



MEMORANDUM

TO: Historic Landmark Commission
FROM: Historic Preservation Office staff
DATE: January 8, 2021
SUBJECT: Demolition or relocation permit applications for property owned by religious organizations

[Texas Local Government Code § 211.0165](#) provides municipal authority for historic landmark designation. In 2019, the Texas Legislature amended that authority through [House Bill 2496, 86 \(R\)](#). In addition to introducing a supermajority requirement for landmark designation over owner objection, the bill provided that property owned by a religious organization may not be designated without owner consent. Subsection (b) states:

If the property is owned by an organization that qualifies as a religious organization under Section 11.20, Tax Code, *the municipality may designate the property as a local historic landmark only if the organization consents to the designation* [emphasis added]. A religious organization under Section 11.20 of the Tax Code is defined as one that is organized and operated primarily for the purpose of engaging in religious worship or promoting the spiritual development or well-being of individuals be operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain; and must use its assets in performing the organization's religious functions or the religious functions of another religious organization, and by charter, bylaw, or other regulation adopted by the organization to govern its affairs direct that on discontinuance of the organization by dissolution or otherwise the assets are to be transferred to this state, the United States, or a charitable, educational, religious, or other similar organization that is qualified as a charitable organization under the IRS Code of 1954.

Most active churches qualify as religious organizations under the Texas Tax Code and are therefore subject to the provisions of § 211.0165 of the Local Government Code.

Pursuant to [Resolution 20160623-082](#) of the Austin City Council, the Historic Preservation Office has referred all applications for the demolition or relocation of buildings fifty years or older and dedicated to civic use—including but not limited to ecclesiastical, educational, recreational, charitable, hospital, and other institutional or community uses—to the Historic Landmark Commission. For properties threatened with demolition or relocation, these public hearings afford the opportunity for citizens to present evidence relating to the potential for a building to be designated as a historic landmark and preserved, and allow the Commission to initiate and recommend historic zoning for consideration by the land use commission and City Council. Local Government Code § 211.0165 removes buildings owned by religious organizations from this process, as it denies City Council the ability to zone such a property as a historic landmark without the consent of the owner.

[Land Development Code § 25-11-213 \(E\)](#) sets a target of five business days for Historic Preservation Office staff to release permit applications administratively or make a referral to the Historic Landmark Commission. To comply with city code and state law, the Historic Preservation Office will administratively approve all applications for the demolition or relocation of a building owned by a religious organization without first scheduling a hearing at the Historic Landmark Commission. At each meeting, as necessary, staff will provide the Commission with a briefing regarding any such action taken since the prior Commission meeting.