

**CITY OF EDEN PRAIRIE
HENNEPIN COUNTY, MINNESOTA**

ORDINANCE NO. 5-2010

AN ORDINANCE OF THE CITY OF EDEN PRAIRIE, MINNESOTA, AMENDING CITY CODE SECTION 11.05 RELATING TO HERITAGE PRESERVATION SITES AND ADOPTING BY REFERENCE CITY CODE CHAPTER 1 AND SECTION 11.99, WHICH AMONG OTHER THINGS CONTAIN PENALTY PROVISIONS.

THE CITY COUNCIL OF THE CITY OF EDEN PRAIRIE, MINNESOTA ORDAINS:

Section 1. City Code Chapter 11 - Section 11.05, Heritage Preservation Sites, is amended in its entirety as follows:

Subd. 1. Declaration of Public Policy and Purpose. The Council of the City of Eden Prairie (hereinafter the "Council") declares as a matter of public policy that the preservation, protection, perpetuation and use of areas, places, buildings, structures, and other objects have historic, aesthetic or community interest or value, benefits the health, prosperity, education and welfare of the community. The purposes of this chapter are to: (1) Safeguard the heritage of the City by preserving sites and structures which reflect significant elements of the City's cultural, social, economic, political, visual or architectural history; (2) Promote the preservation and continued use of historic sites and structures for the education and general welfare of the people of the City; and (3) Foster civic pride in the beauty and notable accomplishments of the past.

Subd. 2. Definitions.

A. The following terms, as used in this Section, shall have the following meanings:

1. Alteration – means any act or process which changes one (1) or more of the exterior architectural features of a building, or landform.
2. Archaeological resources – means archaeological artifacts, objects, or sites as defined in regulations promulgated under the Archeological Resources Protection Act of 1979, 16 USC Section 470.
3. Building – means an enclosed structure with walls and a roof, consciously created to serve a residential, industrial, commercial, agricultural, or other human use.
4. Certificate of Appropriateness – means a certificate issued by the City Council authorizing alteration, construction, restoration, relocation or demolition of a designated Heritage Preservation Site in accordance with the provisions of this Chapter.
5. Commission – means the Heritage Preservation Commission of the City.
6. Cultural resource – means a building, object, monument, structure, site or geographically definable area, such as an historic district or archaeology site that possesses a significant concentration, linkage or continuity of historically significant resources.
7. Demolition – means any act or process that destroys in part or in whole a cultural resource including the removal of any material constituting part of a structure other than for the purposes of ordinary maintenance or repair, which if removed affects the exterior

appearance of the structure, which reduces the stability or longevity of the structure and impairs its historic or architectural integrity.

8. Demolition by neglect – means any total or partial destruction of or damage to a structure or any portion thereof due to failure to adequately maintain or repair the structure.
9. Exterior appearance – means the design, architectural style, general arrangement, ornament, character and general composition of the exterior of a cultural resource, including but not limited to the kind, color and texture of the building material and type, design, style and character of all windows, doors, light fixtures, signs and appurtenant elements.
10. Historic District – means a geographically definable area designated by the City Council conveying a sense of time and place due to the historic and architectural merits of the area. A historic district may also comprise contributing and noncontributing elements separated geographically but linked by association or history.
11. Integrity – means the authenticity of a cultural resource’s historical identity evidenced by its survival of physical characteristics that existed during the property’s historic or prehistoric period.
12. Maintenance – means all activities necessary to prolong the useful life and aesthetic appearance of a cultural resource.
13. Minor work – means small scale repairs and ordinary maintenance to correct problems or damage to the exterior that does not include a change in design, material, or outward appearance of the cultural resource. Examples of minor work include, but are not limited to, touch-up painting, window and door repair, caulking, fastening loose materials and roofing repairs.
14. National Register of Historic Places – means the national list of districts, sites, buildings, structures and objects significant in American history, architecture, archaeology, engineering or culture maintained by the Secretary of the Interior under authority of Title 16 USC, Section 101(a)(1)(A) (National Historic Preservation Act) as amended
15. Object – means a material item of functional, aesthetic, cultural, historical, or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.
16. Preservation – means the identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance and reconstruction of cultural resources. For the purposes of development of cultural resources, preservation means the act or process of applying measures to sustain the existing form, integrity and material of a building or structure and the existing form and vegetative cover of a site. It may include initial stabilization work, where necessary, as well as ongoing maintenance of the historic building materials.
17. Protection – means the act or process of applying measures designated to affect the physical condition of a cultural resource by defending or guarding it from deterioration, loss, or to cover or shield the cultural resource from danger or injury. In the case of buildings and structures, such treatment is generally of a temporary nature and anticipates future historic preservation treatment; in the case of archaeological sites, the protective measure may be temporary or permanent.
18. Reconstruction – means the act or process of reproducing by new construction the exact form and detail of a vanished cultural resource, or part thereof, as it appeared at a specific period of time.

19. Rehabilitation – means the act or process of returning a cultural resource to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the cultural resource which are significant to its historical, architectural and cultural values.
20. Repair – means the replacement of deteriorated materials which are impractical to save, such as broken window glass or severely rotted wood and the reclamation of items worn to the point that they can no longer perform their intended function. Material used for repairs on cultural resources should be as close as possible to the original in composition of materials, in method of fabrication and in manner of erection.
21. Restoration – means the act or process of accurately recovering the form and details of a cultural resource and its setting as it appeared at a particular period of time by means of the removal of later work or by replacement of missing earlier work.
22. Secretary of Interior Standards for treatment of historic properties – means the preservation, rehabilitation, restoration and reconstruction standards adopted by the U.S. Department of Interior codified in 36 CFR Part 68, as may be amended from time to time.
23. Site – means the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing or vanished, where the location itself maintains historical or archaeological value regardless of the value of any existing structure.
24. Stabilization – means the act or process of applying measures designed to reestablish a weather resistant enclosure and the structural stability of an unsafe or deteriorated cultural resource while maintaining the essential form as it exists at present.
25. Structure – means a constructed work, usually immovable by nature or design, consciously created to serve some human activity. Examples are buildings of various kinds, monuments, dams, roads, railroad tracks, canals, millraces, bridges, tunnels, locomotives, nautical vessels, stockades, forts and associated earthworks, Indian mounds, ruins, fences, and outdoor sculpture. For purposes of Section 11.05 "structure" is limited to functional constructions other than buildings.

Subd. 3. Designation of Heritage Preservation Sites.

- A. Reports. The Council may direct the City staff to prepare studies which catalog buildings, land, areas, historic districts or other objects to be considered for designation as a Heritage Preservation Site.
- B. Criteria for Eligibility. The Commission shall recommend to the Council that an area, building, historic district, or object be designated a Heritage Preservation Site, when: (i) the quality in American history, architecture, archaeology, engineering, and culture is present in the historic district, site, building, structure or object and (ii) the historic district, site, building structure or object possess integrity of location, design, setting, materials, workmanship, feeling, and association and (iii) the historic district, site, building, structure or object meets one or more of the criteria listed below.
 1. It is associated with events that have made a significant contribution to the broad patterns of our history; or
 2. It is associated with the lives of persons significant in our past; or
 3. It embodies the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a

significant and distinguishable entity whose components may lack individual distinction;
or

4. It has yielded or may be likely to yield, information important in prehistory or history.
- C. **Planning Commission Review.** The Commission shall advise the Planning Commission of the proposed designation of a Heritage Preservation Site, including boundaries, and a program for the preservation of a Heritage Preservation Site, and secure the Planning Commission's recommendation with respect to the relationship of the proposed heritage preservation designation to the Comprehensive Plan of the City, and the City Planning Commission's opinion as to the effect of the proposed designation upon the surrounding neighborhood and any other planning consideration which may be relevant to the proposed designation. The Commission may make such modifications, changes, and alterations concerning the proposed designation as it deems necessary in consideration of the recommendation and opinion of the Planning Commission. The Planning Commission shall also give its recommendation of approval, rejection or modification of the proposed designation to the Council.
- D. **Communications with State Historical Society.** A copy of the Commission's proposed designation of a Heritage Preservation Site, including boundaries, and a program for the preservation of a Heritage Preservation Site, when received by the City, shall be sent to the State Historical Society in accordance with Minnesota Statutes.
- E. **Findings and Recommendations.** The Commission shall make findings as to whether a proposed Heritage Preservation Site is eligible for heritage preservation as determined by the criteria specified in Paragraph B of this subdivision. If the Commission determines the site meets the criteria in Paragraph B, it shall forward its findings to the Council with its recommendation that the site be designated for heritage preservation and its proposed program for the preservation of the site.
- F. **Council Designation.** The Council shall consider the Commission's recommendation that a site be designated for Heritage Preservation, together with the Planning Commission's recommendations, and may, upon the request of the Commission, by ordinance designate a Heritage Preservation Site.

Subd. 4. Amendment or Rescission of Designation. A Heritage Preservation Site designation may be amended or rescinded following the same process for the original designation.

Subd. 5. Suffix "HP." For purposes solely of identification, a site designated by ordinance as a Heritage Preservation Site may be identified with the suffix "HP" following its underlying zoning classification and any other overlay zoning.

Subd. 6. Heritage Site Preservation Plan and Hearings.

- A. Within such time as is established by the City Council following City Council approval of the Heritage Preservation Site designation, the applicant shall prepare and submit to the Commission for approval a Heritage Site Preservation Plan, which sets forth necessary preservation guidelines, including identification of significant features.
- B. **Hearings.** Prior to the Commission recommending to the Council any building, historic district, or object for designation as a Heritage Preservation Site, the Commission shall hold a public hearing on the proposed designation. Prior to such hearing, the Commission shall cause to be published in a newspaper of general circulation notice of the hearing at least ten (10) days prior to the date of the hearing, and notice of the hearing shall be sent to all owners of the property proposed to be designated a Heritage Preservation Site and to all property owners within three hundred fifty (350) feet of the boundary of the area to be designated a Heritage Preservation Site.

Subd. 7. Additional Powers and Duties of the Commission.

- A. The Commission may recommend to the Council after review and comment by the City Planning Commission, that certain property eligible for designation as a Heritage Preservation Site be acquired by gift, negotiation or by eminent domain as provided for in Chapter 117 of the Minnesota Statutes.
- B. The Commission shall have the powers and duties specified in Chapter 2, Section 2.18 in addition to those otherwise specified in this chapter.

Subd. 8. Alterations.

- A. A Certificate of Appropriateness is required to do any of the following to a Heritage Preservation Site:
 - 1. Remodel, alter, or substantially change the exterior appearance of a historic building, site or landmark.
 - 2. Erect a building or any structure.
 - 3. Erect signs.
 - 4. Move from or to any building.
 - 5. Demolish any building in whole or in part. This does not apply to structures to be demolished in accordance with Minnesota Statutes, Chapter 463.
 - 6. Alter or remove a land form in whole or in part.

The application for a Certificate of Appropriateness shall be accompanied by detailed plans including a site plan, building elevations and design details, and materials necessary to evaluate the request. The Council shall make the determination whether to approve or disapprove the permit.

- B. Commission recommendation. The Commission shall review each application and make its recommendation to the Council relative to the request for a Certificate of Appropriateness. The Commission shall also review and make recommendations to the Council concerning City sponsored construction projects or development projects aided by the City that could change the nature or appearance of a Heritage Preservation Site.
- C. Criteria for Certificate of Appropriateness. All recommendations by the Commission and decisions by the Council to approve, disapprove, and/or impose conditions on a Certificate of Appropriateness shall be in accordance with the program approved by the Council and the State Historical Society for each Heritage Preservation Site. The following General Standards for Historic Preservation Projects issued by the Secretary of the Interior shall be used to evaluate applications of Certificate of Appropriateness:
 - 1. Every reasonable effort shall be made to provide a compatible use for a property which requires minimal alteration of the building, structure, or site and its environment, or to use a property for its originally intended purpose.
 - 2. The distinguishing original qualities or character of a building, structure or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive features should be avoided when possible.
 - 3. All buildings, structures and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.

4. Changes which have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure, or site shall be treated with sensitivity.
6. Deteriorated architectural features shall be repaired rather than replaced, whenever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage historic building materials shall not be undertaken.
8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any acquisition, stabilization, preservation, rehabilitation, restoration or reconstruction project.
9. The Commission and the Council shall also consider, when appropriate, the Secretary of the Interior's Specific Standards for Preservation Projects.

D. Criteria for Certificate of Appropriateness for Demolition of Historic Preservation Site. In addition to the criteria listed in Subd. 7. C, the following criteria shall also apply to an application for demolition of a Heritage Preservation Site. A Certificate of Appropriateness for the demolition or partial demolition of a historic resource shall not be granted without the review and approval of a completed application. The review shall consider the following:

1. The public's interest in the preservation of the cultural resource.
2. The ability of the cultural resource to reasonably meet the National, State or local criteria for designation as a Heritage Preservation Site.
3. The age of the cultural resource, its significant features, unusual or uncommon design, texture, and/or material and its ability to be reproduced without unreasonable difficulty and/or expense.
4. The ability of the cultural resource to help preserve and protect a historic place or prehistoric site or area of historic interest in the City.
5. The ability of the historic resource to promote the general welfare of the City by:
 - a. encouraging the study of American history, architecture and design;
 - b. by developing an understanding of the importance and value of the American culture and heritage; and
 - c. by making the City a more attractive and desirable place in which to live.
6. The cost and economic feasibility of restoring the cultural resource.

- E. No owner or any other person shall demolish or undertake to demolish a Heritage Preservation Site without a Certificate of Appropriateness.
- F. Findings. The Council shall make findings as to whether a Certificate of Appropriateness application should be approved or disapproved, or conditions imposed, as determined by the criteria specified in Paragraphs C and D of this subdivision.
- G. Hearings. Prior to the Council making its decision regarding an application for a Certificate of Appropriateness for a Heritage Preservation Site, the Council shall hold a public hearing on the application. Prior to such hearing the Council shall cause to be published in a newspaper of general circulation notice of the hearing at least ten (10) days prior to the date of the hearing, and notice of the hearing shall be sent to all owners of the property for which a Heritage Preservation Site Certificate of Appropriateness application has been submitted and to all property owners within three hundred fifty (350) feet of such property.
- H. Limitations. If within sixty (60) days from the filing of a completed application for a Certificate of Appropriateness for site alteration the Commission has not made a recommendation of approval or disapproval to the Council, the application shall be forwarded to the Council for approval or disapproval of the permit without the Commission's recommendation.

Subd. 9. Minor Work.

- A. Nothing in this section shall be construed to prevent minor work. Minor work does not require a Certificate of Appropriateness. The criteria set forth in Subdivision 8 C shall be followed to the extent practicable.
- B. Minor work should replace like-with-like, using the same materials and the same construction methods as originally used.

Subd. 10. Archaeological Resources and Traditional Cultural Properties. Special Consideration. The City's archaeological resources are part of its heritage and community fabric. These resources are important to the City's past and are irreplaceable and need to be protected from deterioration and site damage. Though considered historic resources under this ordinance, the City acknowledges that archaeological resources have distinct differences. The City shall maintain an inventory of known archaeology sites and potentially sensitive areas.

Subd. 11. Demolition

- A. Except as otherwise provided in this Section, the Building Official shall not issue a permit to demolish a designated Heritage Preservation Site until after a Certificate of Appropriateness is issued. No owner or any other person shall demolish or undertake to demolish a designated Heritage Preservation Site or an element within a designated Heritage Preservation Site without a Certificate of Appropriateness.
- B. No owner or person with an interest in real property designated as a Heritage Preservation Site shall allow property to fall into a serious state of disrepair without obtaining a Certificate of Appropriateness.

Examples of such deterioration include, but are not limited to, the following:

1. Deterioration of exterior walls or other vertical supports.
2. Deterioration of roofs or other horizontal members.
3. Deterioration of exterior chimneys.
4. Deterioration, crumbling or spalling of exterior stucco, masonry or mortar.

5. Lack of waterproofing of exterior walls, roofs, or foundations; including broken windows or doors that prove ineffective.
6. Deterioration of any feature so as to create a hazardous condition that requires the demolition of the Property for public safety purposes.
7. Deterioration of ornamental features.

Subd. 12. Enforcement. If inspection finds that the work is not in compliance with the Certificate of Appropriateness the City may suspend the Certificate of Appropriateness and issue a "Stop Work Order". No further work shall be undertaken on the project as long as a "Stop Work Order" is in effect except for work necessary to remedy the cause of the suspension.

Subd. 13. Emergency Repair. In emergency situations where immediate temporary repair is needed to protect the safety of the structure and its inhabitants, the Building Department, may approve the temporary repair without prior Commission or Council action.

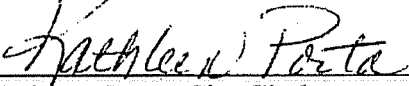
Subd. 14. Repository for Documents. The office of the City Clerk is designated as the repository for at least one copy of all studies, reports, recommendations and programs required under this Section 11.05.

Subd. 15. Recording of Heritage Preservation Sites. The office of the City Clerk shall record the designation of buildings, lands or areas as Heritage Preservation Sites with the Hennepin County Recorder or the Hennepin County Registrar of Titles, unless the County Recorder or Registrar of Titles refuses to record such designation, and shall transmit a copy of the recording document to the Building Department.

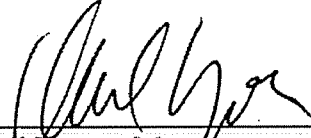
Section 2 – City Code Chapter 1, entitled "General Provisions and Definitions Applicable to the entire City Code Including Penalty for Violation" and Section 11.99, entitled "Violation a Misdemeanor" are hereby adopted in their entirety, by reference, as though repeated verbatim herein.

Section 3 - Effective Date - This Ordinance shall take effect upon its passage and publication.

FIRST READ at a regular meeting of the City Council of the City of Eden Prairie on the 23rd day of March, 2010 and finally read and adopted and ordered published at a regular meeting of the City Council of said City on the 20th day of April, 2010.



Kathleen Porta, City Clerk



Phil Young, Mayor

PUBLISHED in the *Eden Prairie News* on April 29, 2010.

EXHIBIT A

CITY OF EDEN PRAIRIE
HENNEPIN COUNTY, MINNESOTA

SUMMARY OF ORDINANCE NO. 5-2010

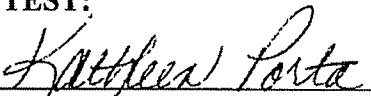
AN ORDINANCE OF THE CITY OF EDEN PRAIRIE, MINNESOTA, AMENDING IN ITS ENTIRETY CITY CODE CHAPTER 11, SECTION 11.05, RELATING TO HERITAGE PRESERVATION SITES AND ADOPTING BY REFERENCE CITY CODE CHAPTER 1 AND SECTION 11.99 WHICH AMONG OTHER THINGS CONTAIN PENALTY PROVISIONS.

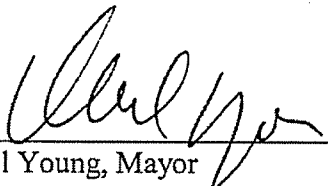
THE CITY COUNCIL OF THE CITY OF EDEN PRAIRIE, MINNESOTA, ORDAINS:

Summary: This ordinance amends Chapter 11, Section 11.05 of the City Code by repealing the existing section in its entirety and replacing it with a new section regulating historic preservation sites. The amendment adds definitions to the Section; revises the criteria for eligibility for historic preservation designation; provides a process for amendment or recession of a designation; provides for informational purposes only a designation of "HP" in the zoning of an historic property; provides for submission of a Heritage Site Preservation Plan following designation of a site as a heritage preservation site; amends the process to alter an historic site by requiring a Certificate of Appropriateness for alterations; requires and establishes criteria for a Certificate of Appropriateness for demolition of a historic preservation site; exempts minor work from the requirement of a Certificate of Appropriateness; provides that the City shall maintain an inventory of known archaeology sites and potentially sensitive areas; and provides enforcement remedies with respect to work not in compliance with a Certificate of Appropriateness.

Effective Date: This Ordinance shall take effect upon publication.

ATTEST:


Kathleen Porta, City Clerk


Phil Young, Mayor

PUBLISHED in the *Eden Prairie News* on April 29, 2010.

(A full copy of the text of this Ordinance is available from City Clerk.)

CITY OF EDEN PRAIRIE
HENNEPIN COUNTY,
MINNESOTA
SUMMARY OF ORDINANCE
5-2010

AN ORDINANCE OF THE CITY OF EDEN PRAIRIE, MINNESOTA, AMENDING IN ITS ENTIRETY CITY CODE CHAPTER 11, SECTION 11.05, RELATING TO HERITAGE PRESERVATION SITES AND ADOPTING BY REFERENCE CITY CODE CHAPTER 1 AND SECTION 11.99 WHICH AMONG OTHER THINGS CONTAIN PENALTY PROVISIONS.

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the process to alter an historic site by requiring a Certificate of Appropriateness for alterations; requires and establishes criteria for a Certificate of Appropriateness for demolition of a historic preservation site; exempts minor work from the requirement of a Certificate of Appropriateness; provides that the City shall maintain an inventory of known archaeology sites and potentially sensitive areas; and provides enforcement remedies with respect to work not in compliance with a Certificate of Appropriateness.

Effective Date: This Ordinance shall take effect upon publication. Phil Young, Mayor
ATTEST: Kathleen Porta, City Clerk

(A full copy of the text of this Ordinance is available from City Clerk.)
(Published in the Eden Prairie News on Thursday, April 29, 2010; No. 3967)

Affidavit of Publication Southwest Newspapers

State of Minnesota)
)SS.
County of Hennepin)

Laurie A. Hartmann, being duly sworn, on oath says that she is the authorized agent of the publisher of the newspaper known as the Eden Prairie News and has full knowledge of the facts herein stated as follows:

(A) This newspaper has complied with the requirements constituting qualification as a legal newspaper, as provided by Minnesota Statute 331A.02, 331A.07, and other applicable laws, as amended.

(B) The printed public notice that is attached to this Affidavit and identified as No. 3967 was published on the date or dates and in the newspaper stated in the attached Notice and said Notice is hereby incorporated as part of this Affidavit. Said notice was cut from the columns of the newspaper specified. Printed below is a copy of the lower case alphabet from A to Z, both inclusive, and is hereby acknowledged as being the kind and size of type used in the composition and publication of the Notice:

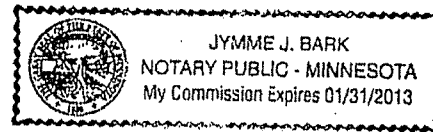
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By: Laurie A. Hartmann
Laurie A. Hartmann

Subscribed and sworn before me on

this 29th day of April, 2010

Jymme J. Bark
Notary Public



RATE INFORMATION

Lowest classified rate paid by commercial users for comparable space... \$31.20 per column inch
Maximum rate allowed by law for the above matter..... \$31.20 per column inch
Rate actually charged for the above matter..... \$12.59 per column inch