

**CHAPTER 151:  
HISTORIC PRESERVATION AND PROTECTION DISTRICTS**

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## **GENERAL PROVISIONS**

### **151.010 PURPOSE**

The purpose of historic preservation and protection is to promote the educational, cultural, economic, and general welfare of the citizens of Fort Wayne; to insure the harmonious and orderly growth and development of the municipality; to maintain established residential neighborhoods in danger of having their distinctiveness destroyed; to enhance property values and attract new residents; to ensure the viability of the traditional Downtown area and to enhance tourism within the City of Fort Wayne; it is deemed essential by the City of Fort Wayne that qualities relating to its history and the harmonious outward appearance of its properties be preserved. This purpose is advanced through the restoration and preservation of historic areas and buildings, the construction of compatible new buildings where appropriate, and the maintenance and insurance of compatibility in regards to style, form, proportion, texture, and material between historic buildings and those of contemporary design. It is the intention of the City of Fort Wayne through this ordinance to preserve and protect historic and architecturally worthy buildings, structures, sites, monuments, streetscapes, landscapes and neighborhoods which impart a distinct aesthetic quality to the City and serve as visible reminders of its historic heritage.

### **151.011 DEFINITIONS**

For the purposes of this chapter, the following definitions shall apply unless the context indicates or requires a different meaning. Words in the present tense include the future tense. The singular number includes the plural, and the plural, the singular. The word “shall” is always mandatory. The word “person” includes a firm, a partnership, a limited liability company, or a corporation, as well as an individual. Terms not defined in this section shall have the meanings customarily assigned to them.

**Accessory Building.** A building that is located on the same property as the primary building but that is clearly subordinate to and serving the primary building or use.

**Addition.** New construction added to an existing building or structure.

**Alteration.** A material or color change of the external architectural features of any building, structure, or site within a local historic district.

**Appurtenance.** Any accessory or subordinate building, object, or structure located on the grounds of a historic building or in a local historic district.

**Building.** A structure having a roof supported by columns or walls designed, built or used for the enclosure, shelter or protection of people, animals, or property.

**City.** The City of Fort Wayne, Indiana.

**Certificate of Appropriateness.** A certificate issued by staff of the Historic Preservation Commission stating that any proposed exterior change to a locally designated property complies with the provisions of this ordinance and has been approved by the Commission.

**Character.** The qualities or attributes of any building, structure, site, object, street, or district.

**Classifications.** Local historic district properties shall be classified in one of the following categories upon designation by the Commission.

- (1) *Outstanding “O”*. The “O” classification means that the property has sufficient historic or architectural significance that is listed, or is eligible for individual listing, in the National Register of Historic Places. Outstanding resources can be of local, state, or national importance.
- (2) *Notable “N”*. A classification of “N” means that the property does not merit the outstanding rating, but it is still above average in its importance. A notable property may be eligible for the National Register.
- (3) *Contributing “C”*. A “C” classification means the property is at least 40 years old, but does not meet the criteria for an “O” or “N” classification. Such resources are important to the density or continuity of the area’s historic fabric. Contributing properties can be listed in the National Register only as part of a local historic district.
- (4) *Non-Contributing “NC”*. Property classified as “NC” is not included in an inventory unless it is located within the boundaries of a local historic district. Such properties may be less than 50 years old, or they may be older properties that have been altered in such a way that they have lost their historic character, or they may be otherwise incompatible with their historic surroundings. These properties are not eligible for listing in the National Register.

**Commission.** The City of Fort Wayne Historic Preservation Commission.

**Conservation District.** A designation that focuses on maintaining those basic features that give an area an identifiable character but does not focus on specific details. Conservation districts can be used to protect neighborhoods or districts that have a distinct architectural or historic character but may not qualify for local historic district status due to loss of integrity or incompatible new development. Conservation of existing identifiable character is achieved by regulating new construction, additions to existing buildings, and demolition.

**Conspicuous.** Obvious or visible.

**Demolition.** The complete or substantial removal of any building, structure, or site.

**Integrity.** The authenticity of a property's historic identity evidenced by the survival of physical characteristics.

**Interested Party.** Means one of the following:

- (1) The Mayor of the City of Fort Wayne.
- (2) The City of Fort Wayne Common Council.
- (3) The Fort Wayne City Plan Commission.
- (4) A neighborhood association officially recognized by the City, whether incorporated or unincorporated, a majority of whose members are residents of a local historic district designated by an ordinance adopted under this title.
- (5) An owner or occupant of property located in a local historic district established by an ordinance adopted under this title.
- (6) Historic Landmarks Foundation of Indiana, Inc., or any of its successors.
- (7) ARCH, Inc., or any of its successors.
- (8) The State historic preservation officer designated under I.C. 14-3-3.4-10.
- (9) City of Fort Wayne Division of Community Development.
- (10) City of Fort Wayne Neighborhood Code Enforcement.

**Interim Protection.** A temporary protection given to a property that prevents demolition or other exterior change, while said property is being considered for local historic designation.

**Landscape.** The totality of the built or human-influenced habitat experienced in one place. Dominant features are topography, plant cover, buildings, or other structures and their patterns.

**Local Historic District.** A single building, structure, object, landscape, or site or a concentration of buildings, structures, objects, landscape, or sites, the boundaries of which are described or delineated on a map approved in an ordinance adopted under this chapter.

**Major Maintenance.** Work that involves a conspicuous exterior change for which a certificate of appropriateness is required.

**Object.** A material thing of functional, aesthetic, cultural, or historical value that may be, by nature or design, moveable, yet related to a specific setting or environment.

**Preservation Guidelines.** Criteria, locally developed, which identify local design concerns in an effort to assist property owners in maintaining the character of the local

historic district during the process of major maintenance, rehabilitation or new construction.

**Primary Area.** The principal area of historic and / or architectural significance within a local historic district.

**Primary Building.** The main or principal building on a property.

**Property.** A piece of real estate that includes the land and any buildings, structures, objects, and plantings situated upon the land.

**Public Way.** A highway, street, avenue, boulevard, esplanade, court, road, lane, alley, sidewalk, or other easement which is open to the general public.

**Public View.** Area of visibility from a public way.

**Reconstruction.** The act or process of reassembling, reproducing, or replacing by new construction, the form, detail, and appearance of a property and its setting as it appeared at a particular period of time by means of the removal of later work, by the replacement of missing earlier work, or by reuse of the original materials.

**Routine Maintenance.** Common or ordinary work which involves an inconspicuous exterior change for which no certificate of appropriateness is required.

**Secondary Area.** An area that is adjacent to a primary area of a local historic district and which has a visual relationship to the primary area and could affect the preservation of the primary area. The purpose of designating a secondary area is to assure its compatibility and harmony with an adjacent, primary area.

**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 maintains historical or architectural value regardless of the value of any existing structure.

**Staff.** Staff of the City of Fort Wayne Planning Department.

**Streetscape.** Appearance along a public way, the distinguishing characteristics of which are created by the width of the street and sidewalks, their paving materials and color, the design of the street furniture (e. g., street lights, trash receptacles, benches, etc.) use of plant materials such as trees and shrubs, and the setback, mass, and proportion of those buildings which enclose the street.

**Structure.** A non-moveable work made up of interdependent and interrelated parts and a definite pattern of organization.

**Temporary.** A span of time not exceeding six (6) months.

**Viewshed.** An area of land, water, or other environmental elements that is visible from a fixed vantage point. Viewsheds tend to be areas of particular scenic or historic value that are deemed worthy of preservation against development or other change.

**Visual Compatibility.** Those elements of design that meet the guidelines set out in Section 151.035 of this title.

**Zoning District.** Delineated areas within the planning jurisdiction of the City, as shown on the zoning maps for the City, to which the regulations of the City Zoning, Sign, and Subdivision Control Ordinances apply.

## ***HISTORIC PRESERVATION COMMISSION***

### **151.020 ESTABLISHMENT AND ORGANIZATION**

- (A) **Creation.** There is hereby established the Historic Preservation Commission of the City of Fort Wayne, Indiana (hereinafter referred to as the “Commission”) subject to and in accordance with the provisions of IC 36-7-11-4.
- (B) **Composition.** The Commission shall consist of seven (7) voting members. The voting members shall be appointed by the Mayor and shall be residents of the City who are interested in the preservation and development of historic areas. The members of the Commission should include professionals in the disciplines of architectural history, planning, and other disciplines related to historic preservation, to the extent that those professionals are available in the community. Nonvoting, advisory member(s) may be appointed to the Commission by the Mayor. Commission members shall serve without compensation, except for reasonable expenses incurred in the performance of their duties.
- (C) **Term.** Voting members shall serve for a term of three (3) years; however, the initial terms of members shall be for one (1) year, two (2) years, and three (3) years in order for the terms to be staggered. The term for nonvoting, advisory members shall be for one (1) year. A vacancy shall be filled within ninety (90) days for the duration of the term.
- (D) **Administrator.** The City of Fort Wayne Planning Department shall designate a planner to serve as the Administrator of the Commission. The Administrator shall provide staff assistance to the Commission, act as secretary, and issue Certificates of Appropriateness as directed by the Commission.
- (E) **Officers.** The Commission shall elect from its membership a Chairperson, and Vice-Chairperson who shall serve for one (1) year and who may be reelected.

- (F) **Rules.** The Commission shall adopt rules consistent with this chapter for the transaction of its business. The rules must include the time and place of regular meetings and a procedure for the calling of special meetings.
- (G) **Meetings.** Commission meetings must be open to the public in accordance with Indiana's Open Door Law and a public record shall be kept of the Commission's resolutions, proceedings, and actions. The Commission shall hold regular meetings, at least monthly, except when it has no business pending. Special meetings may be called in a manner determined by the Commission and its rules.
- (H) **Quorum.** A quorum of four voting members of the Commission must be present at a meeting for the Commission to take action.
- (I) **Action.** Any action of the Commission taken at a monthly meeting at which a quorum is present shall be determined by a majority of those actually voting.
- (J) **Legal Counsel.** The attorney for the City shall be the attorney for the Commission. However, the Commission may employ other legal counsel authorized to practice law in Indiana if it considers it to be necessary or desirable.

#### **151.021 POWERS AND DUTIES OF THE COMMISSION**

- (A) The Commission shall be concerned with those elements of development, redevelopment, rehabilitation, and preservation that affect visual quality in a local historic district, which include but are not limited to viewsheds, landscapes, and streetscapes of historic importance. The Commission may not consider details of design, interior arrangements, or building features, if those details, arrangements, or features are not subject to public view, and may not make any requirement except for the purpose of preventing development, alteration, or demolition in the local historic district obviously incongruous with the local historic district.
- (B) The Commission shall conduct surveys and establish local historic districts in accordance with the provisions of Section 151.030 of this title.
- (C) The Commission shall issue Certificates of Appropriateness in accordance with the provisions of Section 151.032 of this title.
- (D) The Commission may adopt preservation guidelines for architectural review. If adopted, preservation guidelines shall be published and made readily accessible to the general public.
- (E) The Commission has the authority to receive funds in order to promote its stated purpose.
- (F) The Commission shall promote public interest in historic preservation by initiating and carrying on public relations and community education programs.

- (G) The Commission, through this ordinance and subject to approval by Common Council, may:
- (1) acquire by purchase, gift, grant, bequest, devise, or lease any real or personal property, including easements, that is appropriate for carrying out the purposes of the Commission;
  - (2) hold title to real and personal property; and
  - (3) sell, lease, rent, or otherwise dispose of real and personal property at a public or private sale on the terms and conditions that the Commission considers best.
- (H) The Commission shall establish procedures that the Commission must follow in acquiring and disposing of property.

## ***DISTRICT STANDARDS***

### **151.030 LOCAL HISTORIC DISTRICTS**

- (A) All recommendations for the establishment of a local historic district shall be in the form of a written report and must be based on the criteria outlined in this section. A recommendation for establishing a local historic district may be initiated from either of the following two (2) sources:
- (1) Based on its survey, the Commission may draw and submit local historic district maps for City Council approval.
  - (2) Owners of property in fee simple wishing to establish a local historic district which includes their property may petition the Commission to consider drawing and submitting a map or maps of said property(ies) to the City Council for its approval. The Commission may establish in its rules criteria to be met before it considers a petition.
- (B) **Commission preparation of local historic district maps.** In order to establish a local historic district, the Commission shall first prepare a map describing the district in accordance with the following:
- (1) The map shall be based on a survey conducted by the Commission which identifies historic buildings, structures, and sites located within the City.

- (2) A district may be limited to the boundaries of a property containing a single building, structure, object, landscape, or site or may contain a concentration of buildings, structures, objects, landscape, or sites.
  - (3) The map may divide the district into primary and secondary areas as follows:
    - (a) **Primary Area.** The principal area of historic and architectural significance.
    - (b) **Secondary Area.** An area adjacent to a primary area which has a visual relationship to the primary area and could affect the preservation of the primary area. The purpose of designating a secondary area is to assure its compatibility and harmony with an adjacent primary area.
- (C) **Classifications.** The Commission shall classify and designate on the map all buildings, structures, and sites within each local historic district described on the map. Buildings, structures, and sites shall be classified as historic or non-historic. Historic buildings, structures, and sites must possess identified historic or architectural merit of a degree warranting their preservation. The Commission shall further classify and designate all buildings and structures within a proposed local historic district as follows:
- (1) Outstanding
  - (2) Notable
  - (3) Contributing; or
  - (4) Non-Contributing
- (D) **Criteria for designation.** A local historic district shall not be established unless the proposed map includes a building, groups of buildings, structures, sites, objects, streetscapes, or neighborhoods which meet at least one of the following criteria:
- (1) Are associated with the events that have made a significant contribution to the broad patterns of our history;
  - (2) Are associated with the lives of persons significant in our past;
  - (3) Embody the distinctive characteristics of a type, period, or method of construction, that represent the work of a master, possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; and/or
  - (4) Have yielded, or may be likely to yield, information important to prehistory or history.
- (E) **City Council approval of local historic districts.** Before a local historic district is established and the building classifications take effect, the map setting forth the

district's boundaries and building classifications must be submitted to, and approved in an ordinance by, the City Council. The procedure for doing so shall be as follows:

- (1) The Commission shall hold a public hearing to allow public comment. The public hearing may be held separately or in conjunction with the meeting where action on the district is to occur. Such hearing shall be preceded by public notice as set forth in IC 5-3-1.
  - (2) Upon receiving a favorable recommendation for local historic district designation from the Commission, the map will be submitted to City Council for its approval.
- (F) **Recording the fact of designation.** The map establishing boundaries of a local historic district shall be recorded in the Office of the Allen County Recorder.
- (G) **Post designation notice.** All owners of property receiving local historic district designation shall be notified by mail of the designation within 60 days following approval by City Council.
- (H) **Location of maps.** All designations shall be recorded on a map maintained in the Office of Land Use Management.

### **151.031 DESIGNATED HISTORIC DISTRICTS**

Historic districts established under previous ordinances shall be subject to this chapter but in all other respects shall remain unchanged. All established historic districts shall be shown on the City zoning map on file in the Office of Land Use Management as noted in 151.030 (H).

### **151.032 CONSERVATION DISTRICTS**

- (A) The Commission may recommend conservation district designation for a neighborhood or area which has a distinct historic character but does not qualify for local historic district status due to loss of integrity or incompatible new development. To conserve remaining character and ensure compatibility of new construction in a conservation district, a certificate of appropriateness will be required for the following activities: the demolition, construction, or moving of a building, accessory building, or structure, or any addition to an existing building, accessory building, or structure subject to view from a public way.
- (B) A recommendation for establishing a conservation district may be initiated from either of the following two (2) sources:
- (1) Based on its survey, the Commission may draw and submit conservation district maps for City Council approval.
  - (2) Owners of property in fee simple wishing to establish a conservation district which includes their property may petition the Commission to consider drawing

and submitting a map or maps of said property to the City Council for its approval. The Commission may establish in its rules criteria to be met before it considers a petition.

- (C) **Criteria for designation.** All recommendations for the establishment of a conservation district shall be in the form of a written report and must be based on the criteria outlined in this section:
  - (1) The area must possess unifying distinctive element of either exterior features or built environmental characteristics that create an identifiable setting, character, or association.
  - (2) The area must lack sufficient historical, architectural, or cultural significance to qualify as a local historic district based on the criteria set forth in Section 151.030 (C).
- (D) **City Council approval of conservation districts.** Before a conservation district is established, the map setting forth the district's boundaries must be submitted to, and approved in an ordinance by, the City Council. The procedure for doing so shall be as follows:
  - (1) The Commission shall hold a public hearing to allow public comment. The public hearing may be held separately or in conjunction with the meeting where action on the district is to occur. Such hearing shall be preceded by public notice as set forth in IC 5-3-1.
  - (2) Upon receiving a favorable recommendation for conservation district designation from the Commission, the map will be submitted to City Council for its approval.
- (E) **Recording the fact of designation.** The map establishing boundaries of a conservation district shall be recorded in the Office of the Allen County Recorder.
- (F) **Post designation notice.** All owners of property receiving conservation district designation shall be notified by mail of the designation within 60 days following approval by City Council.
- (G) **Location of maps.** All designations shall be recorded on a map maintained in the Office of Land Use Management.
- (H) **Future Local Historic District Designation.** Designation as a Conservation District does not preclude future designation as a local historic district provided sufficient integrity is restored to meet the criteria for local historic designation.

### **151.033 INTERIM PROTECTION**

- (A) When submitting a map to the City Council under Section 151.030 of this title, the Commission may declare one (1) or more buildings, structures, or sites that are classified and designated as historic on the map to be under interim protection.
- (B) Not more than two (2) working days after declaring a building, structure, or site to be under interim protection under this section, the Commission shall, by personal delivery or first class mail, provide the owner or occupant of the building, structure or site with a written notice of the declaration. The written notice must:
  - (1) Cite the authority of the Commission to put the building, structure, or site under interim protection under this section;
  - (2) Explain the effect of putting the building, structure, or site under interim protection; and,
  - (3) Indicate that the interim protection is temporary.
- (C) A building, structure, or site put under interim protection under subsection (A) remains under interim protection until the map is approved in an ordinance or rejected by the City Council.
- (D) While a building, structure, or site is under interim protection under this section:
  - (1) The building, structure, or site may not be demolished or moved; and,
  - (2) The exterior appearance of the building, structure, or site may not be conspicuously changed by:
    - (a) Addition;
    - (b) Reconstruction; or
    - (c) Alteration.
- (E) The Commission may approve a Certificate of Appropriateness at any time during the period of interim protection, provided the proposed change meets the criteria for considering effect of actions on historic buildings in section 151.033 (D) of this chapter and any proposed preservation guidelines for the building, structure, or site. However, the Certificate of Appropriateness shall have no effect, and no action may be taken pursuant thereto, unless the map including the building, structure or site is approved by the City Council.

## 151.034 CERTIFICATES OF APPROPRIATENESS

- (A) **Certificates of Appropriateness required.** A Certificate of Appropriateness must be issued by the Commission before a permit is issued for, or work is begun on, any of the following:
- (1) Within all areas of a local historic district:
    - (a) The demolition of any building or structure;
    - (b) The moving of any building or structure;
    - (c) A conspicuous change in the exterior appearance of any historic building or structure, or any part of or appurtenance to such a building or structure, including walls, fences, light fixtures, steps, paving, landscaping, and signs by additions, reconstruction, alteration, or maintenance involving exterior color change; or
    - (d) Any new construction of a principal building or accessory building or structure subject to view from a public way.
    - (e) Conspicuous and visible changes within the public right-of-way.
  - (2) Within a primary area of a local historic district:
    - (a) A change in walls and fences, or the construction of walls and fences along public ways;
    - (b) A conspicuous change in the exterior appearance of non-historic buildings subject to view from a public way by additions, reconstruction, alteration and/or maintenance involving exterior color change.
  - (3) Within a conservation district:
    - (a) The demolition of any building;
    - (b) The moving of any building; or
    - (c) Any new construction of a principal building, accessory building, or structure, or any addition to an existing building, accessory building, or structure subject to view from a public way.
- (B) **Application for Certificates of Appropriateness.** An application for a Certificate of Appropriateness shall be made in the office of the Commission or its designee on forms provided by that office. All applications shall be subject to the rules and requirements established by the Commission. Rules may include, but are not limited to, fees, filing deadlines and application requirements such as sketches, drawings, photographs, descriptions, or other information which the Commission requires to make a decision.

- (C) **Approval or denial of Certificates of Appropriateness.** The Commission may approve or deny Certificates of Appropriateness for any actions covered by this title. If an application for a Certificate of Appropriateness is approved by the Commission, or is not acted on by the Commission within thirty (30) days after it is filed, a Certificate of Appropriateness shall be issued. The Commission may grant an extension of the thirty-day limit if the applicant agrees to it. The Commission must report its findings and the reasons for its decision in written form, and supply the applicant with a copy of its report. A copy of the Certificate of Appropriateness must be submitted with the application for a building, demolition, or improvement location permit; no building, demolition, or improvement location permit shall be issued unless a copy of the Certificate of Appropriateness is provided by the applicant with the application.
- (D) **Criteria for considering effect of actions on locally designated properties.** The Commission, in considering the appropriateness of any reconstruction, alteration, major maintenance, or moving of a historic building, structure, site or any part of or appurtenance to such building or structure, including walls, fences, light fixtures, steps, paving, and signs shall require that such work be done in a manner that will preserve the historical and architectural character of the building, structure, or appurtenance. In considering historic and architectural character, the Commission shall consider, among other things, the following:
- (1) Purposes of this title;
  - (2) Historical and architectural value and significance of the building, structure, site or appurtenance;
  - (3) Compatibility and significance of additions, alterations, details, materials, or other non-original elements which may be of a different style and construction date than the original;
  - (4) The texture, material, color, style, and detailing of the building, structure, site or appurtenance;
  - (5) The continued preservation and protection of original or otherwise significant structure, material, and ornamentation;
  - (6) The relationship of buildings, structures, appurtenances, or architectural features similar to ones within the same local historic district, including for primary areas, visual compatibility as defined in Section 151.035; and,
  - (7) The position of the building, structure, site or appurtenance in relation to the public ways and to other buildings and structures.
  - (8) A historic building may be relocated to another site only if it is shown that preservation on its current site is infeasible.

### **151.035 STAFF APPROVALS**

- (A) The Commission may authorize the staff of the Commission, on behalf of the Commission, to grant or deny an application for a Certificate of Appropriateness.
- (B) The Commission shall specify by rule the types of applications for Certificates of Appropriateness that the staff of the Commission is authorized to grant or deny. The staff may not be authorized to grant or deny an application for a Certificate of Appropriateness for the following:
  - (1) The demolition of a building, structure, or site.
  - (2) The moving of a building or structure.
  - (3) The construction of an addition to a building or structure.
  - (4) The construction of a new building or structure.

### **151.036 VISUAL COMPATIBILITY**

- (A) **For new construction, contemporary design, and non-historic buildings.** To preserve and encourage the integrity of historic buildings, structures, sites, objects, streetscapes, and neighborhoods and to ensure their compatibility with any new work, the construction of a new building or structure, and the moving, reconstruction, alteration, color change, major maintenance, or repair conspicuously affecting the external appearance of any non-historic building, structure, or appurtenance within the primary area must be generally of a design, form, proportion, mass, configuration, building material, texture, color, and location on a lot compatible with other buildings in the local historic district and with places to which it is visually related.
- (B) **Criteria for considering visual compatibility within historic primary areas.** Within the primary area of a local historic district, new buildings, structures, and appurtenances as well as buildings, structures, and appurtenances that are moved, reconstructed, materially altered, repaired, or changed in color, must be visually compatible with buildings and places to which they are visually related generally in terms of the following visual compatibility factors:
  - (1) Height. The height of proposed buildings must be visually compatible with buildings to which it is visually related.
  - (2) Proportion of building's front façade. The relationship of the width of a building to the height of the front elevation must be visually compatible with buildings to which it is visually related.
  - (3) Proportion of openings within the building. The relationship of the width of the windows to the height of windows in a building must be visually compatible with buildings to which it is visually related.

- (4) Relationship of solids to voids in front facades. The relationship of solids to voids in the front facade of a building must be visually compatible with buildings to which it is visually related.
- (5) Rhythm of spacing of buildings on streets. The relationship of a building to the open space between it and adjoining buildings must be visually compatible with buildings, and places to which it is visually related.
- (6) Rhythm of entrances and porch projections. The relationship of entrances and porch projections of a building to sidewalks must be visually compatible with buildings, and places to which it is visually related.
- (7) Relationship of materials, texture, and color. The relationship of the materials, texture, and color of the facade of a building must be visually compatible with buildings, and places to which it is visually related.
- (8) Roof shapes. The roof shape of a building must be visually compatible with buildings, to which it is visually related.
- (9) Wall of continuity. Appurtenances of a building or site, such as walls, wrought iron fences, and landscape masses, and building facades, must form cohesive walls of enclosure along the street, if necessary to ensure visual compatibility of the building to the buildings and places to which it is visually related.
- (10) Scale of the building. The size of a building, and the mass of a building in relation to open spaces, windows, door openings, porches, and balconies must be visually compatible with the buildings and places to which it is visually related.
- (11) Directional expression of front elevation. A building must be visually compatible with buildings, to which it is visually related in its directional character, including vertical character, horizontal character, or non-directional character.

## ***DEMOLITION AND PUBLIC SAFETY***

### **151.040 PURPOSE**

The purpose of this section is to preserve historic buildings, structures, and sites that are important to the education, culture, traditions, and economic values of the City and to afford the City, historical organizations, property owners, and other interested persons the opportunity to acquire or to arrange for the preservation of these buildings.

### **151.041 CERTIFICATE OF APPROPRIATENESS REQUIRED**

A Certificate of Appropriateness must be issued by the Commission before a demolition permit is issued by other agencies of the city and work is begun on the demolition of any building or structure in any area of a local historic district.

### **151.042 CRITERIA FOR DEMOLITION**

Criteria for the Historic Preservation Commission to consider in the case of a proposed demolition include the following:

- (A) Effect, detrimental or not, of the demolition to the character of the local historic district;
- (B) State of deterioration, disrepair and structural stability of the building or structure;
- (C) Balance of the public interest in preserving the building, structure, site, or the integrity of the district with the interest of the owner of the building, structure, or site in the use and utilization of the property; and
- (D) Possible alternatives to demolition.

### **151.043 REQUIREMENTS FOR ALLOWING DEMOLITION WITHOUT A CERTIFICATE OF APPROPRIATENESS**

- (A) If the Commission denies the issuance of a Certificate of Appropriateness for the demolition of a building, structure, or site, the building, structure, or site may be demolished, but only after establishing all of the following:
  - (1) The property owner has demonstrated to the Commission that the historic building, structure, or site is incapable of earning an economic return on its value, as appraised by a licensed real estate appraiser.
  - (2) The property owner shall file with the administrator documented evidence that good faith effort is being made to sell or otherwise dispose of such property at or below fair market value to any public or private person or agency which gives a reasonable assurance of its willingness to preserve and restore such property. Such documented evidence shall be provided at the property owner's expense and shall include:
    - (a) Offering price;
    - (b) Date the offer of sale is to begin;
    - (c) Name and address of listing real estate agent, if any;
    - (d) A copy of an advertisement to run in the same manner as the notice in section 151.044 below, which offers the property for sale; and

- (e) An appraisal of the property's fair market value by a licensed real estate appraiser.

#### **151.044 DEMOLITION NOTICE**

- (A) Notice of the proposed demolition must be given for a period fixed by the Commission, based on the Commission's classification of the building, structure, or site on the approved local historic district map, but not less than sixty (60) days nor more than one (1) year. Notice must be posted on the premises of the building or structure proposed for demolition in a location clearly visible from the street. In addition, notice must be published in a newspaper of general local circulation at least three (3) times before demolition, with the first publication not more than fifteen (15) days after the application for a permit to demolish is filed, and the final publication at least fifteen (15) days before the date of the permit.
- (B) The Commission may approve a Certificate of Appropriateness at any time during the notice period under subsection (A). If the Certificate of Appropriateness is approved, a demolition permit shall be issued without further delay, and demolition may proceed.

#### **151.045 EMERGENCY DEMOLITION**

- (A) Nothing in this chapter shall be construed to prevent the emergency demolition of a building, structure, site or any part thereof within an local historic district when so ordered by an agency of government having jurisdiction thereof provided that the following actions occur first:
  - (1) The agency having jurisdiction shall determine that a building or structure or any part thereof is immediately hazardous or dangerous to the health and safety of persons or to property;
  - (2) The agency issuing such an order shall, upon issuance of the order, so notify the Commission Administrator who in turn shall notify the Commission; and
  - (3) If demolition is ordered, the agency issuing such an order shall make every effort possible to secure the property or otherwise delay demolition until the Commission can act as designated in this section. Demolition so ordered may occur prior to Commission action only when an immediate hazard or danger to the health and safety of persons or property exists and no reasonable steps can be taken to afford protection to persons or property affected.

## **ADMISTRATION AND ENFORCEMENT**

### **151.050 MAINTENANCE**

- (A) Historic buildings, structures, and sites shall be maintained to meet the applicable requirements established under state statute for buildings generally so as to prevent the loss of historic material and the deterioration of important character defining details and features.
- (B) **Ordinary repairs and maintenance.** Nothing in this section shall be construed so as to prevent the ordinary repairs and routine maintenance of any building, structure, or site, provided that such repairs or routine maintenance do not result in a conspicuous change in the design, form, proportion, mass, configuration, building material, texture, color, location, or external visual appearance of any structure, or part thereof. Such work may be begun and executed without a Certificate of Appropriateness issued by the Historic Preservation Commission. The Commission shall review and act upon any case where a question exists as to whether or not a specific action is an ordinary repair or routine maintenance not requiring a Certificate of Appropriateness.

### **151.051 RELATIONSHIP WITH ZONING DISTRICTS**

Zoning districts lying within the boundaries of the local historic district are subject to regulations for both the zoning district and the local historic district. If there is a conflict between the requirements of the zoning district and the requirements of the local historic district, the more restrictive requirements shall apply.

### **151.052 INTERESTED PARTIES**

- (A) An interested party as defined in Section 151.011 has a private right of legal action to enforce and prevent violation of provisions of this Ordinance or an ordinance adopted by the city under this Ordinance, and with respect to any building, structure, or site within a local historic district or conservation district, and has the right to restrain, enjoin, or enforce by restraining order or injunction, temporarily or permanently, any person from violating a provision of this ordinance or an ordinance adopted under this ordinance.
- (B) The interested party does not have to allege or prove irreparable harm or injury to any person or property to obtain relief under this section.
- (C) The interested party bringing a legal action under this section does not have to post a bond unless the court, after a hearing, determines that a bond should be required in the interest of justice.
- (D) The interested party that brings a legal action under this section is not liable to any person for damages resulting from bringing or prosecuting the action unless the legal

action was brought without good faith or without a reasonable belief that a provision of this ordinance, or an ordinance adopted by a unit under this ordinance, had been, or was about to be violated.

- (E) An interested party, or the defendant, who obtains a favorable judgment in a legal action under this section may recover reasonable attorney fees and court costs from the person against whom judgment was rendered.
- (F) A legal action arising under this section must be brought in the Circuit or Superior Court of Allen County, Indiana and no change of venue from the county shall be allowed in the action.
- (G) The remedy provided in this section is in addition to other remedies that may be available at law or in equity.

### **151.053 ENFORCEMENT, PENALTIES, AND JUDICIAL REVIEW**

- (A) The erection, construction, enlargement, alteration, repair, demolition, color change, moving, or major maintenance of any locally designated historic building, structure, site, or appurtenance which is begun, continued, or maintained contrary to any provisions of this ordinance is hereby declared to be a nuisance and in violation of this ordinance and unlawful.
- (B) **Stop work order.**
  - (1) The Historic Preservation Commission, Commission Administrator, Department of Neighborhood Code Enforcement, or Allen County Building Department shall have the authority to issue an order for work on any building, structure, site, or appurtenance to be stopped, if the work is in violation of this chapter.
  - (2) Such a decision to issue a stop work order may be appealed to the Historic Preservation Commission, in accordance with the provisions of this chapter and The Commission's rules.
  - (3) The stop work order shall remain in effect until it is removed, rescinded, or revoked by the Commission.
  - (4) A violation of a stop work order shall be considered a violation of this chapter.
- (C) **Misdemeanor violations.** Any person whether as principal, agent, owner, lessee, tenant, contractor, architect, engineer or other entity who commits a violation of this chapter, may be prosecuted as set forth in this chapter in Superior Court of Allen County, Indiana Misdemeanor and Traffic Division, for such a violation. Any such violation shall be subject to a fine of up to \$2,500.00 for each offense. Each calendar day of the existence of a violation may be considered as a separate offense.

- (D) **Injunctive relief, abatement.** The individual(s) or entities designated in this chapter may bring action for an injunction in the Circuit or Superior Court of Allen County, Indiana to enjoin any person whether as principal, agent, owner, lessee, tenant, contractor, architect, engineer or other entity from violating, or continuing to violate any provision of this chapter, and/or cause the violation to be resolved, removed, or abated. Such an action may also be initiated by any property owner aggrieved by the violation.
- (E) **Injunctive relief, removal of structure.** The individual(s) or entities designated in this chapter may bring action in the Circuit or Superior Court of Allen County, Indiana for a mandatory injunction requiring the removal of a building, structure, sign, fence, and/or addition/enlargement to an existing structure erected or constructed in violation of this chapter.
- (F) **Payment of costs.** Any person whether as principal, agent, owner, lessee, tenant, contractor, architect, engineer or other entity found to be in violation of this chapter as a result of any enforcement action shall be responsible to pay all applicable attorney fees, court costs, and other costs and expenses incurred in connection with the prosecution of the enforcement action.
- (G) The remedies provided for in this section shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.
- (H) Any person or party aggrieved by a decision or action taken by the Commission shall be entitled to a judicial review hereof in accordance with I.C. 4-21.5-5 (as may be amended).

#### **151.054 SEVERABILITY**

If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.