

## Chapter 80

### HISTORIC PRESERVATION\*

\* **Editors Note:** Ord. No. 18420, §§ 1--21, adopted April 19, 2005, amended ch. 80 in its entirety to read as herein set out. Formerly, said chapter pertained to similar subject matter as enacted by Ord. No. 17292, §§ 1--17, adopted July 28, 1998

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#### **Sec. 80-1. Declaration of policy.**

The city council finds and declares as a matter of public policy that the identification, designation, protection, enhancement, preservation and use of historic assets is a public necessity and is required in the interest of the culture, prosperity, education and welfare of the public. Preservation of historic assets will:

- (1) Protect, enhance and perpetuate historic, distinctive and important elements of the city's cultural, social, economic, political, archaeological and architectural history;
- (2) Safeguard the city's historic and cultural heritage as embodied and reflected in such historic assets;
- (3) Stabilize and improve property values in such locations of historic assets and thus strengthen the economy of the city;
- (4) Promote and encourage restoration, rehabilitation, and maintenance of historic properties, neighborhoods and districts and thus combat blight and decay;
- (5) Foster civic pride in the beauty and noble accomplishments of the past;
- (6) Protect and enhance the city and its attractions to tourists and visitors and provide support and

stimulus to business and industry; and

- (7) Promote the use and adaptive reuse of historic assets for the culture, education, enjoyment and economic welfare of the city's citizens and visitors.

(Ord. No. 17292, § 1, 7-28-98; Ord. No. 18420, § 1, 4-19-05)

## **Sec. 80-2. Definitions.**

As used in this chapter, the following words, terms and phrases shall be the meanings set out below:

*Appurtenances and environmental setting* includes, but is not limited to walkways and driveways (whether paved or not) fences, gateways, open space and waterways. Interiors of structures are included only when a historic resource is designated a historic landmark and the owner consents to the addition of the interior of the structure.

*Certificate of appropriateness* is the approval given by the Topeka Landmarks Commission for projects impacting historic landmarks and assets within historic districts.

*Demolition* shall mean any and all activity that requires a demolition permit.

*Demolition by neglect* is the failure to provide ordinary and necessary maintenance and repair to a structure resulting in the deterioration of the structure or resulting in permanent damage, injury or loss to exterior features.

*Design criteria* is the standard used for issuing a certificate of appropriateness. The criteria shall be based upon the Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, or guidelines adopted by the historic district and based upon criteria of the Secretary of Interior's Standards as recommended by the Topeka Landmarks Commission and approved by the respective jurisdiction. Examples illustrating said standards shall be made available by the preservation staff.

*Historic asset* is a site, land area, building, structure or object, which may also include appurtenances and environmental setting, which has historical, cultural, aesthetic, architectural and/or archaeological significance but has not been officially designated as a historic resource, historic landmark, or as contributing to a historic district by the Topeka Landmarks Commission.

*Historic district* is a group of residential historic resources, consisting of three (3) or more principal use residential structures or a residentially zoned tract of ground five (5) acres or larger which are significant as a cohesive unit and contribute to the historical, architectural, archaeological or cultural values of the city, county, state, or nation which is so designated by the city council. Historic district includes all state and national registered districts provided the owner(s) of record consents in writing to the inclusion. The Historic District may also include appurtenances and environmental setting with written consent from the owner(s) of record.

*Historic landmark* is a historic asset that has been designated, with the written consent of the owner(s) of record, as having historical, architectural, archaeological, or cultural importance or value which the city council determines shall be protected, enhanced and preserved in the interest of the culture, prosperity, education and welfare of the public. Historic landmark may also include the interior of a structure appurtenances and

environmental setting with written consent from the owner(s) of record. Historic landmark includes all state and national registered structures provided the owner(s) of record consents in writing to the inclusion.

*Historic resource* is a site, land area, building, structure or object, which may also include appurtenances and environmental setting, which has historical, cultural, aesthetic, architectural and/or archaeological significance, or is a site, land area, building, structure, or object with potential importance or value.

*Overlay zoning.* Any zoning that functions in addition to the existing land use zoning, as in the case of historic landmark or historic district zoning.

*Permit* means authorization whether by administrative action or actions by the city council and includes a building, demolition, moving, zoning, sign, fence, parking lot, roofing, sidewalk, siding, or swimming pool permit which is issued by the development services office.

*Preservation staff* means personnel assigned to provide staff services for the Topeka Landmarks Commission.

*Project classification.* For the purpose of the certificate of appropriateness review procedure, proposed work involving a historic landmark or property within a historic district shall be classified as major or minor.

(1) *Major projects* include:

- a. Any undertaking requiring a permit on a historic landmark unless determined minor by the preservation staff; or a structure within a historic district; unless determined minor by preservation staff;
- b. Any demolition permit or moving permit for any structure listed as a historic landmark or historic asset within a historic district.

(2) *Minor project.* For the purpose of certificate of appropriateness review, a minor project is any project requiring a permit on a historic landmark or property within a historic district that proposes repairing or restoring an existing exterior element, or replacing an element or material with identical material and design to that which is existing.

*Preservation plan.* A document developed, adopted and implemented by the Topeka Landmarks Commission that identifies trends affecting and impacting historic assets and provides guidance for their preservation. The preservation plan will include a list of all historic resources, historic landmarks and historic districts within Topeka. The preservation plan will be a component of the comprehensive plan for the city.

*Preservation program.* The overall program administered by the Topeka Landmarks Commission that involves the implementation of the historic preservation ordinance, the historic preservation plan, and all activities relating to the furtherance of historic preservation in Topeka.

*Uniform Code for Building Conservation.* A national code adopted by the city that provides for more flexible code review for older and historic properties.

(Ord. No. 17292, § 2, 7-28-98; Ord. No. 18420, § 2, 4-19-05)

**Sec. 80-3. Topeka Landmarks Commission--[Created].**

There is created and established a commission to be known as the "Topeka Landmarks Commission" of the City of Topeka in place of and instead of the body heretofore known as the Topeka-Shawnee County Landmarks Commission. The Topeka Landmarks Commission will hereafter be called the "Topeka Landmarks Commission."

- (1) *Scope of duties.* The duties of the Topeka Landmarks Commission are to advise the city council on historic assets and to safeguard the architectural and cultural heritage of the community through the preservation of historic resources, historic landmarks and historic districts. The Topeka Landmarks Commission may carry out these duties through the identification, documentation and designation of historic assets; development and implementation of a historic preservation plan; administration of ordinances governing the designation, alteration and removal of historic assets; assistance with educational and incentive programs, economic development and tourism, and coordination of public and private historic preservation activities.
- (2) *Members.* The Topeka Landmarks Commission shall be composed of nine (9) members. The nine (9) members shall be appointed by the mayor with approval of the city council and will serve without compensation. The Topeka Landmarks Commission membership shall be comprised of people who have a demonstrated interest in historic preservation through their community and/or professional involvements. The members of the commission shall be drawn from such backgrounds as architecture, history, landscape architecture, architectural history, planning, archaeology, urban design, neighborhood and community development, geography, real estate, law, finance, building trades or related areas. A minimum of four (4) members shall be preservation related professionals.
- (3) *Terms.* The initial terms of office shall be as follows:

One (1) year term	Three (3) members
Two (2) year terms	Three (3) members
Three (3) year terms	Three (3) members

Thereafter, all terms shall be for a three (3) year period commencing on January 1 and terminating on December 31, three (3) years hence. No member shall serve beyond the end of his or her appointed term. Upon expiration of a term, the position shall remain vacant until a successor is appointed.

- (4) *Officers.* The Topeka Landmarks Commission shall elect a chairperson and one (1) vice-chairperson from its members.
- (5) *Meetings.* The Topeka Landmarks Commission shall meet at least once each month, with additional meetings upon call by the chairperson or upon petition of a majority of the members. All meetings shall be open to the public and notification shall be given in the official newspaper and to those who request notification. Unless otherwise required herein, five (5) members present constitute a quorum for the transaction of business.

- (6) *Ex-officio members.* The following may sit on the Topeka Landmarks Commission as ex-officio members:
  - a. The director or designee of the development services office;
  - b. The director or designee of the city planning department.
- (7) *Jurisdiction.* The chapter shall apply to the City of Topeka.
- (8) *Committees and subcommittees.* The Topeka Landmarks Commission may establish through its bylaws such committees, including a design review committee, as deemed necessary or convenient to carry out the various functions and duties of the commission. Such committees or subcommittees may be made up of part or all of the members of the commission and may include members outside the Topeka Landmarks Commission and may meet upon such schedule and for such purposes as established by the commission.
- (9) *Staff of the Topeka Landmarks Commission.* The Topeka Landmarks Commission shall receive such staff support as directed by the city administration.

(Ord. No. 17292, § 3, 7-28-98; Ord. No. 18420, § 3, 4-19-05)

#### **Sec. 80-4. Historic landmark designation.**

The city council may designate certain historic assets as historic landmarks or historic districts. Such designation shall be in addition to any other zoning designation established in the comprehensive zoning regulations of the city and be known as historic overlay zoning. An official register of all historic designations in the city shall be created, maintained and filed for public information and use in the office of the city clerk. (Ord. No. 17292, § 4, 7-28-98; Ord. No. 18420, § 4, 4-19-05)

#### **Sec. 80-5. Historic landmark designation criteria.**

- (1) In the designation of buildings, structures and objects as historic landmarks certain criteria must be met. These properties must be fifty (50) years or older. In addition, the property must meet one (1) or more of the following criteria:
  - (a) Is associated with events that have made a significant contribution to the broad pattern of history of the city, county, state or nation;
  - (b) Is associated with a significant person or group of persons in the history of the city, county, state or nation;
  - (c) Embodies distinctive characteristics of a type, period, or method of construction; represents the work of a master builder/architect; possesses high artistic values; or represents a distinguishable entity whose components may lack individual distinction;
  - (d) Yields or is likely to yield information important in prehistory or history; or

(e) Possesses integrity of location, design, setting, materials and workmanship.

(2) Properties less than fifty (50) years old may be eligible for designation provided they are of extreme historical significance. All other criteria listed herein shall apply.  
(Ord. No. 17292, § 5, 7-28-98; Ord. No. 18420, § 5, 4-19-05)

#### **Sec. 80-6. Historic district designation criteria.**

(1) In the designation of buildings, structures and objects as historic districts certain criteria must be met. The historic assets within the historic district must be located on residentially zoned property and must be fifty (50) or more years old. In addition, the historic assets must meet one (1) or more of the following criteria:

- (a) Are associated with events that have made a significant contribution to the broad pattern of history of the city, county, state or nation;
- (b) Are associated with a significant person or group of persons in the history of the city, county, state or nation;
- (c) Embody distinctive characteristics of a type, period, method of construction; represent the work of a master builder/architect; possess high artistic values; or represent a distinguishable entity whose components may lack individual distinction;
- (d) Yield or are likely to yield information in prehistory or history; or
- (e) Possess integrity of location, design, settings, materials and workmanship.

(2) The boundaries of historic districts shall be drawn so as to include all buildings, structures, sites, objects or land areas which meet one (1) or more of the criteria set out herein or which directly affect or relate to such buildings, structures, sites, objects or land areas meeting one (1) or more of the above criteria, provided that at least seventy-five (75) percent of the total structures within the boundaries are of architectural, historical, archaeological, or cultural importance or value as determined by the Topeka Landmarks Commission.  
(Ord. No. 17292, § 6, 7-28-98; Ord. No. 18420, § 6, 4-19-05)

#### **Sec. 80-7. Nomination.**

(1) The process is initiated when a historic landmark or historic district nomination form is accompanied by the following information and submitted to the Topeka Landmarks Commission. Copies of the nomination form shall be retained by the city clerk, and the city planning department. The nomination form shall include:

- (a) A description of the specific historic asset nominated as a historic landmark or a list of specific historic assets located within the proposed district boundaries and a description of the particular importance or value of each such historic assets, such description to include the following:
  - I. Approximate date of construction, and dates of major alterations, if known;

II. Builder and/or architect, if known;

III. Architectural style;

IV. Primary building materials;

V. Current owner of record; and

VI. Legal description of each property.

- (b) A map showing the boundaries of the proposed historic district and the location of each asset of importance or value identified by a number or letter designation;
- (c) Sufficient photographs of each historic asset proposed as a historic landmark or historic assets listed within the historic district;
- (d) Written consent to the nomination by all of the owners of record of the proposed historic landmark. In the event of a contract sale, both the owner of record and the party or parties holding an equitable interest in the property must consent to the nomination; and
- (e) For a historic district, sixty-five (65) percent of the owners of record within the proposed historic district must provide written consent. In the event of a contract sale of real property, both the owner of record and party or parties holding an equitable interest in the property must consent to the nomination.

(2) Applications to increase the boundaries of a historic district may be made if one (1) or more of the following conditions are met:

- (a) When additional historic assets which relate to the historic district are requested for inclusion;
- (b) When facts previously undisclosed to or unknown by the Topeka Landmarks Commission are revealed which indicate that a particular building or site is possessed of special architectural, archaeological, or cultural character, or economic viability to the district.

(3) Applications to reduce the boundaries of a historic district may be made when one (1) or more of the following conditions have been met:

- (a) When it can be shown that a particular building, structure, site, object or land area has no historic, architectural, archaeological, or cultural importance or value to the viability of the historic district;
- (b) When it can be shown that no physical, historical, architectural, archaeological or cultural degradation will result from exclusion of property from the district.

(Ord. No. 17292, § 7, 7-28-98; Ord. No. 18420, § 7, 4-19-05)

### **Sec. 80-8. Historic district exemptions.**

Within thirty (30) days of approval of a historic district by the city council, property owners located within the district may elect to exempt their property from the requirements of the historic district by providing written notice of the self-exemption to the preservation staff. In the event of a contract sale of real property, both the owner of record and party or parties holding an equitable interest in the property must consent to the exemption. The property shall automatically convert to the historic overlay zoning district upon sale of the property, including a contract sale.

(Ord. No. 17292, § 8, 7-28-98; Ord. No. 18420, § 8, 4-19-05)

### **Sec. 80-9. Topeka Landmarks Commission--[Functions].**

The Topeka Landmarks Commission shall have the following functions:

- (1) The Topeka Landmarks Commission shall familiarize itself with the historic assets within the community and those which may be eligible for designation as historic resources, historic landmarks or historic districts and shall administer the identification, documentation and designation of such historic landmarks and historic districts, and shall present verification of significance to the city planning department, or the city council.
- (2) The Topeka Landmarks Commission, using the criteria identified herein, shall determine whether certain buildings, structures, land areas, and interiors (only for historic landmarks and with owner consent) should be designated as historic landmarks or historic districts.
- (3) The Topeka Landmarks Commission shall administer certificate of appropriateness review according to design criteria as defined to determine whether to grant or deny approval of proposed undertakings.
- (4) The Topeka Landmarks Commission shall review and comment on projects which may be determined to pose a threat to an archaeological site as designated by the Kansas State Historical Office.
- (5) The Topeka Landmarks Commission may apply for or suggest sources of funds for preservation and restoration activities for acquisition, to include federal, state, municipal, private and foundation sources.
- (6) The Topeka Landmarks Commission may implement incentive programs for preservation.
- (7) If the Topeka Landmarks Commission finds that certain historic assets cannot be preserved without acquisition, the Topeka Landmarks Commission may recommend to the city council that the fee or a lesser interest in the property be acquired by gift, or purchase, using funds or facilities available for preservation or restoration.
- (8) The Topeka Landmarks Commission shall annually review the status of designated historic resources, historic landmarks and historic districts and include in the Topeka Landmarks Commission minutes a report of such review.

- (9) The Topeka Landmarks Commission shall make and adopt a historic preservation plan and review and update the plan as needed. The plan may include a list of historic resources which may not have attained the status of a historic landmark or as historic district. Twenty (20) days prior to a historic resource listing determination by the Topeka Landmarks Commission, the following procedures shall be initiated and administered by the preservation staff:
    - a. Property owners of those sites and structures which are being considered for nomination as historic resources shall be notified of a pending decision to list their property as historic resources.
    - b. Property owners of nominated historic resources shall be provided the opportunity to "agree," or "not agree" with the inclusion of their property in the listing.
    - c. If the owner agrees to the historic resource listing, notice of the "historic resource" listing of a property shall be filed with the register of deeds and recorded as an official notice subject to subsequent property owners. If the owner does not agree to the "historic resource" listing, the property shall not be listed as a "historic resource."
  - (10) The Topeka Landmarks Commission may implement a receivership program for conservation easement donations for the purpose of historic preservation. Such easements shall be held by the city and monitored by the Topeka Landmarks Commission.
  - (11) The Topeka Landmarks Commission may recommend programs and legislation to the city council to encourage historic preservation.
  - (12) The Topeka Landmarks Commission, upon request of the property owner, may assist in the preparation of national and/or state register nominations.
  - (13) The Topeka Landmarks Commission, upon request of the property owner, may render advice and guidance with respect to any proposed work on a historic asset.
- (Ord. No. 17292, § 9, 7-28-98; Ord. No. 18420, § 9, 4-19-05)

**Sec. 80-10. Procedure for designation of historic landmark and historic district.**

An application for historic landmark and residential historic district designation requires the following procedures:

- (1) A historic landmark or historic district nomination form, accompanying material, and for historic districts, historic district preservation guidelines as defined herein, shall be submitted to the city planning department.
- (2) Upon receipt of such nomination, a hearing by the Topeka Landmarks Commission will be scheduled either at its regular meeting or at a special meeting, provided that notice of the meeting shall be published twenty (20) days prior to the date of such hearing. For purposes of holding a hearing to consider designation of a historic landmark or historic district, five (5)

members of the Topeka Landmarks Commission shall constitute a quorum. The owner or owners of record of any parcel on which a proposed historic landmark is situated or which is a part of a proposed historic district shall be mailed written notice at least twenty (20) days prior to the hearing relating to the designation of such proposed historic landmark or historic district, the amendment to any designation thereof, or the proposed reduction of any designation or the amendment thereto. Owner(s) consent to the historic landmark or historic district designation is a requirement for such designation to occur. The Topeka Landmarks Commission shall afford a full and fair hearing to all interested persons. The Topeka Landmarks Commission may solicit expert testimony regarding the historic and architectural importance of the historic assets(s) under consideration for designation. All interested persons may appear in person or by representative and present evidence or comment. The Topeka Landmarks Commission shall make its decision regarding the designation within a reasonable time, no later than fifteen (15) days following the close of the hearing. In the event a member of the Topeka Landmarks Commission shall make application, evidence shall be presented in the same manner as all other persons and the Topeka Landmarks Commission member shall not vote on the matter contained in the application. Five (5) affirmative votes shall be required to constitute a recommendation of approval on any nomination application presented to the Topeka Landmarks Commission.

- (3) After consideration and recommendation by the Topeka Landmarks Commission, the application shall be submitted to the City Planning Department. The following is required as part of the designation application:
  - a. The Topeka Landmarks Commission recommendation;
  - b. Legal description and map of the boundaries of the proposed designation;
  - c. Completed historic landmark or historic district nomination form and accompanying materials;
  - d. Applicable historic district preservation guidelines as defined herein; and
  - e. A list of property owner(s) of record.
- (4) The designation shall be placed on the Topeka Planning Commission agenda for public hearing to consider historic landmark or historic district designation. The same public notices and public hearing as required by law in a zoning case shall be observed. The owner or owners of record of any parcel on which a proposed historic landmark is situated or within a proposed historic district as well as all property owners of record within a two hundred (200) foot radius in the city will be notified of the hearing. At the conclusion of its hearing, the Topeka Planning Commission shall set forth in writing its findings as to whether the designation is consistent with adopted plans and shall transmit such findings to the city council.
- (5) After notice and public hearing as required by law in a zoning case, a historic landmark or historic district may be created by ordinance by the city council. Upon passage of such ordinance a certified copy shall be filed with the Shawnee County Register of Deeds.

- (6) Upon approval of a historic landmark or historic district designation ordinance by the city council, the city planning department shall cause the official designation and delineation of the property or properties involved.

(Ord. No. 17292, § 10, 7-28-98; Ord. No. 18420, § 10, 4-19-05)

### **Sec. 80-11. Historic district preservation guidelines.**

Preservation guidelines for a proposed historic district shall be submitted with a nomination application. The district preservation guidelines shall not apply to the interior of commercial structures. Further, the district guidelines shall include, but not be limited to the following:

- (1) Guidelines for those seeking a certificate of appropriateness including, but not limited to the following:
  - a. Acceptable materials for any construction, additions, remodeling or rehabilitation activities to the exterior of the structures;
  - b. Appropriate architectural character, scale, and detail for any construction, additions, remodeling or rehabilitation activities;
  - c. Acceptable appurtenances to the structures;
  - d. Acceptable textures and ornamentation to the exterior of the structures;
  - e. Acceptable accessories on structures;
  - f. Such other building regulations which would have impact on the buildings;
  - g. Acceptable standards for changes to non-contributing resources within the district; and
  - h. Acceptable signage.
- (2) Guidelines for public improvements in the district, including street furniture, signs, design textures of sidewalks, streets and parks.

(Ord. No. 17292, § 11, 7-28-98; Ord. No. 18420, § 11, 4-19-05)

### **Sec. 80-12. Historic district designation administrative requirements.**

The following shall apply:

- (1) When the Topeka Landmarks Commission considers an area as a possible historic district, the Topeka Landmarks Commission shall, prior to rendering its final recommendation, submit the nomination package including district preservation guidelines to appropriate city departments and other public agencies directly affected.
- (2) In addition, the Topeka Landmarks Commission shall, prior to rendering its final

recommendation, make the historic district preservation guidelines available upon request to all landowners in the proposed historic district.

- (3) The Topeka Landmarks Commission approved graphics for designated historic assets within a historic district may be made available to the owners of designated structures.

(Ord. No. 17292, § 12, 7-28-98; Ord. No. 18420, § 12, 4-19-05)

### **Sec. 80-13. Certificate of appropriateness review.**

The following procedures and requirements shall apply to certificate of appropriateness review:

- (1) A permit for any project as defined herein affecting a designated historic landmark or any property within a designated historic district shall not be issued to any applicant by the development services office unless an application for a certificate of appropriateness has first been reviewed and approved by the preservation staff, by the Topeka Landmarks Commission and, if a protest is filed, by the city council. Projects not requiring a permit but which propose to alter features which have been defined in a historic district's preservation guidelines as requiring protection shall require a certificate of appropriateness application. Projects which will or have the potential to damage or destroy historic features of a historic landmark or a historic asset which is located within a historic district shall be subject to a certificate of appropriateness review.
- (2) When applying for a certificate of appropriateness, the applicant shall provide plans, specifications or other documentation pertaining to the work as required on the Topeka Landmarks Commission's adopted application forms. A complete certificate of appropriateness application and accompanying materials shall be submitted to the preservation staff for review of the application and determination if the proposed work is a major or minor project.
- (3) The Topeka Landmarks Commission shall review the application and recommend approval, approval with conditions, or denial within thirty (30) days of the receipt of the application. A fifteen (15) day period for written comments regarding the project shall be provided prior to the Topeka Landmarks Commission's hearing. These written comments shall be directed to the Topeka Landmarks Commission. If approved, and provided that a protest is not filed within five (5) business days, preservation staff shall issue a copy of the certificate of appropriateness to the applicant and provide a copy to the development services office and the applicant. If an appeal is filed by the applicant or any interested party with the preservation staff within five (5) business days of the Topeka Landmarks Commission's action, the certificate of appropriateness shall not be issued until the city council holds a public hearing regarding the application. This public hearing shall be at the next available meeting of the city council. For the purpose of this section, interested party shall mean an individual or individuals with a legally recognized interest in the real property located within the subject historic district.
- (4) A certificate of appropriateness for a minor project shall be reviewed and approved or denied by the preservation staff. If approved, the preservation staff shall provide a certificate of appropriateness to the applicant and provide a copy of documented approval to the development services office. An appeal from a denial of an application for a minor project may be filed with

the preservation staff within five (5) business days. A public hearing on the appeal shall be at the next available meeting of the city council.

- (5) Ordinary maintenance and repair not otherwise subject to a permit or restricted by the historic preservation guidelines may be carried out without a certificate of appropriateness.
- (6) If no action has been taken by the preservation staff and/or the Topeka Landmarks Commission within thirty (30) days for major projects and within fifteen (15) days for minor projects after date of receipt of the completed application, the permit may be applied for with the development services office.
- (7) No significant change shall be made in the work defined in the certificate of appropriateness application after issuance of a certificate of appropriateness without resubmittal and approval thereof in the same manner provided herein.
- (8) A certificate of appropriateness may be refiled provided the request addresses the concerns stated by the city council in its denial.

(Ord. No. 17292, § 13, 7-28-98; Ord. No. 18420, § 13, 4-19-05)

#### **Sec. 80-14. Historic landmark and historic district demolition and moving permits.**

(1) If an application is received by the development services office for demolition or moving of any historic landmark or structure within a historic district the applicant shall be referred to the preservation staff for a certificate of appropriateness application. Review of such application for a certificate of appropriateness shall be as provided herein.

(2) For a project which involves demolition of a historic landmark property or properties within a historic district the proponents of such project shall, before doing any of the demolition or work in furtherance of such project, whether or not a building or other permit is required to be obtained to do such demolition work, file an application for a certificate of appropriateness for review as provided herein.

(3) After review of certificate of appropriateness and, upon the recommendation of the Topeka Landmarks Commission and the Topeka Planning Commission, the city council shall hold a hearing within thirty (30) days of the Topeka Landmarks Commission's recommendation. In addition to the recommendation of the Topeka Landmarks Commission, the city council shall consider the state of repair of the building, the reasonableness of the cost of restoration or repair, owner hardship, the purpose of preserving the designated historic landmark or structure within a historic district, alternatives presented by interested parties, the character of the neighborhood, the economic consequences to the city and the affected owner(s), and all other factors which it finds appropriate. The owner(s) of the historic landmark or owner(s) of the structure within the historic district shall bear the burden of proof demonstrating hardship.

(4) The city council may approve the certificate of appropriateness or deny the certificate of appropriateness if it determines that feasible alternatives to demolition or moving of the historic landmark or structure within the historic district exist and that in the interest of preserving historical values, the historic landmark or structure within the historic district should not be demolished or moved.

(5) In the event of an "emergency" demolition of a historic landmark or a structure within a historic district, the development services office shall notify the preservation staff as soon as possible.  
(Ord. No. 17292, § 14, 7-28-98; Ord. No. 18420, § 14, 4-19-05)

**Sec. 80-15. Review of demolition buildings and moving permits historic resources.**

An application to the development services office for a demolition or moving permit shall require notification to preservation staff if the permit is for a historic resource determined by preservation staff to have potential for landmark designation. These resources shall be fifty (50) years or older and meet one (1) or more of the criteria for landmark designation described herein. The following procedure applies:

- (1) Demolition and moving permit applications for buildings or structures listed as historic resources will be reviewed by preservation staff.
- (2) Preservation staff may make the determination that a building, site or structure threatened with demolition or removal meets the criteria for landmark designation.
- (3) If a building, site or structure is determined by the preservation staff to meet criteria for historic landmark designation a written notice shall be sent by certified mail to the owner or owners of such building, site or structure. Said notice shall describe the property which meets historic landmark criteria including its location and boundaries and justification of its historic or architectural significance. The notice shall also be delivered to the development services office with acknowledgment of receipt by the development services office.
- (4) Following application for a moving or demolition permit for a listed historic resource, a ninety (90) day delay shall occur prior to the issuance of the requested moving or demolition permit in order for alternatives to be explored with the owner by the Topeka Landmarks Commission staff.
- (5) During such period, no permit shall be issued unless for emergency public safety reasons, or a certificate of appropriateness has been issued.
- (6) After the delay, if demolition of the historic resource is the conclusive alternative of the Topeka Landmarks Commission, the Topeka Landmarks Commission shall direct staff to document the resource with photography, and/or measured drawings for record purposes.

(Ord. No. 17292, § 15, 7-28-98; Ord. No. 18420, § 15, 4-19-05)

**Sec. 80-16. Historic landmark and historic district demolition by neglect.**

In the event of demolition by neglect of a historic landmark or structure within a historic district on public or private property, the following provisions shall apply:

- (1) If a historic landmark or a property within a historic district has been determined by the Topeka Landmarks Commission to be the subject of demolition by neglect, the Topeka Landmarks Commission or preservation staff shall provide the owner of record with a written notice specifying the conditions of deterioration and the minimum items of repair or maintenance necessary to correct or prevent further deterioration.

- (2) Such notice shall be sent by certified mail, return receipt requested, addressed to the owner of the property, contract purchaser, if applicable, at his or her last known address, or the address shown on the real property tax records in the Clerk's Office of Shawnee County, Kansas. Such notice, when so addressed and deposited with the United States Postal Service with proper postage prepaid, shall be deemed complete and sufficient. In the event that notification cannot be accomplished, as aforesaid, after reasonable efforts, notice shall be accomplished by posting a public notice on the property. A copy shall also be provided to the development services office .
  - (3) The notice shall provide that corrective action shall commence no later than thirty (30) days from the receipt or posting of said notice, unless an extension is granted by the Topeka Landmarks Commission. The owner or contract purchaser, if applicable, shall demonstrate continual progress and all repairs shall be completed within a reasonable period of time. The notice shall state that the owner(s) of record of the subject property may within ten (10) days request a hearing before the Topeka Landmarks Commission challenging the finding of demolition by neglect and/or the notice to repair. If such request for a hearing is received within this time period, a hearing will be at the next regular meeting of the Topeka Landmarks Commission. The Topeka Landmarks Commission shall review all evidence of demolition by neglect at the scheduled hearing.
  - (4) In the event that the Topeka Landmarks Commission finds that, notwithstanding the necessity for such improvements, corrective action would impose a substantial hardship on the owner or any or all persons with any right or title in the subject property, then the commission shall establish a period of forty-five (45) days and direct preservation staff to seek alternative methods to preserve the historic landmark or property located within a historic district.
  - (5) If no alternative is found to preserve the structure without undue hardship to the owner, and any or all persons with any right or title in the subject property and the structure is determined a threat to human safety and is in violation of city code a demolition permit may be issued.
- (Ord. No. 17292, § 16, 7-28-98; Ord. No. 18420, § 16, 4-19-05)

**Sec. 80-17. Penalty.**

It is unlawful to construct, reconstruct, structurally alter, remodel, renovate, restore, demolish, deface, move or maintain any historic landmark or asset within a historic district in violation of the provisions of this ordinance. In addition to other remedies, the city may institute any appropriate action or proceedings to prevent such unlawful construction, restoration, demolition, moving or maintenance to restrain, correct or abate such violation.

(Ord. No. 17292, § 17, 7-28-98; Ord. No. 18420, § 17, 4-19-05)

**Sec. 80-18. Concurrent use of Topeka Landmarks Commission by the county commission.**

(1) The county commission, at its sole option, may seek the advice and assistance of the Topeka Landmarks Commission on designating and preserving historic assets, historic resources and historic districts located in Shawnee County.

(2) In the event the county commission seeks the advice and assistance of the Topeka Landmarks Commission, it shall receive such county staff support as directed and supplied by the county administration.

(3) The Topeka Landmarks Commission may be used by the county commission for the designation of historic landmarks or districts located in the county according to procedures and criteria established by the county commission.

(4) The county commission may rely upon the Topeka Landmarks Commission for assistance in establishing historic preservation guidelines according to the criteria, standards, and factors specified by the county commission.

(5) The county commission may seek the recommendation of the Topeka Landmarks Commission on the demolition or issuance of a moving permit for a historic landmark or historic district located in the county according to such procedures and criteria established by the county commission.  
(Ord. No. 18420, § 18, 4-19-05)

#### **Sec. 80-19. Continuation of existing designation.**

Nothing contained in this section shall eliminate, change, or otherwise affect the existing designation of an historic landmark or an historic resource in the City of Topeka or Shawnee County which was originally made by the Topeka Shawnee County Landmarks Commission. Any such historic landmark or resource designation shall remain in force and effect.  
(Ord. No. 18420, § 19, 4-19-05)

#### **Sec. 80-20. Severability.**

If any part or parts of this Ordinance shall be held unconstitutional, invalid, or otherwise unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance.  
(Ord. No. 18420, § 20, 4-19-05)

#### **Sec. 80-21. Saving clause.**

If this article or any part thereof shall be held or determined to be unconstitutional, illegal, ultra vires or void, the same shall not be held or construed to change or annul any provisions of this chapter which may be legal or lawful; and in the event this chapter or any part thereof shall be held unconstitutional, illegal, ultra vires or void, the same shall not affect any action theretofore taken by the Topeka Landmarks Commission as theretofore established and constituted.  
(Ord. No. 18420, § 21, 4-19-05)