



City of Fayetteville

433 Hay Street
Fayetteville, NC
28301-5537
(910) 433-1FAY (1329)

Meeting Agenda - Final Planning Commission

Tuesday, April 18, 2023

6:00 PM

Festival Park Plaza

1.0 CALL TO ORDER

2.0 APPROVAL OF AGENDA

3.0 CONSENT

3.01 Approval of Meeting Minutes: February 21, 2023

4.0 LEGISLATIVE HEARINGS

4.01 TA23-020-025: Proposed Text Amendment to UDO 30-2.C.8 Certificate of Appropriateness; 30-2.A.7.a Powers and Duties of the Historic Resources Commission; 30-2.C.22 Standards and Requirements for Local Landmark Designation; 30-1-9 Unified Development Ordinance; 2-41.A-F Historic Resources Commission.

5.0 PUBLIC HEARING

5.01 ALT23-01: Alternative Sign Plan as requested by Fayetteville State University for a large electronic sign to be installed on the south side of the Seabrook Auditorium located at 1030 Martin Luther King Jr Drive.

6.0 OTHER ITEMS OF BUSINESS

7.0 ADJOURNMENT



City of Fayetteville

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City Council Action Memo

File Number: 23-3314

Agenda Date: 4/18/2023

Version: 1

Status: Agenda Ready

In Control: Planning Commission

File Type: Consent

Agenda Number: 3.01

TO: Mayor and Members of City Council

THRU: Development Services, Planning and Zoning Division

FROM: Catina Evans - Office Assistant II

DATE: April 18, 2023

RE:

Approval of Meeting Minutes: February 21, 2023

COUNCIL DISTRICT(S):

All

Relationship To Strategic Plan:

Strategic Operating Plan FY 2021

Goals 2026

Goal 6: Collaborative Citizen & Business Engagement

- Objective 6.2 - Ensure trust and confidence in City government through transparency & high-quality customer service.

Executive Summary:

The City of Fayetteville Planning Commission conducted a meeting on the referenced date during which they considered items of business as presented in the draft.

Background:

NA

Issues/Analysis:

NA

Budget Impact:

NA

Options:

1. Approve draft minutes;
2. Amend draft minutes and approve draft minutes as amended; or
3. Do not approve the draft minutes and provide direction to Staff.

Recommended Action:

Option 1: Approve the draft minutes.

Attachments:

- Draft Meeting Minutes: February 21, 2023

**MINUTES
CITY OF FAYETTEVILLE
PLANNING COMMISSION MEETING
FESTIVAL PLAZA, SUITE 122
FEBRUARY 21, 2023 @ 6:00 PM**

Members Present

Victor Sharpe, Chair
Raymond Makar
Adrian Williams
Antonio Jones
Christina Aragues
Wesley Fountain
Eldred Loftin

Staff Present

Craig Harmon, Senior Planner
Chester Green, Senior Planner
Demetrios Moutos, Planner I
Lisa Harper, Assistant City Attorney
Catina Evans, Office Assistant II

Members Absent

Laurie Linder
Stephon Ferguson

I. CALL TO ORDER

Chairman Victor Sharpe called the February 21, 2023, meeting to order at 6:06 p.m. The Board members introduced themselves.

II. APPROVAL OF THE AGENDA

MOTION: Wesley Fountain made a motion to approve the agenda.

SECOND: Antonio Jones

VOTE: Unanimous (6-0)

III. APPROVAL OF CONSENT ITEMS TO INCLUDE THE NOVEMBER 15, 2022, MEETING MINUTES

MOTION: Christina Aragues made a motion to approve the consent items to include the minutes from the November 15, 2022, meeting.

SECOND: Raymond Makar

VOTE: Unanimous (6-0)

IV. LEGISLATIVE HEARING(S)

TA23-002 through TA23-019

Mr. Harmon said the City Staff has been working on seasonal text amendments twice a year during the Spring and Fall, making sure the Unified Development Ordinances are up to date to ensure they reflect modern trends and community preferences. The Staff is presenting 18 amendments that fall into three categories as follows:

1. Clean up- These are small things in the ordinance that are missing items and do not make sense because a word is left out or something in a former text amendment is missing. Therefore, the ordinance may need some clarification or simplification.
2. Developers and Community- These are issues that have come to the City from developers or the community that they consider do not work well.
3. Policy- Ordinances that reflect the bigger picture of how the City moves forward.

Mr. Harmon provided the Board with a timeline of when the process of presenting these amendments started. He stated that during the City Council Work Session on February 6, 2023, the Staff gave the City Council a brief overview of these amendments. The Council gave Staff their blessing for them to present these text amendments to the Planning Commission.

Mr. Harmon added that the Staff is presenting these amendments to the Board because their main condition per North Carolina State statute is to review and recommend new policies and ordinances. After the Board votes on the amendments, the text amendments will go before City Council on March 27, 2023, for a public hearing for their discussion and hopeful adoption.

Mr. Harmon reiterated that the amendments are broken into three sections, and he will present the first and third sections while Mr. Green will present the second section.

Clean-up Amendments

TA23-002. Accessory Dwellings

Objective: Allow Accessory Dwelling Units in the Single Family 15 (SF-15) zoning district.

Recommendation: Update Section 30-4.D.2 – Table of Permitted Accessory Uses.

Purpose: Allow an additional type of housing (Accessory Dwelling Unit) in SF-15. This type of use is already allowed in all other residential zoning districts.

Mr. Harmon stated that this is the only district that does not allow for accessory dwelling units within the Unified Development Ordinance. Mr. Harmon asked Mr. Sharpe if he wanted the Board to ask questions after the entire presentation or after each amendment is presented to the them. Mr. Sharpe stated that he would rather the Board ask questions after each presentation and the rest of the Board members agreed.

Mr. Fountain asked Mr. Harmon if an accessory dwelling is defined as an attached garage with an apartment on top. Mr. Harmon described an example of an accessory dwelling as a detached garage with a living unit above it.

Mr. Sharpe asked Mr. Harmon if there would be any instances of people requesting a variation because this is prohibited in the Single-Family Residential 15 (SF-15) zoned areas. Mr. Harmon

stated that this issue has not come before the City, but with the current housing shortage in Fayetteville, the City is looking at different ways in which they can build units. This zoning district allows for the largest lot size. Ms. Aragues provided an example of an individual building a tiny home on a lot they already own. Mr. Harmon agreed this could be an option as well. Mr. Harmon reiterated that accessory dwellings are already allowed in the other zoning districts.

TA23-003. Recording Timeline

Objective: Increase variance recordation deadline from 30 days to 60 days (or eliminate the recording requirement).

Recommendation: Update Section 30-2.C.14.e.5.a to change the deadline from 30 days to 60 days after approval.

Purpose: Allow more time for the applicant to have final signed Finding of Facts recorded at the Cumberland County Register of Deeds. This additional time will alleviate constraints on the applicant that are caused by delays in the postal system. (Currently, variances expire if not recorded within 30 days.)

Mr. Harmon stated that the City is looking at this text amendment from two angles. He stated that currently when someone gets a variance the City requires that someone record the findings of the variance with the register of deeds within thirty days. Mr. Harmon said if the City wants to keep that requirement in the ordinance we want to increase the time to sixty days. He said this gives people the opportunity to get the variance recorded sooner. He stated that the way the ordinance reads now is that if the applicant does not get the variance recorded within thirty days, the variance is no longer valid. Mr. Harmon said the second option is for the City to eliminate the recording requirement.

Ms. Aragues stated (for clarification) that the Board can amend the text amendments and get rid of things such as this amendment that are not required by the state. Mr. Harmon confirmed that this was true.

TA23-004. Offset Street Parking Table

Objective: Remove references to Maximum Parking based on the previous amendment which removed Maximum Parking standards from the UDO.

Recommendation: Update Commercial Use Classification and Industrial Use Classification title block in Section 30-5.A.4.b – Off Street Parking table to remove references to “Maximum Parking Spaces.”

Purpose: Remove references to Maximum Parking that are no longer necessary following the removal of a Maximum Parking standard.

Mr. Harmon stated that about a year and a half ago the City Council created an amendment to eliminate maximum parking standards in the Unified Development Ordinance. However, it was missed in this section of the UDO. This is one of those clean up items and all it is doing is making this section of the UDO match everything else in the UDO for something the Council has already taken out of the ordinance.

TA23-005. Accessory Uses on Large Lots

Objective: Allow AR zoned properties that are over an acre in size to construct accessory dwelling units that are larger than permitted in the AR zoning district. This district was not included in the initial amendment.

Recommendation: Update Section 30-4.D.3.w applicability to include references to 30-3.C and 30-3.D, Special Base Zoning District and Residential Base Zoning District. Agriculture Residential is under 30-3.C, Special Base Zoning District.

Purpose: Allow AR zoned properties to utilize the large lot exemption. This exemption allows lots over 1 acre to increase the size of a permitted accessory structure.

Mr. Harmon stated that a year or two ago City Council made a change to the UDO regarding where a resident has an accessory building on their property. Previously, the UDO allowed up to 1200 sq. ft. as the maximum (for an accessory structure) no matter how large the property. A couple of years ago this was changed so that there is a gradual scale so that you could have a bigger outbuilding on your property. He stated that when this ordinance was created, the Agricultural Residential District was left out of the regulation, so the City is just wanting to put the Agricultural Residential District under the same standards as all the other districts for allowing an accessory structure.

TA23-006. Reduce Specimen Tree Fee

Objective: Correct fee listed in Section 30-2.C.9.e.2 – Clear-Cutting Permit.

Recommendation: Update Section 30-2.C.9.e.2 to update the Clear-Cutting Permit fee from \$100 to \$50 per caliber inch.

Purpose: Make corrections to the ordinance based on previously adopted amendments recommended by the UDO Task Force.

Mr. Harmon stated that this amendment is another one in which City Council made a change to the ordinance, but this section was missed from a previous text amendment. He stated that the City Council had already reduced the Clear Cutting Permit fee from \$100 dollars to \$50, but there was this one section that still refers to this as a \$100 fee, so we are just cleaning this section up it reads as a \$50 fee. Mr. Harmon said it should have been caught the first time.

Mr. Williams referred to the previous amendment TA23-05 and asked Mr. Harmon if there is a cap or a graduated scale for sizing the structures on the property. Mr. Harmon said he believes that it caps out at either three or four acres. This is the max. He said you cannot have a bigger accessory structure after that. Leading up to that you can have gradually larger structures other than the house on the property. Again, this Reduced Specimen Tree Fee is just an extra section or another time in the UDO where something was missed in a previous ordinance.

TA23-007. Landscaping Applicability

Objective: Clarify the types of project sites which are exempted from the landscape section of the UDO.

Recommendation: Correct 30-5.B.2.a, Landscaping and Tree Protection Standards, by adding the word “except” to direct readers to Section 30-7.F for sites that are two acres or less in size.

“Except where expressly exempted, these standards shall apply to all development in the City except as described in Section 30-7.F for properties two acres or less.”

Purpose: Correct language in Section 30-5.B.2.a to make the Landscaping section of the UDO clearer.

Mr. Harmon stated that possibly three or four years ago, the Mayor put together a UDO Task Force made up of developers and citizens to go back through the Unified Development Ordinance to look for things that should be revised and this was one item that was changed. They left the word *except* out of the change and without it, the ordinance does not make sense. Mr. Harmon stated that the Staff is cleaning this up so that it is clear.

TA23-008. Remove Maximum Parking

Objective: Remove references to Maximum Parking based on the previous amendment which removed Maximum Parking standards from the UDO.

Recommendation: Remove Section 30-5.A.8.a, Provision over the Maximum Allowed, from the Alternative Parking Plan section of the ordinance.

Purpose: Correct language in the Alternative Parking Plan section of the UDO to remove references to Maximum Parking. Maximum Parking was removed from the UDO under a previous amendment.

Mr. Harmon stated that when City Council removed Maximum Parking requirements from the UDO, they missed two small sections. This one is taken out of the Alternative Parking Plan section of the ordinance so it matches everything else in the UDO.

Mr. Harmon introduced Mr. Green. He stated that Mr. Green runs the development review side of things. He heads up the Technical Review Committee for the City. He is more in touch with all the nuances of landscaping and more technical things with the site approvals. Mr. Harmon asked if the Board had any other questions regarding this section of the amendments and there were no questions.

Developer and Community Amendments

TA23-009. DT-2 Setbacks

Objective: Allow sites in the DT-2 zoning district along Grove, Rowan, and Ramsey Streets to have an increased maximum setback when developing a use with a drive-through.

Recommendation: Amend 30-3.E.11, Downtown 2 (DT-2) District, to include a footnote which would allow staff to approve an increased maximum setback for developments with drive-through facilities.

Purpose: Allow for more site flexibility in the DT-2 along corridors with a higher volume of vehicle traffic and limit the need for variances to address setbacks.

Mr. Green stated that the first amendment in the development section deals with the new DT zoning. He said last year City Staff did an amendment for downtown that split it into a DT-1 and DT-2 zoning district. As part of that amendment, we allowed drive-through uses on some of the major roads and then we found out that because the maximum setback had to keep the building within ten feet of the street, property owners could not build a drive-through on those properties that fail to meet that setback. So the goal is to allow someone who is trying to build a drive-through on one of those streets to increase the setback to a number that works (whatever that minimum number is that works for them) in order for them to put that drive-through in and everything to move safely on that site.

TA23-010. Remove SUP

Objective: Make Financial Institutions with drive-throughs a use by right in the NC zoning district.

Recommendation: Amend 30-4.A.2., Use Table, to list Financial institutions with drive-throughs as a permitted use in the NC zoning district.

Purpose: Allow for the development of financial institutions with drive-throughs without the additional burden of an evidentiary hearing for a Special Use Permit.

Mr. Green stated that the next amendment deals with banks with drive-throughs in the NC zoning district. Currently, if you want to place a bank with a drive-through in an NC zoning district it requires a Special Use Permit. We are looking to get rid of that Special Use Permit, so the applicant can avoid the evidentiary hearing for this permit. Mr. Green stated that it does not make sense why a bank drive-through—that does not really involve neighborhoods— should have to go through the process of acquiring a Special Use Permit, and a lot of the banks have had to go through the process of acquiring a Special Use Permit.

TA23-011. Electrified Fencing

Objective: Allow for flexibility in fence height in the front yard in order to accommodate the installation of electrified fencing.

Recommendation: Amend 30-5.F.5.b.2, Monitored Electrified Fences, to allow non-electrified fencing in the front yard of six feet when approved in conjunction with a Monitored Electrified Fence.

Purpose: Allow greater flexibility for owners of properties in industrially zoned areas to secure their properties while limiting impacts on surrounding properties.

Mr. Green stated that currently when you get an electrified fence approved that is 8 feet, you have to by code put a 6-foot fence in front of it, but the ordinance does not allow a 6-foot fence in the front yard. So, if you get an electrical fence approved, then you are allowed to put a six-foot fence in front of it with some conditions. This section of the ordinance will only allow the owner to use a rot iron fence, so they do not have chain-length fences that are not attractive in the front yard.

TA23-012. Specialty Eating

Objective: Allow specialty eating establishments without drive-throughs as a permitted use in the OI zoning district.

Recommendation: Amend 30-4.A.2, Use Table, to list Specialty Eating Establishments as a use by right in the OI zoning district. Add additional standards for Specialty Eating Establishments which mimic the standards placed on other similar uses.

Purpose: Allow a greater range of uses in the OI zoning district that can make use of existing infrastructure while ensuring the uses are still in keeping with the surrounding uses. (i.e. ice cream parlors, coffee shops, etc.)

Mr. Green said this amendment deals with allowing specialty eating shops in the Office and Institutional (OI) Zoning District. Currently, they are not allowed in OI, but the City is looking to allow them in the Office and Institutional District because these are small little shops like coffee shops, ice cream parlors and drive-throughs. Mr. Green said he thinks that they (specialty eating shops) would fit in that zone basically around all of the office use, so the Staff is looking to change the ordinance to allow them in OI.

TA23-013. Ease Gasoline Sales

Objective: Provide flexibility for the location of access points for gas stations.

Recommendation: Amend Section 30-4.C.4.i.7.c, Gasoline Sales, to allow the City or NCDOT to review and approve access points that may not meet the current standards of the UDO.

Purpose: Allow for greater flexibility in the development of gas station sites. These sites are currently constrained as the UDO requires that their access points be 150 feet from each other and any intersections.

Mr. Green stated that currently in the UDO, there is a section that limits gas stations to two access points and it has some other requirements about being 150 feet away from each other and far away from the corners (intersections). Basically, City Staff discussed this with Traffic Services and there have been some issues on certain sites with them meeting those requirements, so the City is adding a section that basically allows for City Traffic Services or North Carolina Department of Transportation (NCDOT) to approve alternative access points if they cannot meet that section.

TA23-014. Increased Setbacks

Objective: Allow property owners to utilize more of their property.

Recommendation: Remove the requirement for an increased setback when a building wall exceeds 25 feet in height. This standard is found in Section 30-3.D.2, 3, and 4.

Purpose: This will not only clean up the code by limiting the number of modifiers on setback requirement standards but will also allow property owners to utilize more of their land for the construction of their homes.

Mr. Green said that right now there is a section where if you have a building wall that exceeds 25 feet in height, you have to add another 5 feet to your setback. The City is looking to get rid of this section because it is limiting people's ability to build on their properties. It is making the setback confusing. He said the definition of what exactly a wall is and where a roof starts and where the wall ends has been confusing in the past so we are just looking to get rid of that—that extra five-foot setback and make them meet the regular setbacks for the zone, which will also make it easier so you do not have to—people won't have to figure out exactly what their setbacks are.

TA23-015. Remove F.A.R.

Objective: Remove limitations to development based on Floor Area Ratio within the Hospital Area Overlay.

Recommendation: Remove Section 30-3.D.2.e.2 from the Hospital Area Overlay.

Purpose: This will remove limitations on development within the Hospital Area Overlay based on a standard that is not required within any other sections of the UDO.

Mr. Green said this (Hospital Area Overlay district) is the only place in the City where we have a floor area ratio, but we do not feel that it is making sense in that district. All it is doing is limiting development for the hospitals, and it will only limit what the hospital can build in that area.

Mr. Green stated that this was the last item under the development amendments and that Mr. Harmon would cover the policy amendments. He asked the Board if they had any questions regarding these amendments.

Mr. Williams asked Mr. Green if on this amendment (TA23-015) would the floor area ratio limit the height of a structure. Mr. Green said it limits the total square footage of the building. Depending on how you build it (height, square footage), it takes everything into account unlike lot coverage which deals with just that first floor, but this deals with all the floors. So if you just try to go to build too high or too big of a building you can go over that floor area ratio and basically limit the square footage of the building on the site. Mr. Green said the biggest issue is going to come when a hospital starts to expand because they have a lot of parking in other areas, so they might not have much of a parking lot on certain sites. Mr. Green stated that they (the hospital) might be using the rest of their parking. Then, they would have to come and get approval to build a big enough building to maximize their site.

Mr. Williams had another question concerning setbacks. He asked the Staff what the approval test is for a setback. Mr. Williams asked the Staff if you add 5 feet to the setback and the other one was the drive-thru, what is the test for when somebody comes in and says you meet this, this, and this.

Mr. Green said 5 feet is the current code, so basically if the wall is over 25 feet instead of being 10 feet away from your neighbor or 15 feet away from your neighbor, you now have to be 20 feet. He said that one (regulation) just gets confusing for people. It does not seem that a 25-foot house or a 25-foot wall is really going to warrant moving 5 feet further away. That is why we are amending that ordinance. The other one with the drive-through basically would get staff approval and so we would get with Traffic Services and Staff, and based on how the applicant designed the site on a site-by-site basis, they would be able to move the building back just far enough to get a drive-through aisle around it. Mr. Green stated that the issue is that for most drive-throughs, you have to be able to go around the building and the landscaping does not allow you to do this.

Mr. Williams said that he knows that the site and the layout will be different, but he wanted to know what the Staff would you say when someone comes in and submits paperwork. Would the City Staff you say check mark, check mark, check mark and you are on to the next station?

Mr. Williams reiterated that this is why he is inquiring about a test. Mr. Green stated that for those types of new developments, they (the applicants) come through our site plan review. They come through the Technical Review Committee and we will give them (the applicants) comments on their plans, so if they (the applicants) come in and they have it (the setback) way back we will tell them we can give you some lead way but only enough to make the site work. That is how it would work. We would check with the City Traffic Services to make sure that the site would be safe. Mr. Green said the Staff wants to basically only give them what they need.

Mr. Harmon asked Mr. Makar if he had a question. Mr. Makar stated that in regard to zoning or the setback, he would like to think that any new developer would like to take advice from the Council or from the City Planners as far as what the tolerances are that would accommodate that building. Mr. Green said that most of the time setbacks are what they are. There is a little bit of administrative adjustment that we could do—a percentage or 2 feet or something like that. If there is some issue with the site, we can grant that. In this case, we do not want to put a number there because it is site dependent. If we give a number, we are still going to run into a couple of issues on some of them or give too large of a number to know they can move their building all the way back. These are two of the few zones in the city—Downtown and the Hospital Area Overlay—where instead of having a minimum setback in the front, you have a maximum setback, meaning your building can be right at the property line or only 10 feet away.

Mr. Makar stated that during the planning process, there should be a collaboration between the applicant and Staff to discuss the specifications for a site. Mr. Green said that during the technical review process, there is a discussion about what the applicant may be missing and an effort to work with them to help the applicant meet the code requirements. Mr. Makar asked if there is always a deliberate meeting with the Staff. Mr. Green said that there is always a meeting.

Policy Amendments

TA23-016. Commercial Recreation

Objective: Review whether “Outdoor Commercial Recreation” is compatible with other uses in the Office/Institutional Zoning District.

Recommendation: Amend 30-4.A.2, Use Table, to list Outdoor Commercial Recreation as a prohibited use in the OI zoning district.

Purpose: Protect low-intensity uses in and around the OI zoning district from the potentially disruptive uses permitted as part of the Outdoor Commercial Recreation use (go-cart tracks, drive-in theaters, etc).

Mr. Harmon stated that currently, this is a permitted use in our Office and Institutional zoning district, but it is not allowed in our other smaller commercial districts. He said our Office and Institutional District is typically a buffer district. It is where you get your schools, churches, offices—things of that nature and usually things that are more compatible with residential development. So a lot of times there will be a buffer between—it will be used as a buffer between heavier commercial and residential zoning, and so it really does not make any sense for outdoor commercial or recreation to be allowed in that district. Mr. Harmon stated that when we say outdoor commercial recreation we are talking about things like dirt car tracks, golf courses, and batting cages. It is really developments that are not compatible with being right next to residential developments, so we are just looking to take that one use out of that zoning district.

Mr. Sharpe asked what provoked this amendment, and Mr. Harmon stated the fact that it is not allowed in the other commercial districts without a Special Use Permit, but it is allowed by right in OI zones next to residential areas. Mr. Harmon added that before we (the City) have an issue come up, we are trying to head it off at the pass. This is one ordinance that the Staff saw could be a problem in the future.

Mr. Williams asked where the OI zoning was located in the City. Mr. Harmon stated that OI zoning is everywhere in the City. There is a whole lot of OI in the Haymount area and on Hope Mills Road and around the hospital. It is sporadically located in different places around town where you see more office use than plain commercial—that is probably going to be an OI district.

TA23-017. Separation Standards

Objective: Review if the separation requirement between religious institutions and bars/nightclubs/adult entertainment should be adjusted.

Recommendation: Adjust the Separation Standards for bars, nightclubs, adult entertainment establishments and churches as recommended by the Planning Commission.

Purpose: Reduce the number of Special Use Permit requests.

Mr. Harmon stated that currently, we have separation standards between churches, daycares, and schools separated from bars, nightclubs, and adult entertainment.

The Staff is open to suggestions on this one, but the reason that the Staff brought this one before the Planning Commission is that in Mr. Harmon's 14-year-career he stated that he has never seen the City Council disapprove a church wanting to get a Special Use Permit to be less than 500 feet from one of the listed businesses. Mr. Harmon stated that when he looks at something like this in

the UDO his thought is why do we have this in the ordinance? Why are we making churches pay \$1,000 dollars to get permission from the City Council to be closer than 500 feet from a bar, when City Council has yet to turn a church down?

Mr. Sharpe asked Mr. Harmon if there has been an example of a case where this has occurred. Mr. Harmon referred to the time when City Council granted a Special Use Permit to reduce the distance between a church and an adult entertainment business on Bragg Boulevard. Mr. Sharpe clarified that a church would pay a \$1000 fee to obtain a Special Use Permit to exist closer than 500 feet from an adult entertainment business. Mr. Harmon stated that it (paying the fee) would give the church the opportunity to go through the process to go before City Council to obtain a Special use permit. Mr. Harmon reiterated that in his ten years with the City, he has yet to see the City Council turn down a church seeking a Special Use Permit for this purpose.

Mr. Sharpe asked Mr. Harmon if it would jeopardize the adult business's ability to carry on business if a church wanted to reside less than 500 feet from this business. Mr. Harmon said there is a clause in the ordinance that allows the existing adult business to remain. If they were to close down for a year, then the business would fall into something like that (jeopardizing their business).

Mr. Williams asked if it would take away the public hearing necessity, and Mr. Harmon said yes it would take away the need for a public hearing.

Mr. Williams asked Mr. Harmon if the adult entertainment business was able to exist as a nonconformity after a church applied for and was approved for a Special Use Permit to reside less than 500 feet from the business, and would they be grandfathered in if the business decided to sell and other owners come in (and not occupy the building for an initial year). Mr. Harmon stated that if they were to sell and another business comes in within a year and takes over the business they can do that.

Mr. Sharpe asked Mr. Harmon if it was over a year (that the business was unoccupied) would it become a nonconforming use, and Mr. Harmon said yes to this question. Mr. Williams wanted to know under what banner is the City reducing the distance and to whom is this directed. He said each one of these businesses has a right to conduct business. Mr. Williams said they (the City) are encroaching on someone else's right to run a business. In reducing that Special Use Permit, does that stagnate growth? Does that create another district?

Ms. Aragues asked Mr. Williams if he is suggesting that the Board vote to completely get rid of this ordinance. Mr. Williams replied no and stated that he is just playing devil's advocate because he is hearing that we can put a church there less than 500 feet. If you have a campus like Manna and you are within 500 feet and it doesn't encumber that small business over there, but all

that business (the church) goes around it, you can essentially create another district. Mr. Williams said that he does not know what is considered a district—a couple of blocks—because Manna Church and Berean Baptist Church are basically right next to each other. He described this area as massive.

Ms. Aragues elaborated on what Mr. Williams was saying in regard to encumbering another business's right to exist. She stated that if a developer owned commercial real estate in an area where a bar resides and the bar goes out of business and the real estate developer wants to sell or use that property, the developer can only use that property for certain things. Mr. Williams interjects that the area is a religious and school district at that point. It kind of creates a juxtaposition—if you have enough money and enough parishioners, they (the church) can come in and create complete districts which stifle growth. But by reducing Special Use Permits, would you be allowing that? It opens the door for that opportunity.

Mr. Williams stated that there is no statute for it. Although he did not oppose the City Council approving a church's request for the permit, Mr. Williams said that at the end of the day, he would rather the City tell him no and by what test he does not qualify for this and by what means. That way he would know.

Ms. Aragues asked the Staff if there is a way that the Board could pass this amendment so that it can be approved but not change the zoning for the existing businesses in that area—ever.

Mr. Williams stated in terms of planning and growth if you open it up, it becomes the wild, wild west in that sense. If you do not have a Special Use Permit and if you have enough money, you can run people out of town or run them off your block. You need some checks and balances.

Mr. Harmon said that the Board does not have to agree with all parts of the amendments. The Board can suggest changes to all or some of the text amendments. Mr. Harmon said that the amendments go before the City Council before the Staff brings them before the Planning Commission. When the City Staff brought these amendments before the City Council at a work session, the overall consensus was to accept this list and send it to the Planning Commission, so the Board could do its jobs and give its recommendations and send it back to the City Council.

Mr. Harmon stated that there were a couple of amendments left and after the Staff presented them, the Board could conduct a general discussion and ask questions on particular ones.

TA23-018. Airport Entrance Corridor

Objective: Review whether Manufactured Homes are appropriate uses along the entrance to the Airport.

Recommendation: Follow the draft text amendment that Cumberland County is adding to its Airport Overlay District.

Purpose: Eliminate Manufactured Homes on Airport Road from Gillespie Street to the Airport.

Mr. Harmon stated that the City and Cumberland County are presenting this amendment because the County is adopting this text amendment in its Airport Overlay District. This is basically a strip of land on Airport Road between Gillespie Street and the Airport. On one side are trailer parks. Mr. Harmon said we are just trying to make sure that in growing the airport and Fayetteville's image that it (a trailer park) is not the first view people get either coming into our city or leaving our city so that over time new manufactured homes do are not built at these locations. Eventually, it will become like the other side of the road and a more industrial corridor. Mr. Harmon asked if the Board had any questions.

Mr. Williams stated that basically, you are going to rezone that whole area and once again the people there will have a nonconforming use, right? Mr. Harmon agreed.

Mr. Williams asked Mr. Harmon how long a non-conforming use was valid. Mr. Harmon stated that as long they are on the property; they are allowed to be there. Mr. Harmon stated that they would not be able to get another permit to build another modular home on the property.

Ms. Aragues provided an example of how this amendment would affect someone who has a modular home that is of poor quality and he or she wants to build a new one on a piece of land they own. They would not be able to replace the modular home because of this amendment. Mr. Green reiterated that it is a manufactured home and not a modular home in question.

Mr. Green stated that modular homes are just the same as regular houses. They can go anywhere a normal single-family house can go. Mr. William stated that this is strictly directed at mobile homes because there are a lot of modular homes out there. Mr. Harmon stated that the mobile homes are located in two mobile parks in that area and the City is trying to over time basically eliminate that set use in that area. Mr. Williams stated that he is from Jacksonville, and one of the problems that the city has now is the fact that even though they have improved homes around the new river air station, the sound of freedom is one of those things that people complain about. Let us just say that you want to eliminate manufactured homes, and let us just say that instead of it being zoned strictly just for commercial, you put some nice houses up there. He stated that the City is going to have some noise complaints coming from people that are repopulating that land.

Mr. Harmon stated that this is an excellent point because the Airport Area Overlay already discourages residential development.

Mr. Sharpe stated that if you want to eliminate manufactured homes and have people put nice homes in the area, you are going to have some angry people. Mr. Sharpe stated that there was a case that dealt with this. Mr. Harmon confirmed that the case was ultimately turned down by City Council.

Ms. Aragues stated that they were just concerned about housing increases and other housing issues, and she inquired for clarification if this mobile home area is the most affected by this amendment. Mr. Harmon stated yes in response to this statement. Ms. Aragues stated that there is a whole mobile park next to that area—that is twenty homes, maybe thirty.

Mr. Williams stated for clarification that if they have a nonconforming use they can just stay there. Mr. Harmon confirmed this and added that they cannot replace the mobile home.

Ms. Aragues asked the Planning and Zoning Staff and City Council Member Deno Hondros who was present during the meeting if there were a whole lot of people that desired to live next to the airport. Mr. Harmon said no to this question.

Mr. Williams stated that builders do not care about that. Builders want to build houses and if they can find people to buy a house and they can get a permit for it they will do it (build a house).

Ms. Aragues stated that you (the City) are not addressing Fayetteville and other areas, you are looking at downtown and other areas that are not even near the airport. Mr. Harmon stated that you cannot make a good first impression without a good first impression. Ms. Aragues stated that the beautiful new airport that is easy with easy parking is our best first impression. That is the reason I live here.

TA23-019. Boarding of Commercial Buildings

Objective: Review if a time limit should be placed on the boarding of commercial buildings.

Recommendation: Amend Chapter 14 Article 6 to address the boarding of residential and commercial structures.

Purpose: Prevent the potential detrimental effects of boarded buildings throughout the City.

Mr. Harmon said the last text amendment is TA23-19 concerning the boarding of commercial buildings. There is a section in the ordinance that allows people to keep a house boarded up for three years. Under this text amendment, commercial properties would be allowed this same right.

Mr. Harmon stated that Mr. Green will probably have to help him with this amendment. We already have the same use in our ordinance for boarding a residential property. You already have to board a residential property thirty days or sixty days and you are allowed to keep it boarded up for three years. Through this process, commercial properties will be allowed to do the same thing that residential properties are allowed to do. When you board up a building you have to go to the City and get permission and you can stay boarded up for up to three years.

Mr. Williams asked Mr. Harmon if fines were levied upon them (the owner) if the property remained boarded up longer than three years. Mr. Harmon stated that if the owner goes past three years or the owner does not meet the requirements in the ordinance, Code Enforcement can fine them.

Mr. Jones asked Mr. Harmon how long could an owner keep a commercial building boarded up. Mr. Green said there is no specific section of the ordinance that stated that you cannot board a commercial building. If the building starts to deteriorate, Code Enforcement can go after the building for unsafe structure, but if the building is in decent shape the owner can board it up and there is nothing currently in the UDO to prohibit this.

Mr. Makar asked Mr. Harmon what our peer cities look like in regard to this same ordinance. Mr. Harmon stated that he did not think that the City had any data on the peer cities on this particular item.

Ms. Aragues asked Mr. Harmon if property owners in the City were requesting to have numerous buildings boarded up. She asked him if this is why the City is concerned about this amendment. Mr. Harmon said not to his knowledge.

Mr. Harmon stated that this concluded the presentation of the proposed text amendments. Mr. Harmon gave the Board the following options:

- The Board could recommend the City Staff present all or some of the proposed text amendments to the City Council for their review and adoption.
- The Board could recommend remanding some or all of the proposed text amendments back to Staff for further consideration.
- The Staff recommends that the Board recommend Staff to present all proposed amendments to the City Council.

Mr. Harmon stated that the Board could suggest that a text amendment be taken out as well if they want it reviewed later.

Mr. Sharpe opened the public hearing for text amendments TA23-02 through TA23-019. He closed the public hearing because there were no speakers. Mr. Sharpe opened the floor for Board comments. Mr. Sharpe stated that at this point he told the Board if they have questions to go down to each one individually and state any questions they have for the Staff. Ms. Aragues stated that she did not have any comments for the Staff just things that she would like to change. Mr. Sharpe reiterated that the Board can direct any comments they may have to the Staff.

Ms. Aragues wanted to change TA23-003, TA23-016, and Mr. Loftin had issues with TA23-017 and TA23-018. Ms. Aragues stated that the Board has an issue with amendments 16-18 and 003.

Mr. Harmon advised the Board that they should get a motion for the TAs that they approve. Then, the Board can individually review the other text amendments. Mr. Sharpe asked for a motion.

MOTION: Mr. Fountain made a motion to recommend the adoption of the text amendments with the exception of TA23-003 and TA23-016 through TA23-018.

SECOND: Raymond Makar

VOTE: Unanimous (6-0)

Ms. Aragues wanted to recommend that the Staff remove the need to record a variance for the text amendment TA23-03. Ms. Harper stated that the requirement for the recordation was so the variance runs with the land so that if the applicant sold the property the owner would have that on record. She said she thought this was the requirement for the recordation. She said the issue that the Staff is reviewing is how can the City allow an applicant to record who has received a variance so that if they do not record within a certain time period it does not hurt them. But the idea of recording, if you have a variance and since it runs with the land, is if you sell that property and the ordinance says something different, you want to be able to say that I received a variance—this property received a variance for this so it is okay to have this. It is always a permanent record that goes with the property if it is recorded with the Registrar of Deeds.

Ms. Aragues reiterated that it is the owner's responsibility to do this (record the variance).

Ms. Harper said City Staff are looking into other options such as the City increasing the fee for the variance if the City records the variance. Mr. Sharpe said he would recommend this. Ms. Harper said the City is seeking a better approach or a more-friendly approach, but she thought the reason that you (Ms. Aragues) posed the question as to why it is being recorded, is it is recorded so that future property owners would know that the variance runs with the land.

Ms. Aragues asked the Staff if the City has explored any fee amounts in regard to the City recording the variance. Ms. Harper said she does not know how far the department has

researched this matter, but the applicant would be charged so much per page and it would be added to the fee schedule for the application for the variance.

Mr. Jones asked the Staff if the department has decided how they want to do this. Ms. Harper stated that this option was raised initially and then other options were discussed. Ms. Harper said she is not sure if Dr. Newton is doing it this way or looking at other options. Mr. Harmon said that the Staff is looking at other options.

Mr. Williams asked the Staff what is the procedure for registering the deed, he asked if it is done manually. Mr. Harmon stated that a person physically has to go down to the office and have a stamp put on every page of the document that you have recorded and you are charged per page. Mr. Williams discussed the option of recording it digitally, but Ms. Harper said that digitally is not an option with Cumberland County right now. Ms. Harper stated that now the Register of Deeds requires you to file hard copies that must be stamped. Cumberland County may at some point decide to have it digitized, but the City does not have any influence on this process.

Mr. Harmon said what he is hearing is that the Board wants City Staff to be the one that is recording this and that it should not require a time period for it to be stamped and recorded. Mr. Sharpe asked if the Board would make a motion.

MOTION: Christina Aragues made a motion to approve the change Mr. Harmon suggested for the Staff to record the variance and for the Board to make the recommendation without a deadline.

SECOND: Adrian Williams

VOTE: Unanimous (6-0)

Ms. Aragues is against TA23-16 and does not see why it needs to change. Ms. Aragues stated that the Omni Theatre in Fayetteville is close to a residential area and they have the right to have a drive-in movie on their lot. Mr. Harmon pointed out that the Omni is on a commercial lot.

Mr. Green said that people are not aware or would they consider that some uses could exist in the Office Industrial zoned area or that people would buy homes near this district. Ms. Aragues asked for an example of this (an OI zoned area) and Mr. Green said the hospital is an example where people are living near an Office Industrial zoned area. Ms. Aragues asked the Staff if there have been any complaints in these areas by residents. Mr. Green stated not yet.

Mr. Williams inquired about the appearance of the east side of Fayetteville in regard to the OI district and where the entertainment district is located. Mr. Williams wanted to know how this would affect the City in the future. Mr. Green and Mr. Harmon stated that the area is zoned DT.

Mr. Sharpe points out that these areas would not have homes and he does not believe that it would place a hardship on property owners because they would have other areas where OI would be more appropriate. Mr. Williams stated that if a business is close to a neighborhood it can enhance the neighborhood's value. Mr. Green said that most retail businesses would not be allowed in an Office Institutional zoned area, which would be allowable in the commercial district.

Mr. Sharpe stated that the Board can make a change to the text amendment TA23-016 or the Board can accept it as presented. Mr. Jones proposed to move to accept it as is. Ms. Aragues posed the question of what would happen if the owner has to go before the Board if they want to build anything commercial that is not allowed in the OI district.

MOTION: Antonio Jones made a motion to approve the amendment as is.

SECOND: Wesley Fountain

VOTE: (4-2) (Christina Aragues and Eldred Loftin opposed)

In regard to TA23-17, Mr. Williams noted that a business such as adult entertainment could buy out an area, creating an adult district. Mr. Harmon stated that adult businesses are only allowed in certain areas of the City. Mr. Sharpe asked if there was a way to protect the business owner if it becomes a nonconforming use. Mr. Harmon said something could be written in the code to allow it to be non-conforming. Mr. Williams asked Mr. Harmon if this is to reduce the fee to go before City Council. Mr. Harmon said it is not about the fee.

Mr. Sharpe said 500 feet is required for separation. One of the parties would come before City Council to reduce this. Mr. Sharpe asked the Staff what would happen if the adult business asked for the variance. Mr. Harmon replied that only churches, schools, and daycares can get special use permits to reduce this. Mr. Sharpe said that he does not think that this ordinance should be relaxed due to the reason why it is there in the first place— to provide a buffer between these entities and the adult businesses. Mr. Fountain said that they could do nothing and it would stay as is. The Board and the City Staff discussed the matter further and then Mr. Sharpe asked for a motion.

MOTION: Adrian Williams made a motion to remand it back to the Staff (for revision). He said it is setting the City up for something else that they will have to clean up later.

SECOND: Raymond Makar

Mr. Williams clarified that he is remanding the amendment back for revision because the separation requirements are heavily favored upon the religious institutions, and the bars, clubs, and adult entertainment are unequally yoked in their representation.

VOTE: (4-2) (Wesley Fountain and Antonio Jones opposed)

Mr. Loftin said the Board should not approve amendment TA23-018, and Ms. Araques agreed. Mr. Harmon said the Staff's recommendation is to create a new district within the overlay district where it would not be allowed.

MOTION: Christina Araques made a motion to deny the recommendation.

SECOND: Eldred Loftin

VOTE: 4-2 (Antonio Jones and Wesley Fountain opposed)

MOTION: Christina Araques made a motion to adjourn the February 21, 2023, meeting.

SECOND: Adrian Williams

VOTE: Unanimous (6-0)

The meeting was adjourned at 7:40 p.m.

Respectfully submitted by Catina Evans



City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 23-3315

Agenda Date: 4/18/2023

Version: 2

Status: Agenda Ready

In Control: Planning Commission

File Type: Public Hearing
(Public & Legislative)

Agenda Number: 4.01

TO: Planning Commission

THRU: Dr. Gerald Newton, AICP - Development Services Director
Craig M. Harmon, CZO - Senior Planner

FROM: Lauren Long, Planner II

DATE: April 18, 2023

RE:

TA23-020-025: Proposed Text Amendment to UDO 30-2.C.8 Certificate of Appropriateness; 30-2.A.7.a Powers and Duties of the Historic Resources Commission; 30-2.C.22 Standards and Requirements for Local Landmark Designation; 30-1-9 Unified Development Ordinance; 2-41.A-F Historic Resources Commission.

COUNCIL DISTRICT(S):

All

Relationship To Strategic Plan:

Strategic Operating Plan FY 2022
Goals 2027

Goal 4: The City of Fayetteville will be a highly desirable place to live, work, and recreate

- Objective 4.2 - To enhance diverse recreation, leisure, and cultural opportunities

Goal 6: The City of Fayetteville will continue to have a collaborative citizen and business engagement base

- Objective 6.2 - To ensure trust and confidence in City government through transparency and high-quality customer service

Executive Summary:

The proposed text amendments are to update the enabling legislation for the Historic

Resources Commission (HRC), remove the procedure enabling the inclusion of local landmarks in the Historic/Landmark Overlay (HLO) district, re-name the HLO, as well as realign the powers and authority of the HRC and the applicability of a Certificate of Appropriateness.

Background:

In 2010, when the Unified Development Ordinance (UDO) was adopted, several changes were made to the powers and authority of the HRC as well as to the local landmark designation procedure. These changes resulted from the transition of the Historic District Overlay, an overlay that existed prior to the UDO, to a new zoning overlay district designated as the Historic/Landmark Overlay District (HLO). The intent of this new district was to organize all of the City's historic resources under one zoning overlay, where the powers of the HRC and the Design Guidelines would be broadly applicable in the same way that development standards can be tied to base zoning and overlay districts.

Prior to the adoption of the UDO, only the local historic districts had ever been adopted into the Historic District Overlay and landmarks were only recognized by the ordinance with which they were originally designated. Although the intent was to organize everything under the new overlay, when the HLO was created no map amendment was initiated to include the landmarks within the new overlay. This meant that only the two local historic districts transferred to the new overlay when the UDO was adopted. This led to a disconnect between the authority of the HRC to exercise its power over local landmarks because the parameters of the authority vested in the HRC are tied to the HLO. The powers of the HRC as defined by *UDO 30-2.A.7.a. 1-9, Historic Resources Commission, Powers and Duties* are to:

1. *Review and decide applications for Certificate of Appropriateness;*
2. *Review and provide recommendations to the Zoning Commission, and the City Council on Map Amendments that establish or change the boundaries of a Historic/Landmark Overlay District;*
3. *Review and provide recommendations to the Planning Commission and City Council on Text Amendments that involve the Historic/Landmark Overlay District, Certificate of Appropriateness, or other provisions directly related to Historic Preservation.*
4. *Inventory properties of historical, pre-historical, architectural, or cultural significance;*
5. *Investigate and prepare a report describing the proposed boundaries of any area recommended for designation as a historic district*
<<https://online.encodeplus.com/regs/fayetteville-nc/doc-view.aspx?pn=0&ajax=0&secid=10811>> and the significance of the proposed district and the buildings, structures, features, sites, or surroundings included in it;
6. *Review and make findings on the significance of individual structures, buildings, sites, areas, or objects recommended for designation as a landmark;*
7. *Prepare and recommend adoption of preservation goals, objectives, policies,*

and strategies as part of the City's comprehensive planning efforts;

8. Recommend City acquisition of properties within established historic districts or designated landmarks as necessary to promote their preservation; and

9. Provide assistance, guidance, or technical advice to property owners concerning restoration and the preservation of architectural features on historic structures.

According to the adopted language, the authority of the HRC to regulate any historic resources is tied to their inclusion in the HLO. This is further reinforced by the language addressing applicability for a Certificate of Appropriateness. *UDO 30-2.C.8.b.1.a, Applicability for a Certificate of Appropriateness, states: "Unless otherwise exempted" ... "no exterior portion of any building or other structure, including masonry walls, fences, light fixtures, steps and pavement, other appurtenant features, any above ground utility structure, or any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished on designated landmark historic structures or other historic structures within the Historic/Landmark Overlay District..."*. Based on the existing language, a COA is only applicable if the building, structure, or site is located within the HLO.

If a map amendment was never initiated to include the existing local landmarks in the HLO, then the HRC does not have authority over the structures, buildings, or sites that have been locally designated as landmarks. Additionally, outside of not having an assigned review body, the requirement to obtain a COA for any exterior modifications is not applicable to any of the landmarks.

Issues/Analysis:

The intent of the HRC is to provide for the preservation of historical, cultural, or archaeological resources within its jurisdiction on behalf of the City Council. This can be through technical review, educational campaigns, etc. A Certified Local Government (CLG) is a municipality that has demonstrated, through a certification process, their commitment to historic preservation at the local level. CLG status is awarded and certified by the State Historic Preservation Office (SHPO). Through CLG status, a certified municipality can obtain access to federal grants and technical assistance from SHPO. In 1999, the City of Fayetteville entered into an agreement with SHPO to obtain these benefits by agreeing to maintain a preservation commission that met the standards and requirements of a CLG.

The current language in the UDO as it concerns the authority and powers of HRC as well as the applicability of a COA is a "loophole" that has left the Historic Resources Commission in breach of its CLG agreement. This agreement states that the CLG will adhere to all requirements outlined in the *Guidelines for North Carolina's Certified Local Government Program*, see attached agreement. The CLG Guidelines, also attached, outline the requirement to "...establish a review process for proposed alterations, restoration, new construction, demolition, or moving within the boundaries of locally designated historic districts or on locally designated historic landmarks..." as well as the requirement to "...establish a preservation commission which shall have the authority to

review and render a binding decision on proposed alterations...". The current authority designated to the HRC, does not allow the commission to comply with the requirements of a CLG designated commission and the applicability section for a COA does not properly regulate the required review process to maintain the landmarks within the period of significance for which they were originally designated. Although municipalities with preservation commissions are not required to designate local landmarks, if they are designated, they must be regulated. It is worth noting that a municipality without a preservation commission is not enabled by the North Carolina General Statutes (NCGS) to designate local landmarks by ordinance. This is because, under NCGS 105-278, local landmarks can receive up to 50% property tax deferment through the county tax office for maintenance and preservation. This deferment is reviewed by the County on an annual basis and requires that the HRC review all exterior changes through the review of a COA to keep the landmark within the period of significance for which it was originally designated.

If local landmarks are not brought back under the authority of HRC, the commission and the city may risk losing its CLG status and access to the resources that CLG designation brings. Additionally, if exterior modifications to local landmarks are not being regulated by the commission, the tax deferment that is currently being received by those property owners may be at risk. If a local landmark loses its tax deferment status, due to the loss of its significance, the property owner must pay up to three years in back taxes.

Although local landmarks must be brought back under the authority of HRC to comply with the CLG agreement and to comply with the state's enabling legislation for local landmark tax deferments, the current design to include local landmarks within the HLO is also contributing to procedural complications. The inclusion of local landmarks within the HLO is adding additional review and public forum to the landmark designation procedure that is already covered under the required review (as enabled by NCGS 160D-946) by the Historic Resources Commission, the State Historic Preservation Office, and finally the City Council. All local landmarks, in order to receive local landmark designation, are reviewed by the HRC for significance. The HRC then produces a report detailing what it determines to be of significance. That report is forwarded to SHPO. The State has 30 days to produce comments based on that report. At the end of those 30 days, or before if comments are received prior to the deadline, the comments and original report are then reforwarded back to the commission and a public hearing is set to consider designation. A public hearing is required by both the HRC and City Council but they retain the option to hold a joint designation hearing.

Adding the additional requirement that a map amendment also be included in the process of local landmark designation in accordance with 30-2.C.1 is an unnecessary expansion of review. It is not required by the State and increases the burden of designation by expanding the public notification requirement. The UDO public notification requirement for a legislative hearing considering a map amendment includes mailed notice within a *1000' radius of the identified parcel (s)*. Requiring local landmarks to also undergo a map amendment expands the public notification requirements to include mailed notice, which would not otherwise be required of the local landmark designation procedure, as enabled by NCGS 160D-601. It also extends the petitioner's review timeline as the same petition

must then be reviewed by the Historic Resources Commission, the State Historic Preservation Office, the Zoning Commission, and the City Council.

Local landmarks can still be regulated outside of their inclusion in the HLO. If they are specifically identified under the powers and authority of HRC and the applicability of a Certificate of Appropriateness is expanded to include local landmarks this would bring the HRC back in compliance with the CLG Guidelines and local landmarks back under their purview. A text amendment is required to the attached sections in order to bring them into conformance with the CLG guidelines and eliminate the requirement for a map amendment as part of local landmark designation.

Budget Impact:

N/A

Options:

1. Move to recommend approval of the proposed text amendments.
(Recommended);
2. Move to recommend denial of the proposed text amendments;
3. Remand the proposed text amendment back to staff for further consideration and specific changes.

Recommended Action:

Professional Planning Staff recommends option (1), the recommended approval of the proposed text amendments to the Unified Development Ordinance and the Code of Ordinances.

Attachments:

1. Certified Local Government Agreement
2. Certified Local Government Guidelines
3. Draft Ordinance: 30-2.C.8 Certificate of Appropriateness
4. Draft Ordinance: 30-2.A.7.a Powers and Duties of the Historic Resources Commission
5. Draft Ordinance: 30-2.C.22 Standards and Requirements for Local Landmark Designation
6. Draft Ordinance: 30-1-9 Unified Development Ordinance; 2-41.A-F Historic Resources Commission.

NORTH CAROLINA DEPARTMENT OF CULTURAL RESOURCES
DIVISION OF ARCHIVES AND HISTORY
STATE HISTORIC PRESERVATION OFFICE

LOCAL GOVERNMENT CERTIFICATION AGREEMENT

Pursuant to the provisions of the National Historic Preservation Act, as amended, to applicable federal regulations (36 CFR 61), and to *Guidelines for North Carolina's Certified Local Government Program*, the City of Fayetteville agrees to:

- (1) Enforce appropriate legislation for the designation and protection of historic properties (North Carolina General Statutes 160A-400.1 through 14 and *Guidelines* Section III.B.).
- (2) Maintain an adequate and qualified historic preservation review commission (North Carolina General Statutes 160A-400.1 through 14 and *Guidelines* Section III.C.).
- (3) Maintain a system for the survey and inventory of historic properties (North Carolina General Statutes 160A-400.1 through 14 and *Guidelines* Section III.E.).
- (4) Provide for adequate public participation in the historic preservation program, including the process of recommending properties to the National Register (North Carolina General Statutes 160A-400.1 through 14 and *Guidelines* Section III.F. and VI.).
- (5) Adhere to all federal requirements for the Certified Local Government Program.
- (6) Adhere to requirements outlined in the State of North Carolina *Guidelines for North Carolina's Certified Local Government Program* (see above) issued by the State Historic Preservation Office.

Upon its designation as a Certified Local Government (CLG) the City of Fayetteville shall be eligible for all rights and privileges of a CLG specified in the Act, federal procedures, and procedures of North Carolina. These rights include eligibility to apply for available CLG grant funds in competition only with other CLGs.

STATE:


SHPO

Jeffrey J. Crow, SHPO, Director
Division of Archives and History

9/27/99
Date

LOCAL GOVERNMENT:


Chief Local Elected Official

J.L. Dawkins, Mayor, City of Fayetteville
(Typed Name and Title)

September 8, 1999
Date

GUIDELINES
FOR
NORTH CAROLINA'S
CERTIFIED LOCAL GOVERNMENT
PROGRAM

2003

STATE HISTORIC PRESERVATION OFFICE
DIVISION OF HISTORICAL RESOURCES
OFFICE OF ARCHIVES AND HISTORY
NORTH CAROLINA DEPARTMENT
OF CULTURAL RESOURCES

NOTICE

This program receives federal financial assistance for identification and protection of historic properties. Under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, the U.S. Department of the Interior prohibits discrimination on the basis of race, creed, color, religion, national origin, sex, disability, or age in its federally assisted programs. If you believe you have been discriminated against in any program, activity, or facility as described herein, or if you desire further information, please write to Office for Equal Opportunity, National Park Service, 1849 C Street, NW, Washington, DC 20240.

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I. INTRODUCTION

When Congress established a historic preservation program for the United States in 1966 by passing the National Historic Preservation Act, the program operated as a partnership between the federal government and the states. It provided for the identification, evaluation, and protection of historic properties nationwide and gave the states primary responsibility for implementation. As the working relationship grew, it became apparent that local governments also needed to have a role. Therefore, in 1980 Congress expanded the partnership by creating the Certified Local Government (CLG) program in an amendment to the National Historic Preservation Act. The CLG program seeks to assist the development, maintenance, and enrichment of local historic preservation programs in cooperation with the state and federal program. In subsequent amendments to the Act, Congress has further defined the CLG program.

A local government can participate when the State Historic Preservation Officer (SHPO) and the U.S. Department of the Interior, operating through the National Park Service (NPS), certify that the local government has adopted a preservation ordinance and established a preservation commission and is carrying out a preservation program meeting federal and state standards. A local government that receives such certification is known as a Certified Local Government. In North Carolina, approximately one-half of the over 125 municipalities and counties that have adopted preservation ordinances have become CLGs. Their preservation commissions carry out the local programs and are called CLG commissions. There are forty such CLG commissions, with some jointly serving a county and one or more municipalities.

CLGs receive technical assistance and training from the State Historic Preservation Office (HPO), participate in the National Register nomination process, and are eligible to receive small matching grants for preservation activities.

As described in the 1995 NPS publication, *Preserving Your Community's Heritage Through the Certified Local Government Program*,

...the program is much more than just a funding source. It has helped to institutionalize historic preservation by making it a part of local government. And, because local planning office staff often play key roles in CLG projects, the thread of historic preservation becomes woven into the fabric of local land use policy. Another benefit is a stronger partnership among the local, state, and national preservation networks.

The National Historic Preservation Act of 1966, as amended (16 USC 470 *et seq.*), and the corresponding federal regulations (36 CFR Part 61) contain the legal basis for the CLG program. The Act requires each state, in consultation with local governments, local preservation commissions, and interested citizens, to establish its own procedures and guidelines for certifying local governments. The NPS must review and approve all state procedures and any amendments thereto. In North Carolina, the CLG procedures were initially developed and approved in 1984. Revisions were approved in 1988, 1992, 1996, and 2003.

The purpose of this document is to set forth North Carolina's approved CLG procedures. It describes the requirements for certification, the role and responsibilities of CLGs, how local governments can apply for and maintain certification, the role of the HPO and the NPS in the certification process, how the HPO will evaluate CLG performance, and the CLG grants program.

ABBREVIATIONS USED IN THIS DOCUMENT

CFR.....	Code of Federal Regulations
CLG.....	Certified Local Government
DHR.....	North Carolina Division of Historical Resources
DOI.....	United States Department of the Interior
NCGS.....	North Carolina General Statutes
HPF.....	Historic Preservation Fund
HPO.....	State Historic Preservation Office
NPS.....	National Park Service
NRAC.....	National Register Advisory Committee
NRHP.....	National Register of Historic Places
NRN.....	National Register nomination
SHPO.....	State Historic Preservation Officer

DEFINITIONS USED IN THIS DOCUMENT

Act: the National Historic Preservation Act of 1966, as amended (16 USC 470 *et seq.*).

Certified Local Government (CLG): a local government whose local historic preservation program has been certified by the State Historic Preservation Officer, with the concurrence of the National Park Service, to carry out the purposes of the National Historic Preservation Act of 1966, as amended (16 USC 470 *et seq.*), pursuant to section 101(c) of the Act. CLGs receive a portion of the federal Historic Preservation Fund grant received by the state under the Act. To become a CLG, a local government must be certified as meeting the federal and state requirements set forth in these guidelines.

Certificate of Appropriateness: a document issued by the local preservation commission, which must be obtained by the owner of a locally designated landmark or property within in a locally designated historic district prior to making exterior alterations, undertaking new construction, or restoring, moving, or demolishing a building.

Chief local elected official: the elected head of a local government. In North Carolina, the chief local elected official of a county is the chairman of the board of county commissioners. In a municipality, the chief local elected official is the mayor.

Historic preservation review commission: in the federal CLG requirements, the board, council, commission or other similar collegial body which is established by state or local legislation as provided in the National Historic Preservation Act of 1966, as amended (16 USC 470 *et seq.*), and the members of which are appointed, unless otherwise provided by state or local legislation, by the chief local elected official of the jurisdiction concerned from among

- a) professionals in the disciplines of architecture, history, architectural history, planning, prehistoric and historic archaeology, folklore, cultural anthropology, curation, conservation, landscape architecture, or related disciplines, to the extent such professionals are available in the community concerned, and
- b) such other persons as have demonstrated special interest, experience, or knowledge in history, architecture or related disciplines and as will provide for an adequate and qualified commission.

It is the local government that is certified, not the commission. The commission is the entity responsible for certain preservation activities as the representative of the CLG.

Designation: the identification and registration of properties for protection that meet criteria established by the state or the locality for significant historic and prehistoric resources within the jurisdiction of a local government. In North Carolina, the state enabling statute, North Carolina General Statute 160A-400.1 through 14, defines historic districts and landmarks (individual properties) as areas or properties deemed to be of special significance in terms of their historical, prehistorical, architectural, or cultural importance, and to possess integrity of design, setting, materials, workmanship, feeling and/or association. The designation decision is made by the local governing board. The preservation commission recommends areas and properties for designation, but has no power to designate.

Historic Preservation Fund (HPF): a fund established by the National Historic Preservation Act of 1966, as amended (16 USC 470 *et seq.*), to carry out the provisions and purposes of the Act. Funds are available for expenditure only when appropriated by Congress.

Local governing board: in North Carolina, the legislative body of a county or municipality. Counties use the term “board of commissioners.” Municipalities use the term “council,” “board of commissioners,” or “board of aldermen.”

Local government: a general purpose political subdivision of a state. In North Carolina, there are two types: counties and municipalities. A municipality is an incorporated entity with geographic boundaries within a county (sometimes extending into an adjoining county) and may be called a “city,” “town,” or “village.”

Local ordinance: in North Carolina, a preservation ordinance enacted by a local governing board pursuant to the state enabling legislation, North Carolina General Statute 160A-400.1 through 14, which provides for the local designation and protection of historic properties and which establishes an adequate and qualified historic preservation commission.

National Register of Historic Places (NRHP): the official federal list of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture. The NRHP is maintained by the National Park Service, U.S. Department of the Interior. Properties are nominated to the NRHP by the State Historic Preservation Officer in each state. (In contrast, local designation is an activity carried out by a local government using local criteria.)

National Register nomination or nomination (NRN): a document containing the information necessary to nominate a property to the National Register of Historic Places, including a historical narrative, physical description, statement of significance, maps, photographs, legal description, and geographic data. The nomination describes how the property meets the National Register criteria for listing.

Protection: a local review process under state or local law for proposed demolition of, changes to, or other action that may affect locally designated historic properties, including districts and individual properties. In North Carolina, the review process and requirements are set forth in a local ordinance adopted in accordance with the state enabling statute, North Carolina General Statute 160A-400.1 through 14.

Secretary: the Secretary of the U.S. Department of the Interior.

State Enabling Statute: in North Carolina, the general law, North Carolina General Statute 160A-400.1 through 14, enacted by the General Assembly, which allows local governments to adopt a preservation ordinance, designate historic districts and landmarks, and establish a preservation commission with design review authority.

State Historic Preservation Office (HPO): the section within the Division of Historical Resources, Office of Archives and History, North Carolina Department of Cultural Resources, which carries out the state historic preservation program and serves as staff to the State Historic Preservation Officer in regard to his or her preservation responsibilities.

State Historic Preservation Officer (SHPO): the official designated and appointed by the Governor to administer the state historic preservation program and the duties described in the National Historic Preservation Act, as amended (16 USC 470 *et seq.*), including the nomination of properties to the National Register of Historic Places.

Survey and inventory: Survey is the activity which gathers information that is kept in an inventory of the historic properties in a county, city, town, neighborhood, or some other defined area. Inventories may include properties that have historic, architectural, archaeological, or cultural significance.

II. REQUIREMENTS FOR CERTIFICATION

A local government that meets the criteria set forth in this section is eligible to apply for certification. Once certified, a local government must continue to meet the criteria and perform CLG responsibilities satisfactorily to maintain CLG status.

A. FEDERAL REQUIREMENTS

The National Historic Preservation Act of 1966, as amended (16 USC 470 *et seq.*), contains five broad standards that must be met by a local government seeking certification or maintaining certified status. The local government must

- * Enforce appropriate state or local legislation for the designation and protection of historic properties
- * Establish by state or local legislation an adequate and qualified historic preservation review commission
- * Maintain a system for the survey and inventory of properties that furthers the purposes of the Act
- * Provide for adequate public participation in the local historic preservation program, including the process of reviewing nominations to the National Register of Historic Places
- * Satisfactorily perform the responsibilities delegated to it under the Act

The Act contains definitions for various elements of the CLG program; for example, “local government.”

Federal requirements mandate that there be no overlapping jurisdictions between CLGs. In North Carolina, municipalities and counties are the two types of local governments that may become certified. As general purpose political subdivisions of the state, they do not have overlapping jurisdictions.

In addition to the federal requirements listed above, each state must define what constitutes appropriate local legislation and may specify additional requirements. The minimum requirements for certification of local governments in North Carolina and for maintaining certified status are set forth below.

B. LOCAL HISTORIC PRESERVATION ORDINANCE

1. The local government must have a legally enacted ordinance for the designation and protection of historic properties (districts or landmarks, or both) in accordance with the federal statutory definitions for designation and protection. (See “Definitions Used in This Document,” above.)
2. The purpose of the historic preservation ordinance shall be clearly stated and should be substantially similar to the language of the purpose clauses in the North Carolina enabling legislation for historic districts and landmarks, NCGS 160A-400.1 through 14.

3. The historic preservation ordinance shall clearly define a process and criteria for the designation of historic districts and/or historic landmarks by the local governing board, in accordance with NCGS 160A-400.3 through 6.
4. The historic preservation ordinance shall establish a review process for proposed alterations, restoration, new construction, demolition, or moving within the boundaries of locally designated historic districts or on locally designated historic landmarks, in accordance with NCGS 160A-400.7 through 14.
5. The historic preservation ordinance shall establish a preservation commission which shall have the authority to review and render a binding decision on proposed alterations, restoration, new construction, demolition, or moving within the boundaries of locally designated historic districts or on locally designated historic landmarks, in accordance with NCGS 160A-400.7 through 14.
6. The criteria upon which a preservation commission reviews proposals for alterations, restoration, new construction, demolition, and moving shall be clearly set forth in the local ordinance, in accordance with NCGS 160A-400.9, and in design guidelines adopted by the commission.
7. Provisions for enforcing the preservation commission's decisions and a right to appeal the decisions must exist in the historic preservation ordinance or zoning ordinance.
8. The historic preservation ordinance shall contain specific time limits within which the preservation commission and the applicant for design review shall act.

C. LOCAL HISTORIC PRESERVATION COMMISSION

In North Carolina, a local historic preservation commission is established by a local historic preservation ordinance adopted by a local government. The ordinance may provide for locally designated historic districts or locally designated historic landmarks (individual properties), or both. If only districts are provided for, the commission is typically called "historic district commission" or "historic districts commission." If only landmarks are provided for, the commission is typically called "historic landmarks commission" or "historic properties commission." If both types of designation are provided for, the commission is typically called "historic preservation commission" or "historic resources commission." The term "preservation commission" is often used as a general term referring to any of the commission types. When a local government becomes a CLG, its preservation commission becomes known as a CLG commission.

A local historic preservation commission is typically established by a single local government; for example, the Greenville Historic Preservation Commission is established by the City of Greenville. Alternatively, a county and one or more municipalities in the county may establish a joint preservation commission by adopting a joint ordinance or interlocal agreement. In the case of a joint commission, each participating local government desiring to become certified must be separately certified and individually meet the certification requirements. Each local government which thus becomes certified may designate the joint commission as its CLG commission. In this way, the same (joint) commission may act as the CLG commission for more than one certified local government.

As a CLG commission, the preservation commission must meet federal and state requirements concerning qualifications of members. It carries out duties specified in the local preservation ordinance and in the certification agreement with the SHPO. It has responsibilities beyond administering the local preservation ordinance; for example, it reviews National Register nominations for properties anywhere in the territorial jurisdiction of the local government.

1. **Responsibilities.** The responsibilities of the CLG commission must be complementary to and coordinated with those of the HPO. The HPO's tasks are enumerated in the National Historic Preservation Act of 1966, as amended (16 USC 470 *et seq.*), and in state and federal preservation standards, guidelines, and regulations.
2. **Number and Qualifications.** In North Carolina, the CLG commission shall have a minimum of five (5) members. The members must be appointed by the chief local elected official unless local legislation provides for a different method of appointment. In accordance with the state enabling statute, NCGS 160A-400.7, all the members shall reside within the territorial jurisdiction of the local government; except, where a joint commission is established, the county and municipalities involved shall determine the residency requirements of the commission members. All members shall have demonstrated special interest, experience or knowledge in history, architecture or related disciplines that is supported by resume information sufficient to allow the SHPO to confirm the qualifications of members, pursuant to 36 CFR Part 61.
3. **Appointment of Professionals as Commission Members.** CLGs are encouraged to make a "good faith effort" to appoint professional members from the disciplines of architecture, history, architectural history, prehistoric and historic archaeology, planning, folklore, cultural anthropology, curation, conservation, and landscape architecture, or related disciplines to the extent such professionals are available in the community. A good faith effort may include emphasizing these professions in advertising to fill vacancies, communicating with professionals who are known to reside in the community, and contacting local colleges, universities, or professional organizations for referrals. Resumes must document the qualifications of the professional members.

While Section 301.13 of the National Historic Preservation Act of 1966, as amended (16 USC 470 *et seq.*), clearly anticipates that an adequate and qualified CLG commission will include professionals in the disciplines listed above, to the extent they are available in the community, there is no minimum number of professional members that must be included on the commission. The requirement is not that the commission must include professional members, but that the local government will make a good faith effort to seek professionals to serve. It is recognized that all members, whether professionals in these disciplines or not, make important contributions to the commission's work. Professionals can help a commission make objective decisions and enhance the credibility of the commission in the community. Other members offer such valuable services as organizational or parliamentary skills, familiarity with the community's values and political processes, and knowledge of local historic resources.

Documentation of Effort to Seek Professional Members. The local government must provide to the HPO written information concerning how it has sought qualified professionals to serve as members of the commission, whether any were appointed or not. Such information

could include copies of newspaper notices; radio announcements; letters to local schools, colleges, universities, local professional organizations, and civic groups; and notes of telephone contacts with such entities.

4. **Terms of Office.** Terms of office of CLG commission members shall be staggered and of at least two years' duration. Terms may not exceed four years.

Although there is no limit on the number of consecutive terms served by any one member, it is recommended that limits be set in the rules of procedure in order to seek a balance between retaining experienced members and encouraging broad participation on the commission through new appointments.

5. **Filling Vacancies.** The local appointing authority shall act within sixty (60) calendar days to fill a vacancy. The sixty-day period commences on the date of an expired term, letter of resignation, or at the time the commission chairman recognizes that there is a vacancy as defined by the commission's rules of procedure.
6. **Combining Commissions.** The CLG commission may be formed by combining existing preservation commissions, which with respect to some activities may continue to operate individually; however, any activity specifically addressed in federal CLG regulations or other activities specified by the state in the certification agreement must be handled by the CLG commission as a whole.
7. **Educational Requirement.** At least two commission members and the CLG's designated staff (see Section II.D, below) shall attend at least one informational or educational meeting per year pertaining to the work and functions of the commission or to historic preservation. Such meetings may include those sponsored by the HPO, Preservation North Carolina, the National Trust for Historic Preservation, the North Carolina Main Street Center, the North Carolina Chapter of the American Planning Association, or another local preservation organization and should be at least regional in scope (attended by several municipalities or counties).
8. **Review of National Register Nominations.** In addition to any other responsibilities delegated to it by state or local law, the CLG commission shall review all proposed NRNs for properties within the CLG's jurisdiction. (See Section VI, below, on the role of CLGs in the NRN process.)

Whenever the commission, as part of its CLG duties, is rendering its opinion as to whether or not a property being nominated to the National Register meets the criteria for listing or is carrying out other CLG responsibilities that would normally require professional expertise, and the appropriate professional discipline is not represented in the commission membership (for example, an archaeologist for reviewing the nomination of an archaeological site), the commission must seek outside expertise from persons meeting the Secretary of the Interior's Professional Qualification Standards in the field of history, archaeology, architectural history, architecture, or historic architecture, as appropriate. (See Appendix A.) A description of the arrangements the commission has made to obtain appropriate outside professional expertise in such cases must be on file with the HPO. Requisite outside expertise may be provided through

consultation with the HPO. (See Section VI, below, on the role of CLGs in the NRN process.)

9. **Conflict of Interest.** No CLG commission member, agent, or staff, nor their employees, agents, partners, associates, or family members shall participate in the selection, award, or administration of any HPF-assisted program activity, subgrant, contract, or subcontract if a conflict of interest, real or apparent, exists; nor shall such persons engage in outside employment or have any direct or indirect financial interest that conflicts or would appear to conflict with the fair, impartial and objective performance of officially assigned duties and responsibilities for administration of the HPF program. Employees or agents shall neither solicit nor accept gratuities, favors, nor anything of monetary value from contractors, potential contractors, or parties to potential or actual HPF grant awards, in accordance with the *Historic Preservation Fund Grants Manual*, Chapter 3, Section C.
10. **Reporting Requirements.** The CLG commission shall submit annual reports to the SHPO to update property designations, provide resumes of new members, and fulfill other ongoing requirements to maintain continuing certification. Every four (4) years, the commission shall submit to the SHPO a report of its activities for more comprehensive evaluation by the SHPO. (See Section IV, below, on performance assessment.)
11. **Other Responsibilities.** In North Carolina, a CLG may petition to assume greater responsibility for preparation of NRNs and environmental review, provided the CLG has sufficient and qualified staff. Staff qualifications shall be consistent with the Professional Qualifications Standards established in 36 CFR Part 61. (See Appendix A.) If the SHPO delegates these and further responsibilities to the CLG, an appropriate written agreement with the CLG is required.
12. **Orientation and Training.** The HPO shall provide orientation materials and training to CLGs and CLG commissions in accordance with local needs. The orientation and training shall be designed to provide information, education, and technical assistance in historic preservation.

D. CERTIFIED LOCAL GOVERNMENT STAFF

1. **Qualifications.** The CLG must designate a paid member of its staff, or a person working under contract, as the individual responsible for the operations of the preservation commission. The designated staff person need not have historic preservation as his/her sole responsibility, nor must the person have special training or expertise in a historic preservation-related field, although such training would be desirable. Ideally the designated CLG staff is a member of the local government planning staff who can interpret and use design guidelines, can coordinate the documentation for local designations and the process for considering applications for Certificates of Appropriateness, and has experience or training in planning, zoning administration, and commission procedures.
2. **Staff Duties.** The CLG staff attends and participates in all commission meetings; ensures that minutes of those meetings are recorded; and serves as liaison among the commission, the local governing board, and the HPO. In addition, the CLG staff oversees the day-to-day operations and business of the commission, including scheduling meetings and hearings, cooperating with commission officers, preparing reports and grant applications, and arranging for the secretarial

services necessary to conduct commission business. The CLG staff shall attend at least one educational or training meeting each year pertaining to preservation or the work of the commission and shall encourage the training of new commission members and officers.

E. SURVEY OF HISTORIC PROPERTIES

1. The CLG shall begin or continue a process approved by the HPO to identify historic properties within its jurisdiction. Architectural surveys and inventories will follow guidelines in *The North Carolina State Historic Preservation Office Survey Manual: Instructions for Recording Historic Resources*. Archaeological surveys will be conducted according to guidelines set forth by the Office of State Archaeology.
2. Survey and inventory materials shall be
 - a. compatible with the forms and standards for surveys of historic buildings and archaeological resources sponsored by the HPO. Surveyed properties shall be recorded using forms provided by the HPO. The CLG shall submit files containing the photographs, negatives, either original or duplicate completed forms and other documentation, and maps showing properties to which the files are keyed to the HPO for incorporation into the statewide inventory.
 - b. accessible to the public, except that information about the location of archaeological sites shall be restricted pursuant to NCGS 70-18 and Section 304 of the National Historic Preservation Act, as amended (16 USC 470 *et seq.*); and the locations of vacant, endangered, or deteriorated buildings may be withheld for their protection. Inventory information is to be maintained in a safe and secure location.
 - c. available to the public through original or duplicate files at the HPO or the office of the local commission.
3. After a survey is completed, the CLG shall periodically review the status of its survey and inventory of historic properties. (See Section II.A, above.)

If an existing survey is incomplete or outdated (e.g., the level of documentation was not comprehensive by current standards, or the passage of time has brought additional properties into significance), the commission shall consider conducting a survey update. Such an update shall be undertaken in cooperation with the HPO to standards specified in items 1 and 2, above, in this section. CLG grant funds, when available, may be used for such a survey update.

4. In addition to the survey inventory and any properties listed in the NRHP, either individually or in a National Register historic district, the CLG shall maintain a list of the districts and individual properties that have been locally designated according to the local preservation ordinance.

Exception: The National Historic Preservation Act, as amended (17 USC 360 *et seq.*) provides for confidentiality of the location of sensitive historic resources. The chief local elected official of CLGs receiving HPF grant assistance, after consultation with the Secretary of the Interior, shall withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if the Secretary and the CLG determine that disclosure may cause

significant invasion of privacy, risk harm to the historic resource, or impede the use of a traditional religious site by practitioners. A determination of who may have access to the information shall be made in accordance with Section 304 of the Act. When the information in question has been developed in the course of the CLG's compliance with Section 106 or 110(f) of the Act, the Secretary shall consult with the Advisory Council on Historic Preservation in reaching determinations on disclosure and access.

F. PUBLIC PARTICIPATION

1. All meetings of the preservation commission shall adhere to the North Carolina Open Meetings Law (NCGS 143-318.9 *et seq.*), and public comment on commission actions shall be encouraged. Commission meetings must occur at regular intervals and no less often than once a year. Public notice must be provided prior to any special meeting.
2. The preservation commission must adopt and adhere to rules of procedure and design guidelines as required by North Carolina's enabling legislation for historic preservation commissions, NCGS 160A-400.1 through 14. The rules of procedure and design guidelines must be readily available to the public.
3. Careful minutes of all actions of the preservation commission, including the reasons for making its decisions, must be kept on file and available for public inspection.
4. All decisions of the preservation commission shall be made in a public forum, with the exception noted below. Applicants for a Certificate of Appropriateness shall be given written notification of decisions made by the commission. Written notification shall cite the criteria upon which the decisions were made.
5. During the process of recommending properties for nomination to the NRHP, the preservation commission shall provide an opportunity for public comments as specified in Section VI, below.

III. PROCESS FOR CERTIFICATION

A. APPLICATION

A local government may apply to the SHPO for certification at any time during the year. In North Carolina, the historic preservation commission must have operated actively (e.g., have held regular meetings, recommended properties and/or districts for designation, and issued Certificates of Appropriateness) for at least one year prior to the local government's applying for certification. The SHPO may waive this requirement in cases he or she deems necessary. The approval of both the SHPO and the NPS is required for a local government to become certified. The application for certification shall include the following:

1. **Applicant Information Sheet.** This form, provided by the HPO, shall contain the names of the local government and the preservation commission and information on the extent of requested participation in the CLG program. Most local governments applying for CLG status check "not seeking expanded responsibilities" on the applicant information sheet because they do not have the

staff qualifications or time to assume extra obligations for preparation of NRNs, environmental review, or review of Tax Act projects.

2. **Assurance Form.** This form, provided by the HPO and signed by the chief local elected official, contains assurances that the local government will fulfill all of the standards for certification outlined above. It provides the name, position, address, telephone number, fax number, and e-mail address of the designated staff member assigned to the preservation commission. If two or more local governments have established a joint preservation commission, the chief elected official of each local government wishing to become certified shall submit an "Assurance Form."
3. **Local Preservation Ordinance.** A copy of the local historic preservation ordinance and all preservation provisions that appear in the local zoning ordinance. If any revisions are being considered, they must also be included with the application.
4. **Rules of Procedure.** A copy of the preservation commission's rules of procedure.
5. **Design Guidelines.** A copy of the design guidelines adopted by the preservation commission.
6. **Locally Designated Historic Districts and Landmarks.** A list of locally designated historic districts and landmarks, addresses of the landmarks, and a map showing district boundaries and landmark locations.
7. **Resumes.** Brief resumes for each member of the preservation commission, showing his or her interest, experience, or knowledge in historic preservation. Resume forms provided by the HPO may be used. If there are any professional members in the disciplines of history, archaeology, architectural history, architecture, or historic architecture (see Appendix A), who can provide the required expertise when the CLG is reviewing National Register nominations or related activities, their resumes should show their professional qualifications and experience. Members who are professionals in these disciplines are desirable, but not required, for CLG status. However, when reviewing NRNs, if the appropriate expertise is not represented on the commission, the commission must obtain outside expertise. (See Section II.C.8, above, and Section VI, below, on the role of CLGs in the NRN process.)
8. **Evidence of Effort to Attract Professional Members from an Array of Preservation Related Fields.** Documentation that the local government has sought professionals in a wide array of preservation related fields to serve on the preservation commission, to the extent professionals may be available in the community. (See Section II.C.3, above.)
9. **Statement of Residency.** Documentation of the home addresses of preservation commission members, along with a statement that all members reside within the territorial jurisdiction of the local government; or in the case of a joint commission, a statement that all members meet the residency requirements of the joint preservation ordinance or interlocal agreement.
10. **Staff Resume.** Resume for the staff, only if the local government is petitioning to assume "expanded responsibility" for preparation of NRNs, environmental review, or review of Tax Act projects.

B. NOTIFICATION OF CERTIFICATION

1. Within forty-five (45) calendar days from the receipt of a completed application, the SHPO shall respond to the chief elected official of the local government. The application must contain all essential elements listed above to be considered complete.
2. If the SHPO approves the application, the SHPO and the local government will enter into a written certification agreement that lists specifically or by reference to these procedures and guidelines all requirements and responsibilities common to all CLGs and any additional responsibilities delegated to the CLG by the SHPO.
3. The SHPO will forward a request for concurrence to the NPS, along with a copy of the signed certification agreement between the local government and the SHPO and a signed review checklist.
4. If the request for concurrence cannot be affirmed as submitted, the NPS will notify the SHPO within fifteen (15) working days from receipt of the request and will provide written notice of what is necessary for concurrence. The SHPO will then work with the local government to address the concerns.
5. A Certification Agreement is not effective until it is signed by the chief local elected official and the SHPO, and concurred with in writing by the NPS. The effective date of certification is the date of NPS concurrence. The NPS will notify the SHPO of concurrence in writing and send a copy of the letter to the CLG.
6. The SHPO shall submit to the NPS an original signed Certification Agreement.
7. A substantive change in a Certification Agreement constitutes an amendment that must be forwarded by the SHPO to the NPS for concurrence. NPS written concurrence must be received before the amendment may be considered in effect. Changes must be consistent with these guidelines and Chapter 9 Certified Local Governments of the *Historic Preservation Fund Grants Manual*. The NPS will notify the SHPO of its decision in writing and will send a copy of the letter to the CLG.

IV. PERFORMANCE ASSESSMENT

Once a local government is certified, the HPO shall perform annual monitoring activities and a quadrennial performance review. Reports from the preservation commission on forms provided by the HPO constitute the basis for the reviews. The reports and evaluations become a vehicle for commission self-evaluation, publicizing CLG accomplishments locally and statewide, sharing successful activities and best practices, and identifying issues and needs. The reports enable the HPO to ensure that the CLG continues to meet minimum requirements. They help the HPO provide useful advice and technical assistance, plan for commission training, and collect and disseminate information about the important role of local government in preservation.

A. ANNUAL MONITORING ACTIVITIES AND ANNUAL REPORT

The state CLG coordinator monitors CLG activities throughout the year with periodic written notifications, telephone conversations, and site visits. In addition, each CLG submits an annual report covering the period July 1 to June 30. The report includes

resumes of new preservation commission members; evidence of efforts to maintain a qualified commission; brief highlights of commission activities; a list of locally designated districts and/or landmarks; a summary of design review activity; information on properties that have been added to the inventory and on those that have been demolished, radically altered, restored, or moved; and an affirmative statement that the local government has met the requirements for certification contained in these guidelines. Reports must be submitted in a timely manner. The reporting forms are mailed by the HPO to the commissions soon after June 30 each year.

B. QUADRENNIAL REVIEW

The HPO conducts a more comprehensive performance review of CLGs every four years, beginning in 2000 for the period July 1, 1996, to June 30, 2000. In addition to items required annually, the quadrennial review evaluates performance of such basic CLG responsibilities as review of National Register nominations and administration of CLG grants.

C. RESULTS OF ANNUAL AND QUADRENNIAL REVIEWS

The HPO shall inform each CLG in writing of the results of its annual and quadrennial reviews. To promote the exchange of information among local preservation programs, portions of the CLG reports may be circulated to all CLGs.

If the HPO's annual monitoring or quadrennial review indicates that a CLG's performance is inadequate, the HPO will notify the CLG in writing and recommend steps to bring its performance to a satisfactory level. The CLG shall have up to 180 days to make improvements. If, after the stipulated period of time, the HPO determines that sufficient improvement has not occurred, the SHPO may recommend decertification of the CLG to the NPS for concurrence.

If the unsatisfactory performance is related to additional delegations of authority to the CLG, the SHPO may recommend revocation of the additional delegations to the NPS for concurrence, citing specific reasons for the action.

V. DECERTIFICATION

A. REQUEST BY SHPO FOR CLG DECERTIFICATION

The SHPO may recommend decertification to the National Park Service after all of the following conditions have been met:

1. The SHPO determines that a CLG's performance does not meet the performance standards specified in the Certification Agreement or referenced therein, including meeting established time periods, and
2. The SHPO specifies to the CLG in writing ways to improve performance within a period of time by which deficiencies must be corrected or improvements must be achieved, and
3. After the period of time stipulated by the SHPO, the SHPO determines that there has not been sufficient improvement.

The SHPO will notify the CLG in writing prior to, or at the time of, its recommendation to the NPS for decertification. The notification shall state the specific reasons for the proposed decertification, describe the HPO's technical assistance efforts, and affirm that the SHPO will notify the CLG of the NPS concurrence with the decertification.

Failure to perform acceptably under an HPF subgrant is not in itself sufficient grounds for decertification.

The SHPO may also recommend decertification if a CLG requests to be decertified in writing. The SHPO shall forward a copy of the CLG's letter as an enclosure to the SHPO's request to decertify the CLG. The conditions stipulated above do not need to be met if the CLG is requesting decertification.

The SHPO may recommend revocation of expanded responsibilities, if any, under the same conditions and procedures as set forth above.

B. EFFECTIVE DATE OF DECERTIFICATION

The SHPO shall affirm with the decertification recommendation to NPS that the SHPO has notified the CLG. The local government is decertified if the NPS concurs in writing with the SHPO's recommendation to decertify the CLG.

The NPS will notify the SHPO in writing prior to thirty (30) working days after receipt of the recommendation, if there are problems with the recommendation or if the NPS needs more time to review the recommendation.

Upon receipt of the written NPS concurrence with the SHPO recommendation for decertification, the SHPO shall inform the CLG in writing of the decertification, and, if necessary, shall take appropriate action if the decertified local government has a current CLG subgrant. (See Section VII. on subgrants, below.)

If the CLG has been delegated Section 106 responsibilities in its jurisdiction, and a Programmatic Agreement has been executed with the Advisory Council for Historic Preservation, the SHPO shall notify the Advisory Council that the CLG has been decertified.

C. DECERTIFIED LOCAL GOVERNMENTS WITH SUBGRANTS AWARDED PRIOR TO DECERTIFICATION

Decertification, by itself, may not constitute grounds for termination of a CLG subgrant unless the terms of the subgrant cannot continue to be met after decertification. If a local government retains its subgrant awarded as a CLG, that subgrant will continue to be part of the state's ten percent minimum pass-through.

Should the subgrant be amended after decertification

1. Any increase in the federal share of the subgrant will not be part of the state's ten percent minimum pass-through, and
2. Any reduction to the federal share of the subgrant must be reprogrammed to other CLGs if the state's cancellation of the subgrant would result in noncompliance with the ten percent minimum pass-through requirement.

The SHPO may conclude normal subgrant closeout procedures (not termination), unless the terms of the subgrant agreement can no longer be met, in which case the SHPO shall terminate the subgrant. The SHPO may continue to administer the subgrant awarded to the local government if the local government can otherwise meet the work terms and conditions of the subgrant agreement.

As a consequence of decertification, the local government is no longer eligible for CLG subgrants unless recertified. The local government may, however, be eligible for HPF assistance other than the ten percent minimum pass-through, if available.

D. RECERTIFICATION

If the local government wishes to become recertified it must reapply for certification.

VI. ROLE OF CLGs IN THE NATIONAL REGISTER NOMINATION PROCESS

In accordance with the National Historic Preservation Act, as amended (16 USC 470 *et seq.*), whenever an individual property or district within the jurisdiction of the CLG is proposed for nomination to the NRHP, the preservation commission shall review the proposed nomination and submit to the SHPO comments as to whether or not, in the commission's opinion, the property or district meets the NRHP criteria. The commission shall provide a reasonable opportunity for public participation in the review process. The chief local elected official shall provide his/her recommendation in addition to the commission's comments.

Comments on the eligibility of proposed National Register properties may be as simple as affirmative statements that, in the opinion of the preservation commission and the chief local elected official, the property is eligible. If the chief local elected official or the commission finds that the property does not meet NRHP criteria and recommends that the property not be nominated, whichever party that thinks the property is not eligible shall submit a finding explaining why. The chief local elected official and the commission are encouraged to submit any other comments they believe to be relevant. Comments may be submitted on forms provided by the HPO.

The CLG will be involved in the NRN process in the following manner:

1. The SHPO shall receive completed NRNs.
2. If a property to be nominated lies within the jurisdiction of a CLG, the HPO shall transmit copies of the nomination to the local historic preservation commission and the chief local elected official within thirty (30) days after the HPO has determined that the nomination is complete and accurate and at least sixty (60), but not more than one hundred twenty (120), days prior to consideration by the National Register Advisory Committee (NRAC).
3. Concurrently, the HPO shall notify the property owner(s) that the nomination has been completed.
4. After a providing a reasonable opportunity for public comment, the local historic preservation commission and the chief local elected official shall separately notify the SHPO and the applicant whether or not, in their opinions, the property meets the NRHP criteria within sixty (60) days of receipt of the nomination

materials. If the CLG does not respond within sixty (60) days, concurrence that the property is eligible will be assumed, and the SHPO shall continue the nomination process. With the concurrence of the CLG, the SHPO may specify a briefer review period in order to expedite the nomination process.

Note: Although the federal regulations governing the CLG program call for the chief local elected official to provide comments on proposed NRNs within the jurisdiction of a CLG, North Carolina law stipulates that the mayor or the chairman of the county board of commissioners may act only in an administrative capacity on behalf of the local governing board. If a CLG has doubts about the legality of the chief elected official's assuming sole responsibility for comments on proposed NRNs, it may wish to consider two alternatives: 1) having the governing board review each nomination; or 2) having the governing board adopt a resolution granting the chief elected official the authority to furnish comments on behalf of the governing board. The HPO shall provide CLGs with the wording for such a resolution upon request.

5. When a preservation commission considers the nomination of a property that is normally evaluated by a professional in a specific discipline (such as history, archaeology, architectural history, architecture, or historic architecture) and the relevant discipline is not represented in the commission membership, the commission shall seek expertise in this area before rendering its decision. Requisite expertise may be provided through consultation with the HPO, although the commission is encouraged to seek expertise from professionals in the community or region, such as college or university faculty or museum staff. Professionals consulted for opinions on eligibility should meet the Secretary of the Interior's Professional Qualifications Standards in 36 CFR Part 61. (See Appendix A.)
6. During the sixty-day local review period, the CLG shall provide a reasonable opportunity for public comment. The measures to be taken will be in accord with the CLG Certification Agreement. The CLG shall submit a record of the measures taken to notify the public and the comments received.
7. If both the preservation commission and the chief local elected official recommend that the property is eligible for nomination to the NRHP, the SHPO shall place the proposed nomination before the NRAC for consideration at the earliest possible meeting.
8. If either the preservation commission or the chief local elected official recommends that the property is not eligible for nomination to the NRHP, the SHPO will place the proposed nomination before the NRAC for consideration at the earliest possible meeting and inform the NRAC of the CLG's comments.
9. If both the preservation commission and the chief local elected official recommend that the property is not eligible for nomination to the NRHP, the CLG will return the nomination materials to the SHPO with the commission's findings and relevant comments. The SHPO shall take no further action unless, within thirty (30) days of the return of such nomination materials and findings, a written appeal is filed with the HPO by a third party. If such an appeal is filed, the SHPO shall place the nomination before the NRAC for consideration at the earliest possible meeting and inform the NRAC of the CLG's objections.

10. After a nomination is approved by the NRAC, the HPO shall transmit it to the NRHP with the comments of the preservation commission and the chief local elected official, together with any appeal that may have been filed, pursuant to Section 101(a) of the National Historic Preservation Act, as amended.
11. In order to expedite the nomination process, an applicant may submit a completed nomination concurrently to the CLG and the SHPO. Within sixty (60) days, the chief local elected official and the preservation commission shall submit their comments and opinions regarding the proposed nomination to the SHPO and the applicant. The CLG shall ensure that a reasonable opportunity for public comment on the nomination has been provided. After the SHPO has verified that the nomination is complete and accurate, he or she will place the nomination before the NRAC for consideration at the earliest possible meeting, following the mandatory owner notification procedures.
12. The CLG notification procedures do not apply when a federal agency nominates a property under its ownership or control. CLGs are encouraged to coordinate with federal agencies to the extent practical, however, in the consideration of such nominations.
13. The SHPO may, at his or her discretion and by mutual written agreement with the CLG, delegate further responsibilities for NRNs to the CLG, except for the authority to review and nominate properties directly to the NRHP. Local governments may petition for expanded participation to assume responsibility for preparing NRNs if they have sufficient and qualified staff. Staff qualifications shall be consistent with the standards established in 36 CFR Part 61. (See Appendix A.)

VII. HISTORIC PRESERVATION FUND GRANTS TO CERTIFIED LOCAL GOVERNMENTS

A. AVAILABILITY OF FUNDING

Federal law provides that at least ten percent of the HPF allocation to the states be set aside for distribution to CLGs. If Congress appropriates more than \$65 million to the HPF, one-half of the amount above \$65 million will also be transferred to CLGs. At such time, a different method from that outlined below for transferring funds to CLGs may be considered.

The annual CLG share of the HPF allocation to North Carolina, approximately \$70,000, is available to CLGs on a sixty percent matching basis for eligible historic preservation activities and projects. For example, a project estimated to cost \$10,000 is eligible to receive a maximum of \$6,000 in grant funds; and the sponsoring CLG or the CLG's third-party designee (see below) must provide at least \$4,000 in non-federal matching funds or a combination of funds and in-kind services.

B. ELIGIBILITY OF APPLICANTS

The state of North Carolina is responsible, through financial audit, for the proper accounting of the CLG share of federal HPF funds in accordance with the Office of Management and Budget Circular A-87. The HPO is prepared to provide assistance

to all local governments in developing and implementing financial management systems that meet the requirements listed below.

To remain eligible for each year's CLG grants, the CLG must continue to comply with the conditions of its Certification Agreement and the performance standards set forth in *Guidelines for North Carolina's Certified Local Government Program*.

Each CLG receiving a CLG grant must meet the following requirements:

1. Adhere to all required administrative procedures and policies for CLG grants set forth in this section of *Guidelines for North Carolina's Certified Local Government Program* and in the federal *Historic Preservation Fund Grants Manual*.
2. Maintain an adequate financial management system that
 - a. meets federal standards specified in Office of Management and Budget Circular A-87, and
 - b. can be audited in accordance with Office of Management and Budget Circular A-133, and
 - c. documents compliance with procurement requirements of 43 CFR Part 12.76.
3. Adhere to any requirements mandated by Congress regarding the use of HPF funds.
4. Adhere to requirements specified by the SHPO in the Grant Agreement.

C. THIRD-PARTY ADMINISTRATION

Only CLGs are eligible to receive HPF CLG grants. However, a CLG may indicate in its funding application that it wants a grant awarded to it to be administered by a specific, qualified third party, such as another unit of local government, a commercial firm, a nonprofit organization, or an educational institution. (See Appendix B, "Minimum Standards for Third-Party Grant Administrators.") The designated third-party administrator must have the required administrative capability and be able to complete the project by the grant deadline and in accordance with these guidelines and the applicable Secretary of the Interior's Standards for Archaeology and Historic Preservation.

If a CLG chooses to designate a qualified third-party administrator, the following principles apply:

1. The CLG is the official grant applicant.
2. The third-party administrator must provide the CLG with a completed grant application by December 31 for consideration at the January preservation commission meeting.
3. If the third-party administrator is providing matching funds, its ability to do so must be documented.

4. If the application is approved by the preservation commission during its January meeting, an “Authorization to Designate an Administrative Agent” form supplied by the HPO must be attached to the application when it is submitted to the HPO on or before the January 31 deadline.
5. If the application is awarded a CLG grant, the Grant Agreement will be executed among the SHPO, the CLG, and the third-party administrator.
6. If the third-party administrator does not meet grant obligations, the grant will be cancelled or become the responsibility of the CLG.

D. ELIGIBLE ACTIVITIES AND CONDITIONS OF GRANT AWARDS

1. CLGs and any designated third-party administrators receiving HPF grants from the CLG share of the North Carolina HPF apportionment shall be considered subgrantees of the state. Therefore, state and federal conditions associated with the HPF award are passed on to the CLGs and their third-party administrators.
2. A Grant Agreement shall be executed among the SHPO, the CLG, and the third-party administrator, if any, that specifies requirements of the CLG program.
3. All activities assisted with a CLG grant, including the local matching share, must be activities that are eligible for HPF assistance, meet the applicable Secretary of the Interior's Standards for Archaeology and Historic Preservation, and be consistent with the state's comprehensive historic preservation plan.
4. A CLG may use CLG grant funds for eligible activities involving resources outside its territorial jurisdiction if the activities clearly demonstrate a direct benefit to identifying, evaluating, and protecting the historic and archaeological resources of the CLG and both the CLG and the other local government agree.
5. In certain cases entities with indirect cost rates approved by the federal government may apply a portion of their overhead expenses or indirect costs to fulfill matching requirements. However, because of the limited amount of grant funds and the need for local cash matching funds to complete project activities, this practice is discouraged.

E. FUNDING PRIORITIES

Highest priority for available funding will be given to projects involving completion of the statewide architectural and archaeological surveys. A competitive selection process is used to determine all grant recipients. The state is not required to award funds to all CLGs that are eligible to receive funds.

The usual sequence of grant-related activities for a CLG is as follows:

1. **Identification** of historic and prehistoric resources. Projects could include
 - a. a historical/architectural survey of a county, town, downtown area, or residential neighborhood
 - b. an archaeological survey

Identification of resources as the result of a survey will be a prerequisite for projects involving the evaluation or protection of resources unless otherwise justified.

2. **Evaluation and Protection** of historic and prehistoric resources based on local need. Projects could include
 - a. nominations to the NRHP. Properties may be nominated individually, as historic districts, or in multiple resource nominations which may include both individual properties and historic districts.
 - b. land use and historic preservation plans
 - c. design guidelines for historic districts
 - d. public education programs and materials
 - e. technical assistance to owners of historic properties
 - f. architectural plans and specifications or feasibility studies for development and restoration/rehabilitation of properties listed in the NRHP
 - g. testing of archaeological sites to evaluate their eligibility for the NRHP

F. APPLICATION TIMETABLE

1. After the beginning of the federal grant year, October 1, the HPO will distribute grant applications to CLGs and other appropriate organizations or local governments interested in sponsoring projects within the CLG's jurisdiction. Completed applications from such groups must be delivered to the CLG by December 31 for consideration during the January preservation commission meeting.
2. After review by the CLG staff and preservation commission, applications will be ranked in high, medium, and low categories. A summary of commission recommendations will be forwarded to the HPO along with the completed applications.
3. During the January preservation commission meeting, some applications may be considered for third-party administration (see Section VII.C, above). If the commission approves a third-party administrator, a signed "Authorization to Designate an Administrative Agent" form must be attached to the application prior to submission to the HPO.
4. All CLG grant applications, including those from nonprofit organizations and other local governments, must be submitted to the HPO by the CLG and postmarked no later than **January 31**.
5. Applicants will be notified of grant awards and denials on or about March 1, provided HPF funding has been approved by Congress and allocated to the states by the U.S. Department of the Interior. Funded projects must be completed within twelve to fifteen months, but no later than September 30 of the year following the grant award year.

G. THE GRANT APPLICATION

The application form for HPF CLG grant funds will be available from the HPO on or after October 1. Applications that are not submitted on forms supplied by the HPO will be considered, provided they are no longer than four pages in length including the budget page, are legible, and contain adequate information. The application contains the following:

1. **Applicant Information**: name and federal identification number of the CLG or third-party administrator and name, title, address, and telephone number of the contact person or designated project manager
2. **Project Information**: a detailed and specific list of the final products to be accomplished with the grant and local matching funds
3. **Project Budget**: a detailed budget that includes all major work elements and the estimated cost of each element
4. **Matching Share**: identification of the donor, source, kind, amount, and availability of non-federal share to be contributed
5. **Professional Qualifications**: documentation that professional qualifications of the project coordinator, consultants, or principal investigators meet the applicable minimal professional qualifications in 36 CFR Part 61 (See Appendix A)
6. **Equal Opportunity Statement**: a signed and dated Equal Opportunity Statement form or its equivalent¹

H. EVALUATION OF APPLICATIONS

Applications are reviewed by a DHR Review Committee, after which recommendations are made to the SHPO. Project selection will be based on the following criteria:

1. **Assessment of Need.** The application should contain a brief description of the problems and opportunities affecting the historic resources in the community. The statement may be supported by evidence such as statistics or advice from community groups. The assessment of need should indicate how the project will relate to community problems. The proposed solution should be workable-- something that can be accomplished within a reasonable period and with reasonable resources.
2. **Design of Project.** The project description should include clearly stated and specific goals that are realistically attainable within the funding period.

¹ **EQUAL OPPORTUNITY STATEMENT:** The North Carolina historic preservation program receives federal financial assistance for identification and preservation of historic properties. Under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, the United States Department of the Interior prohibits discrimination on the basis of race, creed, color, religion, national origin, sex, disability, or age in its federally assisted programs. If you believe you have been discriminated against in any program, activity, or facility, as described herein, or if you desire further information, please write to Office for Equal Opportunity, National Park Service, 1849 C Street, NW, Washington, DC 20240.

Applications should also demonstrate an understanding of state and local preservation priorities, including efforts to advance the identification, evaluation, and protection of the state's historic and prehistoric resources.

3. **Project Cost.** The application should include a feasible project cost, which combines the requested CLG grant funds and available non-federal matching funds and in-kind services such as project coordination, office space, and use of equipment. Demonstrated community support may also be indicated. Previous HPF grant awards should be listed, including both CLG and non-CLG funds.
4. **Impact.** The application should identify the impact of the project on the local community, including direct and spin-off results. Consideration will also be given to the contribution of project activities to the goals of *Legacy 2000: North Carolina's Comprehensive Historic Preservation Plan 2000-2005*, the state preservation plan. The goals are as follows:

Education. Educate the public and public officials about the state's historic resources and preservation programs

Planning. Integrate historic preservation into all levels of public planning to ensure the development and implementation of preservation-compatible public policies and activities

Identification and Evaluation. Identify and evaluate the historic resources of North Carolina, including archaeological, architectural, historical, and traditional cultural properties

Protection and Enhancement. Protect and enhance the state's significant historic properties and resources

5. **Distribution of Funds.** The DHR will attempt to distribute preservation funding equitably to both urban and rural areas and among major geographic areas of the state. Reasonable effort will be made to divide the funds among the maximum number of eligible jurisdictions. Distribution of funds must result in awards sufficient to accomplish project goals. The requirement for tangible results may not be waived.

VIII. AMENDMENTS TO THESE GUIDELINES

The following procedures shall be followed for amendments to these guidelines and procedures:

1. For proposed amendments affecting the major requirements for becoming a CLG or operating a CLG program or the policy for allocating pass-through funds, with the exception of changes required as a result of NPS policy directives or regulatory changes, the SHPO shall consult with local governments, local historic preservation commissions, and all other parties likely to be interested in the CLG program and CLG issues. The SHPO shall consider local preservation needs and capabilities and invite comments on the proposed amendment from local governments, commissions, and parties in the state likely to be interested. A sixty-day period shall be allowed for public comment on a proposed amendment before it is submitted to the NPS. The SHPO shall keep a record of the consultation process and records of all comments received during the

commenting period and make them available to the NPS upon request. The SHPO will endeavor to respond to all suggestions that it does not adopt. The sole exception to these requirements is provided in Item 2, below.

2. For minor changes, technical corrections, and changes required by the NPS policy directives, a written notification from the SHPO to all CLGs shall be considered adequate.
3. The SHPO shall submit proposed amendments to the NPS for review, including comments received (if any) from CLGs. The NPS shall notify the SHPO of the result of its review within forty-five (45) working days of the receipt date of a sufficiently documented proposed amendment.
4. If the NPS approves the amendment(s), the SHPO shall notify all CLGs in writing and send amended certification agreements to the NPS, for each CLG affected by the amendment within 120 calendar days.

IX. CONTACTS FOR ADDITIONAL INFORMATION

Archaeology: State Archaeologist, 919/807-6551

Architectural Surveys: Survey Coordinator, 919/807-6573

CLG Program: CLG Coordinator, 919/807-6580

Eastern Office (Greenville): 252/744-6730

Grants: Grants Administrator, 919/807-6583

Nominations to the NRHP: National Register Coordinator, 919/807-6587

Restoration/Rehabilitation: Restoration Branch, 919/807-6588

Western Office (Asheville): 828/274-6789

APPENDIX A

PROFESSIONAL QUALIFICATIONS STANDARDS

These standards apply when the CLG commission is reviewing a property nominated to the National Register of Historic Places and offering an opinion as to its eligibility. When the discipline appropriate to the resource being nominated (for example, an archaeologist for an archaeological resource) is not represented in the commission membership, the commission is required to seek an opinion from an outside professional or to consult with the State Historic Preservation Office.

These standards also apply if the CLG wishes to petition to assume greater responsibility, in addition to its basic CLG role and duties, for functions normally performed by the State Historic Preservation Office, such as preparation of National Register nominations, environmental review pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended, or review of Tax Act certification applications, in which case, the CLG staff must meet appropriate professional qualifications standards.

In the following definitions, a year of full-time professional experience need not consist of a continuous year of full-time work but may be made up of discontinuous periods of full-time or part-time work that together comprise the equivalent of a year of full-time experience.

History. The minimum professional qualifications in history are a graduate degree in history or closely related field; or a bachelor's degree in history or closely related field plus one of the following:

- (1) At least two years of full-time experience in research, writing, teaching, interpretation, or other demonstrable professional activity with an academic institution, historical organization or agency, museum, or other professional institution; or
- (2) Substantial contribution through research and publication to the body of scholarly knowledge in the field of history.

Archaeology. The minimum professional qualifications in archaeology are a graduate degree in archaeology, anthropology, or a closely related field plus:

- (1) At least one year of full-time professional experience or equivalent specialized training in archaeological research, administration, or management; and
- (2) At least four months of supervised field and analytic experience in general North American archaeology; and
- (3) Demonstrated ability to carry research to completion.

In addition to these minimum qualifications, a professional in prehistoric archaeology shall have at least one year of full-time professional experience at a supervisory level in the study of archaeological resources of the prehistoric period. A professional in historic

archaeology shall have at least one year of full-time professional experience at a supervisory level in the study of archaeological resources of the historic period.

Architectural History. The minimum professional qualifications in architectural history are a graduate degree in architectural history, art history, historic preservation, or closely related field, with course work in American architectural history; or a bachelor's degree in architectural history, art history, historic preservation, or a closely related field plus one of the following:

- (1) At least two years of full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or
- (2) Substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

Architecture. The minimum professional qualifications in architecture are a professional degree in architecture plus at least two years of full-time professional experience in architecture or a state license to practice architecture.

Historic Architecture. The minimum professional qualifications in historic architecture are a professional degree in architecture or state license to practice architecture, plus one of the following:

- (1) At least one year of graduate study in architectural preservation, American architectural history, preservation planning, or a closely related field; or
- (2) At least one year of full-time professional experience on historic preservation projects.

Such graduate study or experience shall include detailed investigations of historic structures, preparation of historic structures research reports, and preparation of plans and specifications for preservation projects.

APPENDIX B

MINIMUM STANDARDS FOR THIRD-PARTY GRANT ADMINISTRATORS

Certified Local Governments (CLGs) may approve qualified commercial firms, nonprofit organizations, educational institutions, or other units of local government as administrators of federal CLG grant funds to accomplish historic preservation activities within CLG territorial jurisdictions. If the third party is supplying local matching funds, its ability to do so must be documented. In order to avoid a conflict of interest, an entity may not be approved as a third-party administrator if a preservation commission member or close relative of a commission member has a financial interest in the entity. The following standards are suggested as guidelines for approving entities as qualified grant fund administrators.

Commercial Firms. Firms should be well established, competent businesses, approved by the Better Business Bureau. A good track record of dealings with the CLG could justify use of a commercial firm.

Nonprofit Organizations. The organization must be recognized as a 501(c)(3) organization that has been in operation more than a year and has a good track record with the CLG. A qualified individual, such as an officer or paid professional staff of the organization, should be available to act as local coordinator. The treasurer of the group must be instructed about federal fiscal requirements.

Educational Institutions. Colleges and universities are excellent candidates for third-party administrators, especially for archaeological projects involving their own faculty. Institutions located outside the jurisdiction of a CLG may be designated, provided the grant-related project activities will take place within the CLG's territorial jurisdiction.

Units of Local Government. This category applies to county governments within which a municipal CLG is located and to municipal governments located in a county CLG. The staff person assigned as project coordinator must be competent and must demonstrate his or her availability for administrative functions throughout the project period.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING CHAPTER 30, ARTICLE 30-2, SECTION 30-2.C.8; CERTIFICATE OF APPROPRIATENESS OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA

BE IT ORDAINED, by the City Council of the City of Fayetteville, North Carolina, that:

Section 1. The Section 30-2.C.8, *Certificate of Appropriateness*, is amended by replacing the current text with the following text in its entirety:

a. Purpose

The purpose of this section is to provide for the review of development, alteration, or demolition of landmark historic structures, buildings, and sites, as well as for the historic structures, buildings and sites(to include new construction) within the Local Historic Overlay District by the Historic Resources Commission in accordance with the procedures and standards of this Ordinance and the Design Guidelines for Fayetteville's Historic Districts and Local Landmarks.

b. Applicability

1. *General*

- a. Unless otherwise exempted by Section 30-2.C.8.b.2, Exemptions, no exterior portion of any building or other structure, including masonry walls, fences, light fixtures, steps and pavement, other appurtenant features, any aboveground utility structure, or any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished on designated landmark historic structures, buildings, and sites or other historic structures, buildings, and sites within the Local Historic Overlay District, and no Building Permit for

such development shall be issued, until an application for a Certificate of Appropriateness as to exterior features is submitted to and approved by the Historic Resources Commission in accordance with this section.

- b. Where a Certificate of Appropriateness is required for exterior work that does not require a Building Permit, no work shall occur until the project is submitted to, and receives a written Certificate of Appropriateness from the Historic Resources Commission in accordance with this section.

2. *Exemptions*

The following is exempt from the requirements of this section:

- a. The ordinary maintenance or repair of any exterior architectural feature that does not involve a change in design, materials, or outer appearance;
- b. The ordinary maintenance or repair of streets, sidewalks, pavement markings, street signs, or traffic signs;
- c. The construction, reconstruction, alteration, restoration, or demolition of any of the above features where the City Manager certifies the activity is required for the public's safety because of an unsafe or dangerous condition; and
- d. The maintenance of any aboveground utility structure or the immediate restoration of such a structure in the event of an emergency.

c. **Initiation**

An application for a Certificate of Appropriateness shall be initiated by any person having authority to file an application in accordance with Subsection 30-2.B.1, Authority to File Applications.

d. **Procedure**

1. *Basic Procedures*

Except as modified by Sections 30-2.C.8.d.2—7 below, procedures and requirements for the submission, completeness determination, review, recommendation, hearing, and decision on applications are as established in Section 30-2.B, Common Review Procedures.

2. *Review and Action on Minor Works by City Manager*

- a. Where the development proposed by a Certificate of Appropriateness is identified by the Design Guidelines for Fayetteville's Historic Districts and Local Landmarks, which is hereby incorporated by reference, as one that would not impair the integrity of the property and/or district as a whole, the City Manager may act to approve the application or approve it subject to conditions, based on the standards in Section 30-2.C.8.e, Certificate of Appropriateness Standards. The City Manager shall forward to the commission any staff-approved Certificate of Appropriateness application involving minor works.
- b. In all other instances, following staff review, the City Manager shall submit all Certificate of Appropriateness applications to the Historic Resources Commission for review and action.

3. *Review and Action by Historic Resources Commission*

For all other Certificate of Appropriateness applications, following staff review, the Historic Resources Commission shall conduct an evidentiary hearing on the application in accordance with Section 30-2.B.12, Public Notification, and Section 30-2.B.14, Evidentiary Hearing Procedures (Quasi-Judicial Decisions). After close of the hearing, the Historic Resources Commission shall consider the

application, relevant support materials, the staff report, the City Manager's comments, and any testimony or evidence given at the hearing and included in the record. The Historic Resources Commission, by a majority vote of a quorum present, shall take one of the following actions based on the standards in Section 30-2.C.8.e, Certificate of Appropriateness Standards:

- a. Approval of the application as submitted;
- b. Approval of the application subject to conditions; or
- c. Denial of the application

4. *Demolition*

- a. The Historic Resources Commission may not deny a Certificate of Appropriateness application proposing the demolition, removal, or destruction of a designated landmark or building, structure, or site within the Historic/Landmark Overlay District unless the State Historic Preservation Officer determines that the building, structure, or site is of statewide significance and its owner would not suffer extreme hardship or be permanently deprived of all beneficial use or return if demolition were denied.
- b. The Historic Resources Commission, however, may delay the effective date of a Certificate of Appropriateness for such demolition, removal, or destruction for up to 365 days from the date of approval. The Commission shall use such time to negotiate with the owner to find a means of preserving the building, structure, or site.

5. *Conditions of Approval*

In approving a Certificate of Appropriateness application, the Historic Resources Commission may impose appropriate conditions on the approval in accordance with Section 30-2.B.16, Conditions of Approval.

6. *Appeal*

- a. If the decision involves property owned by the State, the State shall have the right to appeal the decision to the State Historical Commission upon filing such an appeal within 30 days after the date of the decision. The decision of the State Historical Commission shall be final and binding upon both the State and the Historic Resources Commission.
- b. An appeal from the City Manager's decision on a Certificate of Appropriateness application for minor works or from the Historic Resources Commission's decision on other Certificate of Appropriateness applications shall be filed within ten business days of the date of the decision, and shall be reviewed and decided by the Zoning Commission in accordance with Section 30-2.C.18, Appeal, except that the appeal shall be in the nature of certiorari.

7. *Expiration*

- a. The Historic Resources Commission may prescribe a time limit within which either the activity or the building permit for the development authorized by the Certificate of Appropriateness shall be secured. Failure to establish the activity or obtain the building permit shall void the Certificate of Appropriateness.
- b. Unless otherwise specified in the Certificate of Appropriateness, the Certificate of Appropriateness shall automatically expire within one year after the date of issuance if the activity or building permit authorized by the Certificate is not secured.

- c. In cases where a maximum time frame for development is established as a condition of approval, the Certificate of Appropriateness shall expire upon the lapse of the allowable time frame.

8. *Extension*

Upon written request submitted at least 30 days before expiration of the time period provided in accordance with Section 30-2.C.8.d.7 above, and upon a showing of good cause, the city manager may grant one extension not to exceed six months. Failure to submit a written request for an extension within the time limits established by this section shall result in the expiration of the Certificate of Appropriateness.

e. Certificate of Appropriateness Standards

1. A Certificate of Appropriateness application shall be approved upon a finding the application complies with the Design Guidelines for Fayetteville's Historic Districts and Local Landmarks, and is otherwise congruous with the special character of the Local Historic Overlay District.
2. The following design features and elements shall also be considered in reviewing Certificate of Appropriateness applications:
 - a. Lot coverage - the percentage of the lot area covered by primary structures;
 - b. Setback - the distance from the lot lines to the building (setback);
 - c. Building height;
 - d. Spacing of buildings - the distance between adjacent buildings;
 - e. The proportion, shape, positioning, location, pattern, sizes, and style of all elements of fenestration and entry doors;

- f. Surface materials and textures;
- g. Roof shapes, forms, and materials;
- h. Use of regional or local architectural traditions;
- i. General form and proportion of buildings and structures, and the relationship of additions to the main structure;
- j. Expression of architectural detailing;
- k. Orientation of the building to the street;
- l. Scale - the size of units of construction and architectural details in relation to the human scale, and the relationship of the building mass to adjoining open space and nearby buildings and structures;
- m. Proportion of width to height of the total building façade
- n. Archaeological sites and resources associated with standing structures;
- o. Effect of trees and other landscape elements;
- p. Major landscaping that would impact known archaeological sites;
- q. Style, material, size, and location of all outdoor advertising signs;
- r. Appurtenant features and fixtures, such as lighting;
- s. Structural condition and soundness;
- t. Walls and their physical ingredients, such as brick, stone, or wood walls, wrought iron fences, evergreen landscape masses, or combinations of these;
- u. Color;
- v. Ground cover or paving; and
- w. Significant landscape, archaeological, and natural features.

f. Amendment

A Certificate of Appropriateness may be amended, extended, or modified only in accordance with the procedures and standards established for its original approval.

Section 2. It is the intention of the City Council, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code or Ordinances, City of Fayetteville, North Carolina.

ADOPTED this the _____ day of _____, 2023.

CITY OF FAYETTEVILLE

MITCH COLVIN, Mayor

ATTEST:

PAMELA J. MEGILL, City Clerk

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING CHAPTER 30, ARTICLE 30-2, SECTION A.7.A; HISTORIC RESOURCES COMMISSION OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA

BE IT ORDAINED, by the City Council of the City of Fayetteville, North Carolina, that:

Section 1. Section 30-2.A.7.a, *Powers and Duties*, is amended by replacing the current text with the following text in its entirety:

The Historic Resources Commission is hereby established in accordance with §160D-303 and §160D-942 of the North Carolina General Statutes.

1. Review and act upon proposals for alterations, demolitions, or new construction within historic districts, or for the alteration or demolition of designated landmarks, pursuant to an application for a Certificate of Appropriateness; and
2. Investigate, inventory, and prepare reports describing/identifying geographical areas, structures, buildings, sites, or objects of historical, pre-historical, architectural, or cultural significance; and
3. Recommend to the governing board geographic areas to be designated by ordinance as "Historic Districts" and individual structures, buildings, sites, and areas to be designated by ordinance as "Landmarks"; and
4. Review and provide recommendations to the Zoning Commission and City Council on Map Amendments (Rezoning) that establish or change the boundaries of the Local Historic Overlay (LHO) District; and

4. Recommend City acquisition of individual structures, buildings, sites, areas, or objects of historical, prehistorical, architectural, and/or cultural significance as necessary to promote their preservation; and
5. Prepare and recommend adoption of preservation goals, objectives, policies, and strategies as part of the City's comprehensive planning efforts; and
6. Provide assistance, guidance, or technical advice to property owners concerning restoration and the preservation of architectural features on historic structures, buildings, or sites.
7. Cooperate with the State, federal, and local governments in pursuance of the purposes of this Part. The governing board or the commission, when authorized by the governing board, may contract with the State, or the United States of America, or any agency of either, or with any other organization provided the terms are not inconsistent with State or federal law.

Section 2. It is the intention of the City Council, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code or Ordinances, City of Fayetteville, North Carolina.

ADOPTED this the _____ day of _____, 2023.

CITY OF FAYETTEVILLE

MITCH COLVIN, Mayor

ATTEST:

PAMELA J. MEGILL, City Clerk

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING CHAPTER 30, ARTICLE 30-2, SECTION 30-2.C.22; STANDARDS AND REQUIREMENTS FOR DEVELOPMENT APPLICATIONS OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA

BE IT ORDAINED, by the City Council of the City of Fayetteville, North Carolina, that:

Section 1. The Section 30-2.C, *Standards and Requirements for Development Applications*, is amended by adding the following subsection:

Section 30-2.C.22, *Local Landmark Designation*

a. Purpose

The purpose of this section is to provide a uniform means for designating individual structures, buildings, sites, and areas of historical, pre-historical, architectural, educational, or cultural significance as local landmarks

b. Authority

The City Council may adopt an ordinance designating a structure, building, site, and/or area of any historical, pre-historical, architectural, educational, or cultural significance as a local landmark upon compliance with the provisions of this section.

c. Initiation and Procedure

1. The Historic Resources Commission shall make or cause an investigation and report to be made describing the historic, pre-historic, architectural, educational, or cultural significance of structures, buildings, and/or sites proposed to be designated as a historic landmark and hold a legislative hearing to review the

findings. Notice of the public hearing shall be made as provided for by North Carolina General Statute (NCGS) §160D-601.

2. The City shall forward the investigative report to the State Historic Preservation Office of the North Carolina Department of Cultural Resources, which shall be given at least 30 days to review the report and submit written analysis and recommendations to the City Council.
- d. City Council Public Hearing and Review
1. Upon receiving a written analysis and recommendations on the report from the State Historic Preservation Office, or expiration of the 30-day review period set forth in section c.2 above, the City Council may hold a legislative hearing to consider an ordinance designating a local landmark as proposed, with any amendments it deems necessary, or reject the proposed ordinance. Notice of the public hearing shall be made as provided for by NCGS §160D-601. If an owner of real property, as defined by NCGS §105-164.2 (205), whose property is being considered for designation files a written objection to the proposed ordinance before the public hearing, the City Council shall not approve the ordinance and the proposed ordinance shall be denied or withdrawn.
 4. The ordinance shall include each property designated in the regulation, the name or names of the owner(s) of the property, those elements of the property that are integral to its historical, pre-historical, architectural, educational, or cultural significance, including the land area of the property so designated, and any other information the City Council deems necessary. For all structures and buildings

designated the ordinance must also require that the waiting period set forth in NCGS §160D-945 be observed prior to demolition.

5. Upon adoption of the ordinance, the owners and occupants of each designated landmark shall be given written notice of the designation and a copy of the ordinance. One copy of the ordinance shall be filed with the Cumberland County Register of Deeds. A second copy shall be kept on file by the City Clerk.

Section 2. It is the intention of the City Council, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code or Ordinances, City of Fayetteville, North Carolina.

ADOPTED this the _____ day of _____, 2023.

CITY OF FAYETTEVILLE

MITCH COLVIN, Mayor

ATTEST:

PAMELA J. MEGILL, City Clerk

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE
AMENDING CHAPTER 30, ARTICLES 30-1-9; UNIFIED DEVELOPMENT
ORDINANCE OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE,
NORTH CAROLINA**

BE IT ORDAINED, by the City Council of the City of Fayetteville, North Carolina, that:

Section 1. Wherever the classification of “Historic/Landmark Overlay District (HLO)” appears the district shall be reclassified as the Local Historic Overlay (LHO) District.

Section 2. It is the intention of the City Council, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code or Ordinances, City of Fayetteville, North Carolina.

ADOPTED this the _____ day of _____, 2023.

CITY OF FAYETTEVILLE

MITCH COLVIN, Mayor

ATTEST:

PAMELA J. MEGILL, City Clerk

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING CHAPTER 2, ARTICLE II, SECTION 2-41, SUBSECTION 2-41.A-F; HISTORIC RESOURCES COMMISSION OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA

BE IT ORDAINED, by the City Council of the City of Fayetteville, North Carolina, that:

Section 1. Section 2-41, *Historic Resources Commission*, is amended by replacing the current text with the following text in its entirety:

- a. There is hereby created pursuant to 160D-303, a commission to be known as the city historic resources commission.
- b. The historic resources commission shall have those powers, duties and responsibilities pursuant to G.S. 160D-942 except as stated in this section and as further defined, limited, or regulated by its charter or the city council.
- c. Appointments to the historic resources commission shall be made by city council in accordance with the commission charter.
- d. The required procedures for designating a historic building, structure, site, area, or object pursuant to G.S. 160D-944 and G.S. 160D-945 and which is located outside a historic district zoning area supplemented as follows:
 1. That the owner thereof shall receive written notice by certified mail of the public hearing.
 2. If the property owner shall file written objection to the designation prior to the public hearing, then the city council shall not designate the property as historic.
- e. The historic resources commission may enter into negotiations pursuant to G.S. 160D-942 only upon the prior approval of the city council.

- f. The city historic properties commission previously authorized and chartered by this section is hereby disbanded; however, all duly approved actions and all records of this commission shall be continued and maintained by the city historic resources commission.

Section 2. It is the intention of the City Council, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code or Ordinances, City of Fayetteville, North Carolina.

ADOPTED this the _____ day of _____, 2023.

CITY OF FAYETTEVILLE

MITCH COLVIN, Mayor

ATTEST:

PAMELA J. MEGILL, City Clerk



City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 23-3321

Agenda Date: 4/18/2023

Version: 2

Status: Agenda Ready

In Control: Planning Commission

File Type: Public Hearing
(Public & Legislative)

Agenda Number: 5.01

TO: Mayor and Members of City Council

THRU: Will Deaton - Planning & Zoning Division Manager

FROM: David Winstead - Zoning Administrator

DATE: April 18, 2023

RE:

ALT23-01: Alternative Sign Plan as requested by Fayetteville State University for a large electronic sign to be installed on the south side of the Seabrook Auditorium located at 1030 Martin Luther King Jr Drive.

COUNCIL DISTRICT(S):

2 - Shakeyla Ingram

Relationship To Strategic Plan:

Strategic Operating Plan FY 2021

Goals 2026

- Goal 1: Safe and Secure Community
 - Objective 1.2 - To ensure traffic and pedestrian safety
- Goal 2: Responsive City Government Supporting a Diverse and Viable Economy
 - Objective 2.3 - To sustain a favorable development climate to encourage business growth.
- Goal 4: Desirable Place to Live, Work, and Recreate
 - Objective 4.4 - To provide a clean and beautiful community with increased green spaces.

Executive Summary:

Fayetteville State University has requested an Alternative Sign Plan to address its specific signage needs. The university would like to install a 64' 5" x 17' 10.2" electronic message center on Seabrook Auditorium in order to communicate real-time information regarding campus programs, news, and emergency messages to members of the FSU

community and the surrounding area.

Background:

Owner: Fayetteville State University

Applicant: Hector Molina, Fayetteville State University

Zoning District: UC - University College

Property Address: 1030 Martin Luther King Jr Drive

Size: 133.52 Acres

Existing Land Use: University

Adjoining Land Uses & Zoning:

- North: Single Family 6 (SF-6) and Mixed Residential 5 (MR-5) - Residential
- East: Single Family 6 (SF-6) - Residential
- South: Single Family 6 (SF-6) and Mixed Residential 5 (MR-5) - Residential
- West: Mixed Residential 5 (MR-5), Office & Institutional (OI), and Limited Commercial (LC) - Residential and Commercial

Section 30-5.L.10.g - Alternative Signage Plan:

Regardless of the other provisions of this Article, the Planning Commission may, at its sole discretion, approve a signage plan for certain development projects listed in this section. The approved signage plan may include signs of different sizes, types, locations, placements, and heights otherwise enumerated in this Article.

The purposes behind this section are as follows:

- a. To permit creativity in sign design and placement to address site issues and constraints associated with topography, pedestrian orientation, wayfinding other conditions unique to the subject development.
- b. To encourage the development of comprehensive signage plans for large developments that promote an integrated approach to sign design and placement that is both attractive and informative.

Issues/Analysis:

Section 30-5.L.10.g provides for five standards to be considered. Each standard is listed below along with the applicant's response and staff analysis.

A large electronic message center would enable the university to communicate upcoming events as well as urgent safety matters to students, staff, and the surrounding community. However, there are a variety of potential concerns that may need to be addressed in the form of conditions such as light pollution, hours of operation, animation, and traffic. The Planning Commission has the authority to impose conditions upon an Alternative Sign Plan.

1. The extent to which the proposed signage plan deviates from the sign allowances otherwise applicable in this Article:

The applicant states the "Current city ordinance allows for wall (marquee) signage up to 500 square feet, Fayetteville State University is proposing a marquee LED sign on

the rear of Seabrook Auditorium in the size of 64' x 22' (1,408 square feet)".

2. The rationale provided by the applicant for the deviations:

The applicant would like "to maximize the visibility of the signage from Bronco Mid-Town, Murchison Rd. traffic, and campus locations."

3. The extent to which the signage plan promotes city goals for way-finding, pedestrian-orientation, and business identification:

Per the applicant, "The digital signage will support the University's visual communication vision to inform students, faculty, staff, visitors, and the Fayetteville community about campus programs, events, campus news, campus facts, and emergency messages."

4. The degree to which the signage plan creatively and effectively addresses the issues and constraints unique to the site with regard to signage:

The applicant stated, "The proposed digital signage will offer an option impossible for print advertising formats to assist the University with transmitting in real-time so that the messages can be changed according to University circumstances or needs."

5. The degree to which the signage plan creates a unified approach to development signage that is attractive and effective in communication.

Per the applicant, "The current ordinance allows for 500 square feet (copy area maximum) for a wall (marquee) sign. FSU is proposing a marquee sign that shall not extend over a front yard and/or sidewalk and provides the required vertical clearance of nine feet or more maintained beneath the sign. This sign will not be closer than two feet, measured in horizontal distance from the curb line or edge of any street. In addition, the sign will not extend vertically above the roof line or parapet wall of Seabrook Auditorium. The minimum height from grade to the lowest edge of the sign will be more than nine feet above a pedestrian walkway or 14 feet above a vehicular drive and parking area."

Budget Impact:

None

Options:

- Approve the Alternative Sign Plan as requested
- Approve the Alternative Sign Plan with conditions
- Deny the Alternative Sign Plan

Recommended Action:

Staff recommends approval of the Alternative Sign Plan request as described above because finding(s) 1-5 appear to have been met with the evidence currently submitted.

Attachments:

1. Application with sign renderings



Alternative Signage Plan Application Form

433 Hay Street, Fayetteville, North Carolina 28301
 Phone: 910-433-1612 Fax: 910-433-1776

Meeting Date: _____
 Approved/Denied: _____

Case #: _____ **Date Submitted:** _____ **Payment Received:** _____

Notes:

- The purpose behind an Alternative Signage Plan is to permit creativity in sign design and placement to address site issues and constraints associated with topography, pedestrian-orientation, wayfinding and other conditions unique to the subject development and to encourage the development of comprehensive signage plans for large developments that promote an integrated approach to sign design and placement that is both attractive and informative.
- Please reference Article 30-5.L.10 of the City code for more information.

1. General Project Information

Project Address:	Seabrook Auditorium - Martin Luther King Dr., Fayetteville, NC 28301		
Tax Parcel Identification Number:	0438037602000		
Owner Name:	Fayetteville State University		
Owner's Address:	1200 Murchison Rd., Fayetteville, NC 28301	Lot Area/Acreage:	
Is this application associated with another application?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	If yes, what type? _____
Base Zoning District:	Mixed-Use District	Overlay Zoning District:	Murchison Road Corridor Overlay District

2. Written Description of Request – Answer all the questions under this section. Attach additional sheets as needed

A) Explain the extent to which the proposed signage plan deviates from the sign allowances otherwise applicable in the ordinance.

Current city ordinance allows for wall (marquee) signage to up 500sqft., Fayetteville State University is proposing a marquee LED sign on the rear of Seabrook Auditorium in the size of 64 W x 22H (1,408sqft.).

B) Explain the rationale for the deviations.

To maximize the visibility of the signage from Bronco Mid-Town, Murchison Rd. traffic, and campus locations.

C) Explain the extent to which the signage plan promotes the city goals for way-finding, pedestrian-orientation, and business identification.

The digital signage will support the University's visual communication vision to inform students, faculty, staff, visitors, and the Fayetteville community about campus programs, events, campus news, campus facts, and emergency messages.

D) Explain the degree to which the signage plan creatively and effectively addresses the issues and constraints unique to the site with regard to signage.

The proposed digital signage will offer an option impossible for print advertising formats to assist the University with transmitting in real-time so that the messages can be changed according to University circumstances or needs.

E) Explain the degree to which the signage plan creates a unified approach to development signage that is attractive and effective in communication.

The current ordinance allows for 500sqft. (copy area maximum) for a wall (marquee) sign. FSU is proposing a marquee sign that shall not extend over a front yard and/or sidewalk, and provides the required vertical clearance of nine feet or more maintained beneath the sign. This sign will not be closer than two feet, measured in horizontal distance from the curb line or edge of any street. In addition, the sign will not extend vertically above the roof line or parapet wall of Seabrook Auditorium. The minimum height from grade to the lowest edge of the sign will be more than nine feet above a pedestrian walkway or 14 feet above a vehicular drive & parking area.

3. Submittal Requirement Checklist

(Submittals should include 2 copies of listed items, unless otherwise stated.)

<input checked="" type="checkbox"/>	Alternative Signage Plan Application
<input checked="" type="checkbox"/>	Application fee of \$250.00
<input checked="" type="checkbox"/>	A site plan indicating all proposed signage to include sign dimensions

4. Primary Point of Contact Information

Primary Point of Contact Name:	Hector M. Molina		
Mailing Address:	1200 Murchison Rd., Fayetteville, NC 28301	Fax No.:	
Phone No.:	910-672-1200	Email:	hmolina@uncfsu.edu

5. Owner Information

Owner Name:	Fayetteville State University		
Mailing Address:	1200 Murchison Rd., Fayetteville, NC 28301	Fax No.:	
Phone No.:	910-672-1111	Email:	hmolina@uncfsu.edu
Signature:	<i>Hector M. Molina</i>	Date:	March 10, 2023

4.13 FINANCIAL STABILITY

As a condition of contract award, the Vendor must certify that it has the financial capacity to perform and to continue to perform its obligations under the Contract; that Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Vendor that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction

Each Vendor shall certify it is financially stable by completing the ATTACHMENT G: CERTIFICATION OF FINANCIAL CONDITION. The State is requiring this certification to minimize potential performance issues from Contracting with a Vendor that is financially unstable. This Certification shall be deemed continuing, and from the date of the Certification to the expiration of the Contract, the Vendor shall notify the State within thirty (30) days of any occurrence or condition that materially alters the truth of any statement made in this Certification.

4.14 AGENCY INSURANCE REQUIREMENTS MODIFICATION

A. Default Insurance Coverage from the General Terms and Conditions applicable to this Solicitation:

- Small Purchases
- Contract value in excess of the Small Purchase threshold, but up to \$1,000,000.00
- Contract value in excess of \$1,000,000.00

5.0 PRODUCT SPECIFICATIONS

5.1 SPECIFICATIONS

Fayetteville State University has a requirement for one outdoor 10MM Jumbotron LED screen (w/ catwalk - 64' 5" W x 17' 10.2" H) digital billboard (marquee) installed at its Seabrook Auditorium. This will be a turnkey installation, to include project management, installation, labor, steel fabrication, materials, equipment, and related items for the system. All electrical work & data wiring will be handled by FSU however, the awardee is required to communicate the needs of the equipment to FSU.

The specific items and any specifications that the Purchasing Agency is seeking are listed below. Items offered by the Vendor must meet or exceed the listed Specifications.

Below is a scale rendering of desired finished project.



Item #	Specifications
1	<p>One outdoor 10 MM Jumbotron LED Screen (w/ Catwalk-64' 5" W x 17' 10.2" H) digital billboard (marquee) meeting the following specifications:</p> <ul style="list-style-type: none"> • Screen shall be ETL certified. • The screen has a pixel pitch of 10 MM • The total screen resolution shall be 1,952 pixels W x 544 pixels H • Viewing distance minimum of 30 feet and maximum of 800 feet • One Video Processor and an asynchronous sending card • Spare parts should be included. • Screen Life span of atleast 100,000 hours • SMD style LED with 7,500 NITS brightness per square meter or better
2	<p>Delivery and Installation</p> <ul style="list-style-type: none"> • Supply materials and labor to install equipment. • Configure one MS Windows OS computer with all software needed to operate the system. • Free-On-Board (FOB) Destination Delivery of equipment <p>Note: Although, Fayetteville State University will engage trusted vendor(s) to complete the necessary electrical and data wiring work, awardee is expected to fully communicate the needs of the equipment to ensure the information is correctly provided to these vendors.</p>
3	<p>Warranty</p> <p>Minimum of 5-year warranty</p>
4	<p>Maintenance Option</p> <p>FSU Has the OPTION TO ORDER Additional Parts</p>

VENDOR'S RESPONSE

Item #	Specifications	Product/Service Offered Meets Specification
1	ONE OUTDOOR 10MM JUMBOTRON 64' 5" W x 17' 10.2" H	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
2	DELIVERY + INSTALLATION	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
3	5 Years - Parts Replacement ONLY	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
4	FSU Has OPT TO ORDER additional Parts over those included with ORDER	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

5.2 CERTIFICATION AND SAFETY LABELS

All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization; such as the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and /or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas

CITY OF FAYETTEVILLE CITY HALL 433 HAY
STREET FAYETTEVILLE, NC 28301
910-433-1676 FINANCE DEPARTMENT

=====

DEPT#: 355
Miscellaneous GL OC 1x 250.00 250.00

GL Account:
011.15.501.0000.6631112.00000000.00000
Description: Alternative Signage Pllan
FSUSeabrookAud

Description/Payee: Fayetteville State
Univ

=====

SubTotal:	250.00
Total:	250.00

=====

6.CC Visa	250.00
Number : *****9050	

3/31/2023 09:53 LD
#0492140 /4/2

THANK YOU!