



# CITY OF HOUSTON

## MEMORANDUM

August 18, 2010

To: Mayor Annise Parker  
Houston City Council Members  
Marlene Gafrick, Director, Planning & Development  
David Feldman, City Attorney

Via City Secretary for distribution to addressees and to the public

From: Oliver Pennington  
City Council Member District G

Re: Historic Preservation Ordinance Amendments, July 19 Public Comment Draft

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The current Historic Preservation Ordinance, Houston Code of Ordinances Section 33-201 *et. seq.* (the “Ordinance”), provides that no contributing structure in an Historic District can be demolished unless the owner waits for 90 days, unless the City approves a variance from that requirement. The July 19, 2010, Public Comment Draft of amendments to the Ordinance (the “Amended Ordinance”), proposes to fundamentally and substantially change regulation of contributing and potentially contributing structures by the City and would prohibit demolition unless certain unusual financial considerations exist. Prior to the moratorium on the issuance of 90 day waiver certificates, the city instructed property owners wishing to demolish or alter their structures to take a “time out” and think about it (some called this a “cooling off” period). After 90 days, they were free to conduct their demolition or construct their alterations. Now we are considering adopting a whole new rule. Under the Amended Ordinance, we will be telling people they cannot demolish or alter their structures, period, end of story.

There is no evidence that the proposed ordinance will promote a sense of community in the areas it regulates and it is certainly contrary to the building which has occurred over the last 50 years.

While a series of public meetings is now being held by the Planning & Development Department, the procedure for the meetings has been to only allow

residents in attendance to submit written questions which effectively prohibits residents who are currently living in designated Historic Districts and the public at large from meaningful participation in the decision-making process. The procedure to disallow opinion to be given prohibited discussions of the complex social, personal property rights issues and community growth issues presented by the proposed ordinance. Many of these residents did not agree to be placed in an Historic District, and no one in a current Historic District has agreed to have alterations of their homes or other structures (such as changing a front door entrance) or the demolition of their structures regulated to the extent proposed in the Amended Ordinance.

I attended the July 29 “public hearing” at St. Stephen’s Church on the proposed Amended Ordinance, which was specifically held to hear the concerns of owners of properties in existing Historic Districts. Despite the fact that an ordinance is legislation and is being considered for adoption, the hearing was conducted in an “adjudicatory” style (like litigation) where those in attendance were not invited to speak or to share how they will be affected by the Amended Ordinance (as they would in a typical legislative hearing). Those present were only allowed to submit written questions. Some were answered, others were not. Also, much of the discussion at the meeting outlined how an Historic District can be created, which was irrelevant to the property owners already in an Historic District, and no statement was made outlining a procedure of how one now in an Historic District can opt out of the Historic District. At the conclusion of the August 10 meeting in the Heights, the audience voted overwhelmingly to be resurveyed.

I was introduced at the public meeting on July 29 but did not speak. After the meeting a number of those present sought me out and raised issues which I feel should be fully explored during the hearing process to assure a full vetting of the Amended Ordinance and to afford the public ample opportunity to comment as well as to develop a record to be considered by the Mayor and Council in considering whether to adopt the Amended Ordinance. The concerns include but are not limited to the following:

1. How can a resident or group of residents now in an Historic District withdraw from the District? I heard from residents that they did not agree to have the demolition or alteration of their homes so dramatically regulated. I might add that they mentioned several reasons for this (in addition to not signing a petition to be included in an Historic District) including:

- (a) being surrounded by non contributing or dilapidated homes;
- (b) the proposed Amended Ordinance does not control land use (i.e. commercial multi-family activity can occur in a primarily single family residential area if not prohibited by deed restrictions so long as the façade of the building does not change);
- (c) the value of the real estate owned will be devalued by the kind of new construction which is allowed by the proposed Amended Ordinance and even land owners who can now proceed to build cannot actually do so because financing is not available because of the likelihood that the character of the neighborhood will

- be retrograded with homes designed more than 50 years ago based upon the needs, economy and family living style at that time;
- (d) the number of structures affected by the Amended Ordinance can be readily expanded without regard to individual rights as evidenced by the fact that the Houston Archaeological and Historical Commission (the “Commission”) need only receive a petition from one property owner in a particular subdivision to be obliged to begin the process to have a mail in vote on the creation of an Historic District for the area.

I would like to see both (i) an opt out provision added to the Amended Ordinance where the same percentage of residents who are able to opt into an Historic District can also opt out, and (ii) a repetition of all residents in all Historic Districts which have already been created and recognized, and this only after residents have been fully informed of the new “no means no” rule. I do not agree that the Heights is the only Historic District that should be repetitioned.

2. As a City Council Member, I believe there is information which should be presented at a legislative-type hearing where the public, including those who will be affected by the Amended Ordinance, and interest and expert groups who have specific knowledge of the potential impact of the Amended Ordinance can be heard, such as:

- (a) How many structures are affected or potentially affected by the Amended Ordinance?;
- (b) How many contributing structures and non-contributing structures are there in the existing Historic Districts?;
- (c) Can an effort be made to identify particular buildings which should not be classified as contributing structures (even though they might be considered such) because they are surrounded by non contributing structures or are located near undesirable buildings or thoroughfares or other individual conditions exist where such designation would not be productive to historical preservation of the neighborhood or would be unfair to the individual owner because of the reduction in value of the property without a corresponding benefit to historic preservation?;
- (d) What will be the effect of the Amended Ordinance on individual home values throughout the City as a whole since the City relies heavily on ad valorem value increases to increase the City revenue stream? What would have happened if there had not been changing land uses over the years? Additionally, it is well established that a person’s home is his or her major asset. What happens to the budget if the value of the major asset is suddenly reduced? I particularly note that the distinguished University of Houston Professor Barton Smith projects in our region that during the next 25 years 80% of the new population and 64% of new jobs will be located outside the City limits. I wonder what the effect of the proposed Amended Ordinance will have on growth in Houston. We need to adopt an ordinance that will promote growth, not hinder it;
- (e) What will be the positive and negative effects on the communities affected by the Amended Ordinance? As stated before, not many conforming homes have been constructed in neighborhoods in the last thirty years. If the city attempts to

change this by regulation, it will be contrary to the natural tendencies of people as shown by their construction of larger more modern homes than the historical models which I saw at the public hearing.

- (f) What is being done in other cities in historic preservation? Are other cities recreating development which occurred more than 50 years ago? If they are, then we should examine the programs and the areas being preserved to determine if they are analogous to the Houston Historic Districts. I did hear at the meeting from a gentleman who is an architect and who has a daughter living in Miami that the historic preservation effort there is not serving the city well. If others are doing it successfully, those efforts are a positive for Houston trying it. If not, there is evidence against the Amended Ordinance;
- (g) Are there other programs or ordinances which are more dynamic and respectful of individual rights which can effectively promote Historic Preservation?
- (h) We received numerous emails asking the same question: if a non-contributing structure burns down, can the homeowners rebuild the structure that existed prior to the fire, or are they forced to now build a structure in lines with the contributing or potentially contributing structures in the Historic District. This becomes a real issue when a homeowner has a large home and the contributing and potentially contributing structures in the Historic District are all small bungalows. This is an important point because presumably the City officials attending these meetings do not know the answer either. This specific question was asked at the August 10 meeting in the Heights and the response was that this situation is not addressed by the current language.

3. Requested Revisions to Amended Ordinance: I have received numerous emails and phone calls from constituents with comments to the Amended Ordinance. Some of the more pertinent comments are outlined below:

- Sec. 33-222(a)(2) & 33-222.1(a)(2): while it was allowed under the Ordinance, I received many comments stating that the Commission should NOT be able to initiate the designation of a landmark, archaeological site, protected landmark or historic district.
- Sec. 33-222.1(a)(1) & (c): the threshold for creation of an Historic District is too low. The Amended Ordinance only requires a request from a single person in a neighborhood to begin the historic neighborhood procedures. Afterwards, a 67% approval from those who actually return their notice cards is required to create a District. If only 10 cards are returned in a proposed Historic District containing 200 homes, and 7 of those cards are in favor, that is sufficient to create an Historic District and that is not fair or adequate in my opinion. This can be addressed in two ways: (a) either make all cards not returned constitute “NO” votes or (b) factor in a quorum requirement (such as 80% of all cards must be returned, and 67% of those returned cards must vote in the affirmative). There is a related issue of which City-owned properties get to vote. We heard from several people that all city properties (esplanades, parks, etc.) were voted in favor of the designation.

There seems to be contradictory information about how the process actually works that should be clarified.

- Sec. 33-201: the definitions of “contributing” and “potentially contributing” are quite vague and ambiguous (“reinforces the cultural, architectural or historical significance of the historic district”). While this was also the case under the Ordinance, now would be a good time to try to make the definition clearer.
- Deal with the issue of what happens if a home is destroyed (by fire or hurricane). Can the homeowners replace exactly what was there pre-disaster, or do they now have to build a contributing structure regardless of size of structure and family situation.

4. Finally, there is no estimate of the cost to the City of administering the Historic District program supporting the necessary bureaucracy necessary to run the proposed program. Additionally, the governance provisions of the Historic Commission do not require it to regularly examine the efficacy of the program or its effect on individual rights or the community at large.

I recommend a change to the procedures for the hearings on the proposed Amended Ordinance to invite full public input, including input from experts such as the GHBA, HAR, Rice University, University of Houston, Texas Southern University, and others with expert knowledge of the issues involved in this matter. The hearings before the Historical Commission and the Planning Commission will not add to the knowledge of the social and economic impact of the proposed ordinance, because neither of those bodies are charged with responsibility under the Charter and Ordinances of the City to investigate and to adjudicate those issues. Unfortunately, the quick pace with which this language has been presented to the residents has caused confusion and pitted neighbor against neighbor. It may require a longer process, but it will afford those affected an opportunity to express their views on the Amended Ordinance. This hearing process will afford a chance for all to be heard and the statements made will fully inform the Mayor and Council of the merits and limitations of the proposed Amended Ordinance so that we can reach a fair and equitable decision for our City on this important issue.

Thank you for your consideration of these issues. I look forward to discussing this subject matter in greater detail with my colleagues and more importantly with the homeowners of Houston.