

**ORDINANCE AMENDMENT REVIEW SHEET**

**Amendment:** C20-2017-001 – Historic Landmark Commission Majority

**Description:** Consider an amendment to City Code Title 25 to change Historic Landmark Commission voting requirements such that a simple majority is required to recommend Historic Zoning over the objection of a property owner.

**Proposed Language:** See attached draft language.

**Summary of proposed code changes:**

Change the number of members of the Historic Landmark Commission (HLC) required to recommend zoning or rezoning property as a historic landmark (H) combining district if a property owner files a written statement protesting the zoning or rezoning, *from two-thirds to a simple majority.*

**Background:** Initiated by City Council by Resolution 20170126-046 on January 26, 2017.

From Council's initiating Resolution:

*"WHEREAS, no other advisory body to the City Council is required to affirm a recommendation on a vote of two-thirds of the body's membership; and WHEREAS, this requirement has resulted in numerous failures to initiate historic designation despite the fact that a majority of Historic Landmark Commission members supported the initiation; and WHEREAS, the Montopolis Negro School was one such structure that received majority support from the Landmark Commission but failed to receive a two-thirds majority; and WHEREAS, once the Historic Landmark Commission fails to recommend landmark status with a two-thirds majority most structures end up demolished;*

*NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:*

*That the City Manager is directed to initiate an amendment to City Code, repealing Section 25-2-355(C) requiring the affirmative vote of two-thirds of the members of the Commission to recommend zoning or rezoning property as a historic landmark if a record owner of the property files a written statement protesting the zoning or rezoning."*

**NOTE:** In the past two years there have been three cases that received a majority vote (6 votes) at the HLC, but not the required 2/3rds vote (8 votes) needed to designate historic zoning:

1. Cherico-Franzetti-Arriaga House, 1403 E. 6th Street; vote to recommend historic zoning: 7-2-1.
2. Ben and Maude Leifeste House, 3108 Grandview Street; vote to recommend historic zoning: 6-4.
3. Montopolis Negro School, 500 Montopolis Drive; vote to recommend historic zoning: 7-1.

**Staff Recommendation:** Approve proposed language change. Staff feels the change would bring the zoning process at HLC in line with the existing zoning process at Planning Commission and the Zoning and Platting Commission, which only require a simple majority vote to recommend a zoning change. A three-fourths vote of Council would still be required to approve a zoning change over the opposition of the property owner.

**Board and Commission Actions:**

March 27, 2017: Recommended by the Historic Landmark Commission on a 7-2 vote (Commissioners Tollett and Papavasiliou nay).

April 19, 2017: Postponed by the Codes & Ordinances Joint Committee.

May 17, 2017: No recommendation from the Codes & Ordinances Joint Committee, on a 3-1-1 vote (not enough votes for an affirmative action; Commissioners Flores and Seeger absent).

May 23, 2017: Postponed by the Planning Commission.

June 13, 2017: To be reviewed by the Planning Commission.

**Council Action:**

June 8, 2017: A public hearing has been set.

**Ordinance Number:** NA

**City Staff:** Greg Dutton     **Phone:** (512) 974-3509

**Email:** greg.dutton@austintexas.gov

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING CITY CODE § 25-2-355 RELATING TO  
HISTORIC LANDMARK COMMISSION REVIEW.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

**PART 1.** City Code § 25-2-355 (*Historic Landmark Commission Review*) is amended to  
repeal Subsection (C):

~~[(C) The affirmative vote of two thirds of the members of the Historic Landmark  
Commission is required to recommend zoning or rezoning property as a historic landmark  
(H) combining district if a record owner of the property files a written statement protesting  
the zoning or rezoning.]~~

**PART 2.** This ordinance takes effect on \_\_\_\_\_, 2017.

**PASSED AND APPROVED**

\_\_\_\_\_, 2017      §  
                                 §  
                                 §  
Steve Adler  
Mayor

**APPROVED:** \_\_\_\_\_ **ATTEST:** \_\_\_\_\_  
Anne L. Morgan                      Jannette S. Goodall  
City Attorney                      City Clerk

**RESOLUTION NO. 20170126-046**

**WHEREAS**, the City Council established the historic preservation program in 1974 to “preserve, enhance, and perpetuate those aspects of the city having historical, cultural, architectural and archaeological merit”; and

**WHEREAS**, the goals of the Historic Landmark Program are to preserve and enhance historically, culturally, architecturally, and archaeologically significant sites and structures which serve as visible reminders of the city's culture and heritage; and

**WHEREAS**, preserving historic districts, landmarks, and places contributes to Austin's economic health and prosperity; and

**WHEREAS**, Imagine Austin affirms historic preservation as a priority and cites as an imperative that the City Council "protect historic buildings, structures, sites, places, and districts in neighborhoods throughout the City"; and

**WHEREAS**, Austin is experiencing an increasing number of demolitions in neighborhoods throughout Austin due to intense development pressure; and

**WHEREAS**, more than 1,200 homes 50 years or older have been demolished since 2013; and

**WHEREAS**, the Historic Preservation Office currently receives an average of 50 demolition permit requests each month; and

**WHEREAS**, the Historic Landmark Commission has been tasked with reviewing requests to demolish structures older than 50 years; and

**WHEREAS**, at its December 2016 meeting alone, the Historic Landmark Commission approved 11 demolitions in the Ebony Acres neighborhood in East Austin; and

**WHEREAS**, City Code Section 25-2-355(C) requires the affirmative vote of two-thirds of the members of the Commission to recommend zoning or rezoning property as a historic if a record owner of the property files a written statement protesting the zoning or rezoning; and

**WHEREAS**, no other advisory body to the City Council is required to affirm a recommendation on a vote of two-thirds of the body's membership; and

**WHEREAS**, this requirement has resulted in numerous failures to initiate historic designation despite the fact that a majority of Historic Landmark Commission members supported the initiation; and

**WHEREAS**, the Montopolis Negro School was one such structure that received majority support from the Landmark Commission but failed to receive a two-thirds majority; and


**WHEREAS**, once the Historic Landmark Commission fails to recommend landmark status with a two-thirds majority most structures end up demolished;  
**NOW, THEREFORE,**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

That the City Manager is directed to initiate an amendment to City Code, repealing Section 25-2-355(C) requiring the affirmative vote of two-thirds of the members of the Commission to recommend zoning or rezoning property as a historic landmark if a record owner of the property files a written statement protesting the zoning or rezoning.

**ADOPTED:** January 26, 2017

**ATTEST:**

  
Jannette S. Goodall  
City Clerk

Dutton, Greg

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From: Rivera, Andrew  
 Sent: Tuesday, April 18, 2017 6:19 PM  
 To: Dutton, Greg  
 Subject: Fwd: Please deny removal of super majority at HLC

Dutton:

Please forward to C&amp;OJC.

T/ ar

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From: Glen Coleman <[REDACTED]>  
 Sent: Tuesday, April 18, 2017 5:54:11 PM  
 To: Rivera, Andrew  
 Subject: Please deny removal of super majority at HLC

Dear Codes &amp; Ordinances Commissioners,

On behalf of the Home Builders Association of Greater Austin, I am writing to ask you to recommend to the full Planning Commission that the Austin Landmark Commission maintain its current super majority requirement for owner opposed demolitions.

Austin's conduct in the matter of historic zoning has become so much a matter of thwarting infill development, and so little a matter of preservation, that the city has attracted state-wide attention and derision. Below is a link to an Austin Monitor article referencing a bill now in the Texas House of Representatives. Some points of the bill are unworkable, but some are quite valid, and both the bill's authors' and preservationists statewide are clear that Austin is the source of the offending behavior. The bill is asking among other things that the a 3/4 majority be required both at the local landmark commission AND at a city's land use board. (Planning Commission or ZAP). Not an auspicious time to lower the bar.

Please consider these points in your deliberations:

1. The current high bar only applies to owner opposed designations; it would not effect our robust historic designation program, historic districts, certificates of appropriateness, or any existing historically designated structure.
2. Super majorities are enshrined in many places in democracies where the rights of the minority are balanced against the will of the many. It is a terrible time in our history to signal current State and Federal majority holders that procedural precautions such as super majorities are valued by Austin's leaders only when it is in their interest, but abandoned when it is convenient to do so. Let's please not send that message to the Legislature this April.
3. If lack of quorum is an issue, then Council could simply appoint alternates a la the BOA, or appoint commissioners dedicated to better attendance. This would protect the high bar while allowing a fair assessment of the historicity of the site.
4. Council rarely landmarks a house against an owner's wishes, but the current system can be manipulated by third parties to generate long delays and increased expenses for home builders. Months can be added to cost of a development by the abuse of our current landmark statutes and lowering the 2/3 bar will only make the practice more frequent. The resulting cost increases widen income gaps in neighborhoods already suffering from run away gentrification.
5. We have been here before: Council raised the bar from simple majority to super majority to protect home owners and prevent capricious or political initiations of historic designations. If a site is truly historic, it should be able to achieve a 2/3 majority, and if it can not, perhaps it is best left to the home owner to decide its fate.

7/13/2017 MCA 315007

6. Your recommendation could be handing the Planning Commission some very long nights if this measure is passed by Council. And to what end? *Long bitter zoning battles that result in nothing but increased cost of homes.*

Council has not requested that this be made an ordinance: they have requested that the matter be discussed and voted on, and returned to them for consideration.

Our city's history is important and our system for protecting it should have integrity and respect of the public.

Please recommend to maintain the current high bar for owner opposed historic designation.

Thank you for your service and with every best wish,

for the HBAGA

Glen Coleman

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- glen coleman

512 407-9357

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[www.southllano.com](http://www.southllano.com)

The Austin Monitor

<https://www.austinmonitor.com/stories/2017/04/urban-affairs-committee-takes-preservation-bill/>



To: COA Codes and Ordinances Committee  
From: Charles M Mansfield, Austin resident  
May 17, 2017

This letter is to express my opposition to changing the 3/4<sup>th</sup> rule currently applied to the Austin Landmark Commission's historic zoning recommendations. Those who wish to change this rule are looking for a new tool to slow gentrification. This would constitute the misuse of Historic designation for non-historic purposes, and is harmful to Austinites for the following reasons:

- 1) Preventing demolition of old houses will cause financial harm to the low-income owners (or their heirs) who wish to sell them. Many of the homes being demolished in Central Austin are being sold by elderly, lower-income owners who wish to move closer to their adult children, or are being sold by the owner's heirs after their death – many of whom are also low-income. The value of their homes will be greatly diminished if potential buyers are not allowed to demolish the house. This harms the long-time, lower-income residents that you are trying to protect.
- 2) Misuse of Historic designation means more residents will be living in obsolete, unsafe and energy-wasting houses, which causes harm to them and to all Austin residents. Old houses are not built to current building codes. They are less safe, less energy efficient, and require more upkeep. My son and daughter-in-law purchased a 1940's house in Crestview. They demolished it and built a modest 1-story house of an architectural style that was appropriate for the neighborhood. They now have a family. The new house uses less energy than the old house, and they were not forced to move to the suburbs to start a family, adding to road congestion. This helps all Austin residents.
- 3) Misusing Historic designation as a back-door means to slow gentrification infringes on owner's property rights, and will serve to justify intervention by the State Legislature. Don't give them a legitimate reason to take away more of our local control. Already, the Historic Landmark Commission and the Board of Adjustments have a history of making inconsistent and arbitrary decisions. In one case a person is allowed a variance or a demolition permit, in a nearly identical a different applicant is not given the permit. This is bad governance, and can be used to justify intervention by the legislature. The 3/4<sup>th</sup> rule helps to reduce these arbitrary and unfair decisions which, inevitably, will occur if the decision to apply Historic designation can be reached by a simple majority. Do not allow the ludicrous application of Historic designation to properties clearly do not meet the spirit of Historic Preservation. Austinites will suffer for it.

I have lived in Austin for 50 years. Economic and social changes over these decades are straining many of my friends and family members - and me as well. I own an old house that I would never think of tearing down. But I fear city commissioners who would impose Historic designation on houses that clearly do not warrant it, over the wishes of its owners.

Charley Mansfield