires notice to the property owner and registered neighborhood association of a scheduled HDRC hearing but does not specify the type of notice or minimum notification period. As policy, OHP follows the public notice provisions for historic district designation outlined in UDC Section 35-403 and includes a minimum 30-day written notice of the public hearing within the eligibility notice mentioned above.

With the passage of HB 2496, staff finds the written notice should be updated and codified to include educational information including the benefits of designation, such as historic tax incentives for rehabilitation or other City programs, regulations that may apply (including interim controls as described below), the designation process, and an opportunity to express support or opposition for the proposed designation. It also requires that the notice be provided to the property owner no later than 15-day prior to the first public hearing on the item. Staff further recommends updates to Table 403(1) Notice Requirements to reflect this updated requirement. For cases initiated by the City, the property owner may waive any minimum notification period in order to expedite the process.

Follow notification, a property owner may choose to support the proposal or effectively initiate a historic landmark application as the owner. In this instance, the process would follow the initiation steps listed in item #1 above following written authorization from the property owner to proceed with historic landmark designation.

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The following steps in the evaluation and designation process apply solely to applications initiated by the City for properties which lack owner consent for the proposed designation:

**Applicability of Interim Controls** - UDC Section 35-453 states that properties determined to be eligible for historic landmark designation shall follow the same requirements for review and permitted as a designated historic landmark for a period of 180 days following written notification to the property owner. This provision is intended to provide review oversight by the Office of Historic Preservation and protections from unpermitted demolition activity for the duration of the public hearing process or until a decision by City Council. The allotted timeframe also guarantees an expeditious public hearing process for the property owner while the property is considered for historic designation. Public hearings required in the process will be scheduled so that a final determination by City Council could potentially be made within 180 days unless otherwise requested by the owner.

It should be clarified that from time to time a property owner may request additional time to consider alternatives to demolition or seek legal counsel. Similarly, City Council may also seek a continuance to negotiate alternatives with a property owner. If such a request to delay the public hearing process is made in writing by the property owner or by City Council action, then the period under which interim controls apply is also extended as requested as an appropriate means to ensure review oversight by the Office of Historic Preservation. Proposed language for Section 35-453 which clarifies extensions is provided below.

**Finding of Historic Significance** – Following notification of the property owner, a public hearing of the HDRC regarding a Finding of Historic Significance for the property may be scheduled. It is OHP’s policy to make every effort to accommodate property owner participation in the process. At the written request of the property owner, OHP may delay consideration by the HDRC to ensure attendance by the owner or a representative of the owner. If a Finding of Historic Significance is approved, the landmark designation process is not initiated until a valid application for rezoning of the property to include a historic zoning overlay is made.

**Appeal** – In accordance with UDC Section 35-481, an appeal of a decision related to Chapter 35 of an administrative official may be submitted to the Board of Adjustment for their review. The UDC clearly sets out that the HDRC is a recommending body and not an administrative official. In cases where the HDRC recommends eligibility of a property through a majority vote, the HDRC has taken action directing staff to request a Resolution by City Council to proceed with the landmark designation process. Because the HDRC decision has not been made by an administrative official it is not appealable.

**Resolution by Council & Initiation of Landmark Designation** – Following approval of a Resolution to proceed with historic landmark designation for a property, OHP staff will file an application for a change in zoning for the property to include a historic zoning overlay. The historic landmark designation process officially begins when this application is submitted, prompting new rules under HB 2496.

**Zoning Case** – Once submitted, the request for a change in zoning to include a historic zoning overlay will be processed in accordance with UDC Section 35-421. Consideration of the item by Zoning Commission will be scheduled within 45 days. A recommendation from the HDRC concerning the application of the historic zoning overlay will be scheduled for the first available HDRC hearing prior to action by Zoning Commission. The written recommendation of the HDRC for the application shall be provided to the Zoning Commission for consideration.

In accordance with HB 2496, a three-fourths vote of either the HDRC or Zoning Commission is required in order for the case to proceed to City Council. Similarly, a three-fourths vote by City Council is also required to rezone the property without owner consent.

**Future UDC Amendments:** Staff recommends the following UDC Amendments:

**Table 403-1**  
Notice Requirements

(A)	****	(M)	(N)
Type of Notice	****	Applications within Neighborhood Conservation Districts and Historic Districts	<a href="#">Finding of Historic Significance Requiring a Public Hearing</a>
<b>Publication:</b> Publication in an official newspaper of general circulation before the 15th day before the date of the hearing.	****		
<b>Mail :</b> Written notice of the public hearing shall be sent.	****		<a href="#">*(2)(10)</a>
<b>Internet:</b> Post notice on the city's Internet website until the process has been completed.	****		
<b>Signage:</b> Post a sign on the property subject to the application. Signs to be installed and provided by the city	****		
<b>E-Mail:</b> Courtesy Reports of Applications shall be sent.	****	*(9)	

- Notes:
- (1) Notice shall be sent to each owner, as indicated by the most recently approved municipal tax roll, of real property, within two hundred (200) feet of the property. Notice for zoning cases shall be sent prior to the tenth day before the date of the public hearing at the zoning commission. Notice for demolition applications shall be sent prior to the seventh day before the date of the public hearing at the historic design and review commission. Notice shall not be required for text amendments to the Community, Neighborhood, Perimeter or Sector Plans.

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(9) Notice of Courtesy Reports of general building permits, sign permits, and Preliminary Plan Review meeting requests shall be sent weekly to all registered neighborhood associations. These notices are sent as a courtesy. Any failure to send or receive courtesy reports shall not restrict the issuance of the applicable permit.

(10) No later than the 15<sup>th</sup> day before the date of the initial hearing on historic designation of a property, the historic preservation officer shall provide the property owner a historic designation impact statement of impact that describes the impact that a historic designation of the owner's property may have on the owner and the owner's property. The historic designation impact statement shall include lists of the:

Regulations that may be applied to any structure on the property after designation;

Procedures for the designation;

Tax benefits that may be applied to the property after the designation; and

Rehabilitation or repair programs that the municipality offers for a property designated as historic.

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Sec. 35-453. - Permits Affecting Properties Identified as Eligible Resources or Recommended by the Historic Design and Review Commission for Historic Designation.

**(a) Applicability.**

(1) When an application is made on a building, object, site or structure that has been determined by the historic preservation officer to be an eligible resource for historic designation in accordance with this section, and when written notice informing the property owner of such a determination has been provided, then the provisions of this division shall apply to the property until the lesser of one hundred eighty (180) days of the notification or action by city council on the recommendation for designation. This period may be extended at the written request of the property owner at any time or by City Council action.

(2) When an application is made on a building, object, site or structure recommended by the commission for designation as a historic landmark or of a building, object, site, structure or unimproved land located within an area recommended by the commission for designation as a historic district, then the provisions of this division shall apply to the property until action by city council on the recommendation for designation.

**(b) Initiation.** The applicant may apply to the commission for review of a proposed project prior to final city council action on the designation request.

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Sec. 35-606. - Designation Process for Historic Landmarks.

(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. Notwithstanding the foregoing, a request for landmark designation may be made and approved by the city council. To the extent that this subsection conflicts with any other provisions of this chapter, this paragraph shall control except for buildings, objects, sites, structures, or clusters heretofore designated as local landmarks or districts, National Register landmarks or districts, state historic landmarks or sites, or state archaeological landmarks or sites. Additionally, requests for designation shall be made on a form obtained from the city historic preservation officer through the office of historic preservation. Completed request forms shall be returned to the office of historic preservation for processing. All buildings, objects, sites, structures, or clusters heretofore designated by the city council as historic landmarks under any pre-existing ordinance of the City of San Antonio shall be accorded the protection of properties designated historic landmarks under this chapter and shall continue to bear the words "historic, exceptional" (HE) or "historic, significant" (HS) in their zoning designation.

(b) **Designation of Historic Landmarks.**

(1) **Initiation.** Any person, the historic and design review commission, zoning commission, the historic preservation officer, or the city council may initiate [an request for review of historic significance or evaluation for eligibility for historic landmark designation](#) ~~a historic landmark designation~~ by filing an application with the historic preservation officer. [Owner consent to initiate historic landmark designation shall be required unless a city council resolution to proceed with the designation has been approved.](#) Requests for [historic landmark](#) designation [may be requested by or with verified written consent of a property owner and](#) 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.~~ Additionally, owners may submit with the application a written description and photographs or other visual material of any buildings or structures that they wish to be considered for designation as non-contributing to the historic landmark.

(2) **Completeness Review.** See section 35-402 of this chapter. For purposes of this section and subsection 35-402(c), the historic preservation officer is the administrative official with original jurisdiction to review an application for completeness.

(3) **Evaluation.** [Following receipt of a complete application, properties shall be evaluated for eligibility under the Designation Criteria for Historic Districts and Landmarks outlined in 35-607. At his or her discretion, the Historic Preservation Officer may request a review](#)

and recommendation by the Historic and Design Review Commission for a Finding of Historic Significance.

~~(3)(4) **Decision.** The historic preservation officer shall refer a completed application for historic landmark designation to the historic and design review commission. Property owners of proposed historic landmarks shall be notified of the historic and design review commission hearing by the historic preservation officer by mail prior to a historic and design review commission hearing for historic landmark designation. Notice to property owners shall state the place, date, time and purpose of the historic and design review commission hearing. The historic preservation officer shall also send notice of the meeting to any registered neighborhood associations located within the proposed district boundary. The historic and design review commission shall make and forward its recommendation to the zoning commission within forty five (45) days from the date of submittal of the designation request by the historic preservation officer. Upon submittal of the historic and design review commission's recommendation, the proposed historic district or landmark designation shall be submitted to the zoning commission for its review recommendations along with its finding of historic significance. The zoning commission and the city council shall process the application as prescribed in section 35-421 of this chapter and this section. The zoning commission shall schedule a hearing on the historic and design review commission recommendation to be held within sixty (60) days of receipt of such recommendation and shall forward its recommendation to city council which shall schedule a hearing to be held within sixty (60) days of council's receipt of such recommendation.~~ The Historic and Design Review Commission may approve a Finding of Historic Significance through a majority vote of members present. If approved, the Historic Preservation Officer will seek concurrence from the property owner. Property owners may verify or withdraw consent at any time during the designation process.

- A. All requests for a change in zoning to include a historic zoning overlay having either written, verified owner consent or resolution by City Council to proceed with the historic landmark designation will be processed in accordance with 35-421.
- B. If the subject property owner does not consent to the proposed designation, the Historic Preservation Officer shall process the HDRC request to City Council for consideration of a resolution to initiate historic landmark designation. The HDRC shall be the applicant for all purposes.
- C. To designate a historic landmark, the city shall obtain consent to the designation by the owner of the property or approval of designation by three-fourths vote of either the Historic and Design Review Commission or Zoning Commission recommending the designation and a three-fourths vote by the City Council. If the property is owned by an organization that a religious organization under Section 11.20, Tax Code, the property may be designated as a historic landmark only if the organization consents to the designation.



D. Upon passage of any ordinance designating a historic landmark, or removing or upgrading the designation of historic, the city clerk shall send notice of the fact by mail to the owner or owners of affected property.

~~(4) **Criteria.** Designations of exceptional and significant historic landmarks shall be made considering criteria enumerated in section 35-607 of this division.~~

(5) **Recordation.** Upon designation of a building, object, site, structure, or cluster as an exceptional or significant historic landmark, the city council shall cause this designation to be recorded in the official public records of real property of Bexar County, the tax records of the City of San Antonio and the Bexar Appraisal District, the house numbering section of the City of San Antonio's department of development services, and on the City of San Antonio's official zoning maps. Still further, for purposes of clarity in the zoning designation of property, all zoning maps shall reflect exceptional and significant historic landmarks or property in historic districts by inclusion of the words "historic, exceptional" (HE) or "historic, significant" (HS) as a prefix to its use designation as specified in accordance with the general zoning ordinance of the City of San Antonio.

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