

Public Hearing Draft
2/13/2023
Subject to change, not final until approved by City Council
Not approved by City Attorney

Ordinance No. 2023-_____

AN ORDINANCE AMENDING CHAPTER 33 OF THE CODE OF ORDINANCES OF THE CITY OF HOUSTON BY ADDING A NEW ARTICLE XI, CONSERVATION DISTRICTS; ESTABLISHING CRITERIA AND PROVIDING FOR THE CREATION OF CONSERVATION DISTRICTS; PROVIDING FOR OTHER MATTERS RELATED TO THE SUBJECT; PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Houston has a vibrant historic preservation program that helps preserve and protect neighborhoods with architectural importance; and

WHEREAS, the City Council recognizes that some neighborhoods have character and cultural elements that are worth protecting, each to be based on particular elements common throughout an area; and

WHEREAS, the City Council finds that it is in the public interest to establish requirements and options for the creation of conservation districts as an alternative method of neighborhood protection, and allowing for the development of area-specific design requirements; and

WHEREAS, in 2021, the Texas Supreme Court upheld the City's historic preservation program, finding that the program was not zoning as contemplated in Article VII-b, Section 13 of the City Charter, and also held that since regulating places and areas of historical, cultural, or architectural importance and significance was specifically enumerated in Texas Local Government Code Chapter 211 ("Chapter 211"), Section 211.003 as within a city's scope of authority to regulate by zoning, compliance with that Chapter was required; and

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WHEREAS, it is the City's intention to comply with and adhere to Chapter 211 in addition to any requirements spelled out in this Ordinance; and

WHEREAS, the Houston Architectural and Historical Commission have held public hearings on the proposed regulations; and

WHEREAS, the City Council has held a public hearing on the proposed regulations, and has determined that these amendments will benefit the public health, safety, and welfare of residents of the City while preserving private property rights; **NOW, THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

Section 2. That a new Article XI, Conservation Districts, Chapter 33 of the City of Houston Code of Ordinances is hereby adopted as set forth in **Exhibit A**, attached hereto and incorporated herein.

Section 3. That the City Attorney is hereby authorized to direct the publisher of the Code to make such non-substantive changes to the Code as are necessary to conform to the provisions adopted in this Ordinance, and to make such changes to the provisions adopted in this Ordinance to conform them to the provisions and conventions of the published Code.

Section 4. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for

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any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 5. Any violation of any provision of Chapter 33, Article XI, Conservation Districts, as herein adopted and made a part of the City of Houston Code of Ordinances, is a misdemeanor punishable upon conviction by a fine not to exceed \$2000.00 per day of violation. Each separate day of violation is a separate offense.

Section 6. That a public emergency exists requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on that day and shall take effect immediately upon its passage and approval by the Mayor.

PASSED AND ADOPTED this _____ day of _____, 2023.

APPROVED this _____ day of _____, 2023.

Mayor of the City of Houston

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Prepared by Legal Dept. _____

KM/ Senior Assistant City Attorney III

Requested by Margaret Wallace-Brown

Director, Department of Planning and Development

L.D. File No. 0000001090

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EXHIBIT A

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ARTICLE XI. Conservation districts.

Sec. 33-601. General. A conservation district may be established within the city limits to preserve, maintain, and protect the exterior elements of development and the community character and heritage of neighborhoods having distinctive characteristics and patterns of development. When a conservation district is identified, specific regulations will be considered and adopted by council to protect and strengthen the neighborhood's desirable and unique physical features and design characteristics, to promote new compatible development, and to encourage the harmonious, orderly, and efficient growth and redevelopment of these Houston neighborhoods.

Sec. 33-602. Initiation of Conservation Districts.

- (a) A conservation district may be initiated following the expression of interest by a community and discussions with staff. No formal application or petition is required. The department may also identify appropriate areas that may be eligible for and benefit from conservation district designation, and may also create an annual plan for one or more conservation districts. Existing historic districts designated by the City of Houston may not be converted to only conservation districts, though part or all of a local or federal historic district may be included within a conservation district.
- (b) One or more of the following criteria may be utilized in considering whether an area should be analyzed for consideration as a conservation district:
 - (1) Property owner and resident support and input;
 - (2) Analysis of development applications and any existing restrictive covenants in the area;
 - (3) Historical studies of the neighborhood and cultural institution;
 - (4) Analysis of the area confirming consistent and identifiable physical attributes of culture, history, scale and development that can be preserved by protecting or enhancing one or more of those attributes;
 - (5) Whether the area is of a sufficient size, is compact and contiguous, and reasonable boundary lines can be drawn to the logical edges of the area or subdivision, as may be indicated by a creek, street, subdivision line, utility easement, or other boundary; and
 - (6) Other data relevant to consideration as determined appropriate by the director.

Sec. 33-603. Process for designation of a conservation district.

- (a) The department's analysis for a proposed conservation district shall include, at a minimum:

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- (1) A map indicating the boundaries of the proposed district, which must be contiguous;
 - (2) A description and photographs of properties in the proposed district;
 - (3) A statement regarding the reason for creating the proposed district;
 - (4) A list of attributes for new construction or exterior alterations on existing structures that the neighborhood wants to be regulated. The director will prepare design guidelines appropriate for the proposed district from the list of areas identified by the owners and residents as listed below, or as may otherwise be determined appropriate:
 - a. Building height or number of stories;
 - b. Building size and massing, the general shape and form of the structure;
 - c. Lot size, coverage;
 - d. Front and side building setbacks;
 - e. Off-street parking ;
 - f. Roof line and pitch;
 - g. Paving, hardscape covering;
 - h. General site planning, location of primary and ancillary structures;
 - i. Architectural style and detailing;
 - j. Building materials;
 - k. Alterations to the exterior of existing structures;
 - l. Garage entrance location;
 - m. Fences and walls; and
 - n. Building relocation and demolitions, subject to other provisions in this code.
 - (5) Additional information to assist in the evaluation of the application, or as may be requested by the director.
- (b) Upon completion of the above-described plan and map of the area, the director will schedule and conduct at least one public meeting to review the analysis, proposed design guidelines and map boundaries with the community. The director will give notice of each public meeting as described in this section and complying with state law. As of the date notices are mailed, the director shall cause notice of pending designation to be placed in the city permitting system and on the City's public access GIS mapping site.
- (c) The director may establish additional rules for the conduct of public meeting(s) and shall hold the public meeting(s) within or near the proposed conservation district, provided that an adequate location is available. At the public meeting(s), the director will present information on the proposed district, the draft guidelines, and the process for approval.

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- (d) Draft guidelines and a detailed map of the proposed conservation district will be displayed to the public as part of the public meetings for community input.
- (e) Procedures for consideration of designation as a conservation district:
 - (1) Within no more than 60 days after the director's review under subsection (b), determining the analysis is complete and sufficient to move forward, the director shall mail a notice to the owners of each property within the proposed conservation district as indicated on the most current appraisal district records. The director will also give notice by regular mail or email to all civic associations registered with the city whose boundaries include land in the proposed district. The notice shall contain, at a minimum:
 - a. The date, time, and location of the public meeting(s) described in subsection (c) of this section;
 - b. A map of the proposed boundaries; and
 - c. Any other information the director determines may be useful to the property owners.
 - (2) After the final public meeting, the director shall send, by regular mail, a response form to the owners of all property within the proposed conservation district, as indicated on the most current appraisal district roles. The response form, to be returned by the property owner, shall indicate whether the property owner does or does not support designation of the conservation district. The response form must be delivered to the department as directed on the response form. A minimum of 30 days will be allowed between the date of the notice and the deadline for return to the department.
 - (3) After the deadline for returning response forms has passed, the director will determine the percentage of owners in support of and owners in opposition to the designation of the proposed conservation district. The signature of one owner is required to indicate support of a property, even if co-owned..
- (f) If the director determines that 51% or more of the property owners in the proposed conservation district support the designation, the proposed conservation district may move forward for review and consideration as described below.
- (g) If support for the proposed conservation district is below 51%, then the director may either:
 - (1) Consider modifying the boundaries of the proposed conservation district to a smaller area that meets the minimum support level and the general criteria in Sec. 33-604. The design standards will be revised if necessary. The director will mail notice to the owners of all property, as indicated on the most recent appraisal district records, within the original boundaries of the proposed conservation district notifying them of the modified boundaries and the proposal to move forward with the modified boundary, and detailing whether their

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- property is located within the modified boundary or has been removed. The director will hold at least one additional public meeting for further comment and consideration of the boundaries; or
- (2) Determine that the proposed conservation district fails and that no further action will be taken. The director will mail notice to the owners of all property, as indicated on the most recent appraisal district records, within the proposed conservation district that the application has failed and that no further action will be taken.
 - (h) Following a determination that a proposed conservation district has at least 51% support to move forward, the director will prepare a final draft of design guidelines for the proposed conservation district and schedule one or more public hearings before the HAHC. Notice shall be given in accordance with Chapter 211, Texas Local Government Code.
 - (i) The HAHC will conduct at least one public hearing on each proposed district. Following the closing of the public hearing process, the HAHC may:
 - (1) Approve the proposed conservation district and design guidelines and forward the item to the mayor for council consideration;
 - (2) Approve after amending the boundaries or design guidelines in accordance with the provisions of this article, and forward the item to the mayor for council consideration;
 - (3) Defer the application and continue the public hearing to a later public hearing date; or
 - (4) Disapprove the application, after which no further action shall be taken.
 - (j) Once an item for a conservation district has been submitted to the mayor for consideration by council, council will schedule and conduct a public hearing and give notice in accordance with Chapter 211, Texas Local Government Code for each application recommended for designation as a conservation district. A district-specific ordinance for each proposed conservation district, containing the detailed design guidelines shall be made part of the HAHC recommendation and be submitted for consideration by council. Following the public hearing, council may:
 - (1) Approve the proposed conservation district;
 - (2) Approve after amending the boundaries or design guidelines in accordance with the provisions of this article;
 - (3) Defer the application and continue the public hearing to a later public hearing date; or
 - (4) Disapprove the application, after which no further action shall be taken.

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- (k) Action to approve a proposed conservation district by HAHC and City Council will be done in accordance with Chapter 211, Texas Local Government Code.

Sec. 33-604. Criteria for designation.

The following criteria may be considered by the Houston Archeological and Historical Commission and City Council in determining whether to designate a conservation district:

- (a) Common streetscapes, street patterns, significant community sites, or land use patterns creating an area identity;
- (b) Common pattern of improvements, landscaping, or building setbacks on the properties;
- (c) Common scale or bulk among buildings and structures, roof heights, location of garages, or other building footprint elements; or
- (d) Whether a proposed district is an area that was planned or developed by historically underrepresented or disenfranchised communities;
- (e) The value of the area as an aspect of community sentiment or public pride.

Sec. 33-605. Restrictions on development pending designation.

In accordance with sec. 33-603(c), and the placement of notice in the city permitting and public GIS systems, no application for a building permit for new construction, demolition, or alterations shall be granted until:

- (a) the commission makes a negative recommendation on a proposed designation,
- (b) council determines not to enact the proposed designation, or
- (c) 181 calendar days has elapsed, whichever is less,
- (d) the landowner has made application for a permit for development prior to the date of the notice being placed in the city permitting and public GIS systems, or
- (e) or city council approves the designation and the permit is within the parameters of the new standards.

If HAHC defers the application at a public meeting once, then (c) shall be extended to 211 calendar days; if HAHC defers two or more times, then(c) shall be extended to the 241 calendar days after the application is deemed complete. If council defers the application or remands the application back to HAHC for reconsideration, 60 days will be added to the number of days of the protected status provided for by this subsection.

Sec. 33-606. Effect of designation as conservation district.

- (a) Following council approval of a conservation district ordinance for a particular neighborhood, the district-specific ordinance shall control over conflicts with

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other codes or ordinances, except those for the protection of public health and safety.

- (b) Nothing in a district-specific ordinance shall be construed to prevent the following:
1. ordinary maintenance, repair or replacement of any exterior feature of structure located in a conservation district which does not involve a structural change or the outward appearance thereof;
 2. landscaping with plants, trees, or shrubs; or
 3. the partial reconstruction of a structure or exterior architectural feature damaged or destroyed by fire, storm or other disaster.

Sec. 33-607. Review of building permits and development applications in conservation district once established.

- (a) Conservation district boundaries shall be entered into the city's permitting system to flag them for historic preservation office review.
- (b) Historic preservation office shall review each development application and may administratively review for compliance with the standards in the district-specific ordinance.
- (c) Historic preservation office may request the advice of an HAHC commissioner, or submit an application to the HAHC for review and comment in particular cases where additional expertise is required. Such review shall be completed in no more than 60 days, and these items may not be deferred by HAHC except with the consent of the applicant or owner.

Sec. 33-608. Amendment or removal of conservation district boundaries or regulations.

To amend or remove the boundaries or design guidelines for a conservation district, the process is the same as for its establishment.

Sec. 33-609. Penalty for Violation. Any person who intentionally, knowingly, recklessly, or with criminal negligence violates any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$2,000.00. Each day of violation shall constitute a separate offense.

Sec. 33-610—33-699. Reserved.