

NEWTON ORDINANCE NO. 5009-20

NORTH NEWTON ORDINANCE NO. 633-20

A JOINT ORDINANCE OF THE CITIES OF NEWTON AND NORTH NEWTON RE-ESTABLISHING THE JOINT HISTORICAL PRESERVATION COMMISSION AND PRESCRIBING ITS DUTIES; ESTABLISHING CRITERIA AND PROCEDURES FOR THE DESIGNATION OF HISTORIC STRUCTURES, SITES, LANDMARKS AND DISTRICTS; ESTABLISHING STANDARDS, CRITERIA AND PROCEDURES FOR THE ISSUANCE OF CERTIFICATES OF APPROPRIATENESS AND CERTIFICATES OF ECONOMIC HARDSHIP AS TO PROPOSED ACTIVITIES WHICH WOULD SERVE TO ALTER OR AFFECT PROPERTIES DESIGNATED AS HISTORIC STRUCTURES, SITES OR LANDMARKS, OR WHICH WOULD SERVE TO ALTER OR AFFECT PROPERTIES LOCATED WITHIN DESIGNATED HISTORIC DISTRICTS; AND ESTABLISHING MINIMUM MAINTENANCE REQUIREMENTS FOR PROPERTIES DESIGNATED AS HISTORIC STRUCTURES, SITES OR LANDMARKS, AND FOR PROPERTIES LOCATED WITHIN DESIGNATED HISTORIC DISTRICTS; AND REPEALING NEWTON ORDINANCE NO. 4818-14, NEWTON ORDINANCE NO. 4278-98 AND NORTH NEWTON ORDINANCE NO. 429.

BE IT ORDAINED BY THE GOVERNING BODIES OF THE CITIES OF NEWTON, KANSAS, AND NORTH NEWTON, KANSAS:

SECTION 1. Definitions. For purposes of the administration of this Ordinance, the following words or terms shall have the following definitions.

1. Administrator: The designated individual assigned to administer, interpret and enforce the provisions of this Ordinance. Until such time as an Administrator is designated, the City Clerk of the City in which is located a proposed or designated historic structure, site, landmark or district shall perform the functions of the Administrator.
2. Alteration: Any act or process that changes one (1) or more of the exterior architectural features of a structure, including, but not limited to, the erection, construction, reconstruction or removal of any structure.
3. Building: A structure, such as a house, barn, church, hotel, courthouse, city hall, social hall, commercial structure, library, factory, mill, train depot, theater, school, store or similar construction, created to shelter any form of human activity. The term also may refer to a small group of buildings, which constitute a historically and functionally related unit such as a courthouse and jail, house and barn, mansion and carriage house, church and rectory, and farmhouse and related outbuildings.

4. Certificate of Appropriateness: A certificate issued by the Commission indicating its approval of plans for alteration, construction, removal or demolition of a landmark or of a structure located in a historic district based primarily in design consideration.
5. Certificate of Economic Hardship: A certificate issued by the Commission indicating its approval of plans for alteration, construction, removal or demolition of a landmark or of a structure located in a historic district based primarily on economic considerations.
6. City: The City of Newton, Kansas, or the City of North Newton, Kansas.
7. Commission: The Joint Historic Preservation Commission created under the terms of this Ordinance.
8. Construction: The act of adding to an existing structure or the erection of a new principal or accessory structure on a lot or property.
9. Contributing: A significant building, site, structure or object, which adds to the architectural qualities, historic association or archeological values of a designated tract because:
 - (1) It was present during the pertinent historic time;
 - (2) It possesses integrity and reflects its significant historic character or is capable of yielding important information about the pertinent historic period; or
10. Demolition: Any act or process that destroys in part or in whole a landmark or a structure within a designated tract.
11. Design Guideline: A standard of appropriate activity that will preserve the historic and architectural character of a structure or area.
12. Exterior Architectural Appearance: The architectural character and general composition of the exterior of a structure, including, but not limited to, the kind, color and texture of the building material and the type, design and character of all windows, doors, light fixtures, signs and appurtenant elements.
13. Façade: The exterior face of a building which is the architectural front, sometimes distinguished by elaboration or architectural or ornamental details.
14. Governing Bodies: The Newton City Commission and the North Newton City Council.
15. Historic District: A number of contiguous locally designated landmarks that has petitioned and been granted designation as a historic district pursuant to the procedures set forth in this Ordinance.

16. Improvement: Any physical change in a structure or property including the adding of exterior features, any change in landscape features, alteration of a structure, new construction, painting or repainting, reconstruction, restoration or remodeling, but excluding Normal Maintenance and Repair.
17. Landmark: A site, structure or object that is worthy of rehabilitation, restoration and or preservation because of its historic, archeological and/or architectural significance to the City of Newton or North Newton, Kansas.
18. Newton/North Newton Register of Historic Places: The official register or listing of those structures, sites, landmarks and districts which have been granted local historic designation pursuant to the procedures set forth in this ordinance.
19. Object: Those physical items that have functional, aesthetic, cultural, historical or scientific value and are relatively small in scale and simply constructed. While an object may be, by nature or design, movable, it should be located in a specific setting or environment appropriate to its significant historic use, role or character. Objects include sculptures, monuments, street signs, fence posts, hitching posts, mileposts, boundary markers, statuary and fountains.
20. Ordinary Maintenance and Repair: Any Improvement or work for which a building permit is not required by City Ordinance, designed to correct deterioration, decay or damage and restore, as may be practical, a structure or property to the condition that existed prior to the deterioration, decay or damage.
21. Owner of Record: Those individuals, partnerships, firms, corporations, public agencies or any other legal entities holding title to property but not including legal entities holding mere easement or leasehold interests; may also be referred to as property owner(s). Current owner(s) of record are those listed as owners on the records of the register of deeds. For the purposes of this article, the vote of owner(s) of record shall require the complete signature(s) of the listed owner(s) on the records of the register of deeds. For example, deeds designating joint ownership by two (2) individuals shall require the signature of both individuals for a single vote to be recorded.
22. Property: An area of land, undivided by a street, alley, railroad, stream or similar physical feature, under common ownership or control, which is or will be occupied by one structure or land use and any accessory structures and uses. A property could be made up of one or more lots of record, one (1) or more portions of a lot or lots of record, or any combination thereof. The term shall include landscape features.
23. Removal: Any relocation of a structure in whole or in part on its site or to another site.
24. Repair: Any change to a structure or object that is not construction, removal, alteration or demolition.

25. Site: The location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined or vanished, where the location itself possesses historic, cultural or archeological value regardless of the value of any existing structure. Examples of sites include habitation sites, burial sites, village sites, ruins of historic buildings and structures, designed landscapes, natural features, springs and landscapes having cultural significance.
26. Structure: Anything constructed or erected, the use of which requires permanent or temporary location on or in the ground, including, but not limited to, the following: buildings, walls, gazebos, signs, towers and swimming pools.

SECTION 2. Joint Historic Preservation Commission; Re-establishment. There is hereby re-established the Joint Historic Preservation Commission of the Cities of Newton and North Newton. Its members shall be appointed by the Mayors of the Cities of Newton and North Newton with the approval of their respective City governing bodies, in the manner hereinafter described.

SECTION 3. Same; Number and Qualification of Members. The Joint Historic Preservation Commission shall consist of nine members, six of whom shall be appointed by the Mayor of the City of Newton, with the consent of the governing body thereof, and three of whom shall be appointed by the Mayor of the City of North Newton, with the consent of the governing body thereof. The following qualifications shall apply to appointees to the Commission:

- (a) All appointees shall be persons who have a demonstrated interest, knowledge or training in fields closely related to historic preservation, such as history, architecture, landscape architecture, architectural history, archeology, planning, real estate, law, finance, building trades, urban design and geography.
- (b) Not less than three of the Newton appointees and not less than two of the North Newton appointees shall be composed of persons who are engaged in or retired from preservation-related professions such as architecture, architectural history, archeology, history, landscape architecture and planning; provided, however, that upon a demonstration that the required number of positions for preservation-related professionals could not be filled despite a reasonable effort to do so, the governing body may waive this requirement. The determination of what constitutes reasonable efforts to fill such positions shall take into consideration the possibility that the absence of certain preservation-related professions on the Commission may necessitate the retaining of consultants as to certain matters as provided herein.
- (c) No person shall be appointed to the Commission until a written summary of that person's qualifications in relation to the requirements set forth in subsections (a) and (b) above has been obtained and placed on file with the City Clerk of the appointing city. The written summaries of each appointee shall be provided to the

State Historic Preservation Officer and shall be made available to the public upon request.

SECTION 4. Same; Terms of Members. The initial appointees shall be appointed to serve terms in the following manner.

- (a) City of Newton Appointees. Two members shall be appointed to serve one year terms, two members shall be appointed to serve two year terms and two members shall be appointed to serve three year terms.
- (b) City of North Newton Appointees. One member shall be appointed to serve a one year term, one member shall be appointed to serve a two year term and one member shall be appointed to serve a three year term.

Thereafter, all appointees shall be appointed for three-year terms each. Each term shall begin on the first day of April of the year of appointment, and shall end on the 31st day of March in the year of expiration. Each governing body shall have the right to remove any member of the Commission appointed thereby for failure to regularly attend to the duties of such office, or for other good cause or reason as deemed appropriate by such governing body. In the event of the death, incapacity, resignation, disqualification or removal of any member, the governing body which appointed such member shall fill such vacancy within sixty (60) days after such position becomes vacant by appointment in the same manner as designated above. Such appointment to fill a vacancy on the Commission shall be made for the unexpired portion of such vacated term. All members of this Commission shall serve without compensation. There shall not be a limit on the number of consecutive terms served by one member.

SECTION 5. Same; Meetings. The Commission shall meet at regular intervals as established from time to time by the Commission or at special meetings, subject to the following requirements.

- (a) No meeting shall be conducted by the Commission or by any committee thereof unless notice of the date, time and place of such meeting has been conveyed not less than seven days in advance thereof to the City Clerks of the Cities of Newton and North Newton for the purpose of enabling such City Clerks to provide any necessary public notice of such meeting as required by law.
- (b) All meetings of the Commission, or of any committees thereof, shall be open to the public and shall be conducted in conformity with the Kansas Open Meetings Act, K.S.A. 75-4317, *et seq.*
- (c) The Commission, and any committees thereof, shall keep a record of its proceedings, a copy of what shall be filed for public view in the offices of the City Clerks of the Cities of Newton and North Newton.

- (d) No business of the Commission may be conducted unless a quorum of not less than a majority of the appointed members is present, disregarding any vacancies on the Commission.

SECTION 6. Same; Officers. The Commission shall elect a Chair to preside over the meetings of the Commission, a Vice-Chair to preside in the absence of the Chair, and a Secretary to be responsible for the preparation of the records of the Commission and to preside in the absence of either the Chair or the Vice-Chair.

SECTION 7. Duties and Responsibilities. The Commission shall perform the following additional functions.

- (a) Historic Survey. The Commission shall prepare or cause to be prepared an inventory of structures, sites, landmarks and districts in the Cities of Newton and North Newton which do or may have architectural, archaeological, cultural or historical significance to the Cities of Newton and North Newton, and may update the inventory from time to time as the need may arise. As a part of the survey, any prior surveys and studies by any public or private organization may be reviewed and evaluated, and appropriate descriptions, facts, photographs and other representations may be compiled. All new surveys and inventories compiled shall utilize the inventory form and survey manual prepared by the Kansas State Historic Preservation Office. Upon completion of the survey for all or any portion of the Cities of Newton and North Newton, the Commission shall identify the most significant structures, sites, landmarks and districts with potential for designation as historic structures, sites, landmarks and districts as hereinafter provided in this ordinance. Complete copies of documents compiled in all surveys will be stored in the Harvey County Historical Society research library, Newton Public Library, City of Newton and Mennonite Library and Archives on Bethel College Campus in North Newton.
- (b) Advisory Functions. The Commission shall formulate and make such recommendations to the governing bodies of the Cities of Newton and North Newton as to activities, programs or regulations which the governing bodies should consider implementing for any of the following purposes:
 - (1) To promote the designation of historic properties and landmarks, and the creation of historic districts for the educational, cultural, economic and general welfare of the public;
 - (2) To strengthen the economic base of the Cities by the re-vitalization, preservation, protection and enhancement of those structures, sites districts which reflect outstanding elements of the cultural, artistic, social, economic, political, architectural, historic or other heritage of the Cities;

- (3) To promote the outstanding historical or architectural structures, sites or districts of the Cities by promoting civic pride in the history and accomplishments of the past; and
 - (4) To stabilize and improve the aesthetic and economic vitality and values of such structures, sites and districts.
- (c) Administrative Functions. The Commission shall perform the administrative and hearing functions delegated to the Commission below as to the designation of historic structures, sites, landmarks and districts (and as to the rescission of any such designations), as to the issuance (or denial) of Certificates of Appropriateness, and as to issuance (or denial) of Certificates of Economic Hardship.
 - (d) Impact Review Functions. At such time as one or more of the governing bodies may enter into an agreement with the Kansas State Historical Society to such effect, the Commission shall conduct reviews and make recommendations to such governing bodies as to the impact of proposed activities.
 - (e) Fiscal Functions. Make recommendations to the governing bodies regarding funding for the purpose of carrying out the duties and powers of the Newton/North Newton Historic Preservation Commission.
 - (f) Ordinance Review Functions. Periodically review the preservation ordinances of the Cities of Newton and North Newton and recommend to the governing bodies any amendments appropriate for the protection and continued use of historically and architecturally significant structures, sites and districts.
 - (g) Annual Training. In order to stay current with developments in the field, each Commission member is strongly encouraged to attend at least one informational or training meeting per year that pertains to fields associated with historic preservation or with the duties of local preservation commissions.
 - (h) By-Laws. The Commission shall adopt rules of procedure or by-laws which shall be made available to the public. Included in the rules of procedure shall be section which specify attendance requirements for members and which cover potential conflicts of interest situations.

SECTION 8. Designation of Historic Structures, Sites, Landmarks and Districts.

- (a) The Newton/North Newton Register of Historic Places is a designation not affiliated with the National Register of Historic Places or the Register of Historic Kansas Places. Its purpose is to protect landmarks and historic districts from construction, demolition or alteration that may detract from its historical or architectural character and to publicize and recognize local landmarks thereby promoting community pride. The Register shall include the following:

- (1) A list of structures, sites, landmarks and districts designated as significant pursuant to this ordinance; and
 - (2) A description of the boundaries of each area designated as a district pursuant to this ordinance.
- (b) A structure, site, landmark or district may be nominated for designation as an historic structure, site, landmark or district by either of the following:
- (1) Upon majority vote of the Historic Preservation Commission, with the consent of the owner(s) constituting more than fifty percent (50%) of all ownership interests of record in such a structure, site or landmark; or
 - (2) By application of the owner(s) constituting more than fifty percent (50%) of all ownership interests of record in such a structure, site or landmark; or
 - (3) By application of the owner(s) of record of more than fifty percent (50%) of all property within a proposed site or district.
- (c) Except for nominations made by the Commission, any application for such a designation shall be made by means of an application form developed by the Commission for such purpose and approved by City Attorneys for the Cities of Newton and North Newton. All such applications shall be submitted to the Administrator, and shall be accompanied by an application fee in the amount of \$50.00 (if accompanied by the consent of the owners of record of all ownership interests in all property which is the subject of application) or in the amount of \$100.00 (if not accompanied by all such consents), and by a certificate of a licensed abstractor providing the name and address of the owner or owners of record of all ownership interests in such structure, site, landmark or district. As to nominations made by the Commission, the Commission shall be responsible for procuring the required abstractor's certificate. Upon receipt thereof, the Administrator shall cause the matter to be placed on the agenda for the next regularly scheduled meeting of the Commission for which any agenda submission deadline has not expired.

SECTION 9. Same; Criteria for Designation. The Commission shall, upon such investigation as it deems necessary, make a determination as to whether a nominated structure, site, landmark or district possesses significant historical, archeological and/or architectural qualities to merit designation as an historical structure, site, landmark or district, pursuant to the following criteria:

- (a) Its character, interest or value as part of the development, heritage or cultural characteristics of the community, county, region, state or nation;
- (b) Its location as a site of a significant local, county, regional, state or national event;

- (c) Its identification with a person or persons who significantly contributed to the development of the community, county, region, state or nation;
- (d) Its embodiment of distinguishing characteristics of an architectural style valuable for the study of a period, or of a type or method of construction, or of a use of indigenous materials;
- (e) Its identification as a work of a master builder, designer, architect or landscape architect whose individual work has influenced the development of the community, county, region, state or nation;
- (f) Its embodiment of elements of design, detailing, materials or craftsmanship that render it architecturally significant;
- (g) Its embodiment of design elements that make it structurally or architecturally innovative;
- (h) Its unique location or singular physical characteristics that make it an established or familiar visual feature;
- (i) Its character as a particularly fine or unique example of a utilitarian structure, including but not limited to farmhouses, gas stations or other commercial structures, with a high level of integrity or architectural significance; and
- (j) Its location as a site of prehistoric or historic occupation or activity possessing significant archeological value;

provided, however, that any structure, site, landmark or district that meets one or more of the above criteria must also have sufficient integrity of location, design, materials or workmanship to make it worthy of preservation or restoration.

SECTION 10. Same; Public Hearing Procedure. Prior to formulating a recommendation for the designation of any historic structure, site, landmark or district, the Commission shall conduct a public hearing as to each such nomination at a reasonable time and place as established by the Commission, subject to the following requirements.

- (a) Not less than twenty (20) days prior to the commencement of the public hearing a notice thereof shall be published in the official city newspaper for the City in which such structure, site, landmark or district is located, which notice shall state the date, time and place of the hearing and contain a description of the location of the structure, site, landmark or district including the legal description thereof.
- (b) If the hearing is upon an application to which written consents have not been given by the owners of all ownership interests of record in the subject property, then not less than twenty (20) days prior to the commencement of the public

hearing a written notice of such hearing containing the same information set forth in subsection (a) above shall also be sent by regular mail to each person reflected in the real estate records of the county who holds any ownership interest in the nominated structure, site or landmark, or in any property located within a nominated district.

- (c) The public hearing may be continued from time to time, as the Commission deems necessary to fully explore all issues relevant to the nomination. Once the notice requirements set forth in subsections (a) and (b) have been satisfied, such notice procedure need not be repeated as to the continuation on another date or dates of a public hearing commenced with such notice, if notice of the date, time and place of such public hearing continuation is announced at the time of such public hearing or at the time of a continuation thereof.
- (d) If, at the time of the commencement of any public hearing procedure hereunder, the Commission or a designee thereof has prepared a report or analysis as to any such nomination, such report shall be presented at the commencement of such public hearing procedure prior to the opening of the matter to public comment. A reasonable number of copies of any such written report or analysis shall be on hand and available to the public.
- (e) Any person or party may appear in person or by a representative and be heard at any such public hearing; provided, however, that nothing herein shall limit or restrict the ability of the Commission to establish and enforce reasonable rules of order.
- (f) The Commission shall not consider any information pertaining to such a nomination which information has not been provided or disseminated as a part of a public hearing procedure with a reasonable opportunity of all interested parties to comment thereon or respond thereto.

SECTION 11. Same; Report and Recommendation. Within sixty (60) days of the conclusion of the public hearing procedure, the Commission shall forward to the governing body of the City in which such structure, site, landmark or district is located its report and recommendation adopted by majority vote thereof as to whether it should be designated as a historic structure, site, landmark or district. The report and recommendation shall be accompanied by a complete record of the proceedings of the Commission on the nomination, including all written materials submitted to the Commission in relation thereto. The recommendation shall include the following information;

- (a) An explanation of the significance or lack of significance of the nominated structure, site, landmark or district as it relates to the criteria set forth in this ordinance; and
- (b) As to a nominated structure, or as to a nominated district whose significance is substantially based upon the presence of structures of deemed historic

significance, a description of the significant architectural features that warrant preservation or restoration, and a description of the types of construction, alterations, demolition or removal (if any), other than those requiring a building or demolition permit, that should not be undertaken without the requirement of obtaining a Certificate of Appropriateness under this Ordinance.

Any member of the Commission may also submit a concurring or dissenting report or recommendation. A failure of the Commission to approve a majority report or recommendation within the time prescribed above shall be deemed to be a negative recommendation, and the matter shall then go before the governing body as such.

SECTION 12. Same; Action by Governing Body. A report and recommendation of the Commission, or the failure of the Commission to approve a majority report or recommendation within the time prescribed, shall be placed on the next available agenda of the governing body of the City in which such structure, site, landmark or district is located, according to the policies and time requirements for the submission of agenda items of such governing body. The governing body shall conduct a public hearing on the matter, and may continue that public hearing from time to time, as the governing body shall deem appropriate. No additional public notice shall be required as to any such public hearing procedure beyond the normal publication of the agenda of such meeting of the governing body if such matter is listed thereon as an agenda item. The governing body shall not consider any information pertaining to such a nomination which information has not been provided or disseminated as a part of a public hearing procedure of the Commission or of the governing body with a reasonable opportunity of all interested parties to comment thereon or respond thereto. Upon the conclusion of such public hearing procedure, or at any time thereafter, the governing body may consider an ordinance designating any such nominated structure, site, landmark or district, or any part or portion thereof, as an historic structure, site, landmark or district.

SECTION 13. Same; Effect of Denial of Designation. In the event of a denial of a designation of an historical structure, site, landmark or district, no person or party may submit any new nomination of such district or any portion thereof for a period of one year following such action by the governing body; except, however, that an application may be submitted sooner by any new owner of a proposed structure, site or landmark who acquired such interest after the prior nomination of the structure, site or landmark. Acquisition of a partial ownership interest whereby any prior owner continues to hold an ownership or other equitable interest in the structure, site or landmark shall not qualify for the foregoing exception.

SECTION 14. Same; Notice of Designation. The Administrator shall forward notice of designation of any structure, site, landmark or district approved by the City governing body to the Kansas State Historical Society. Within seven (7) days after approval of such an ordinance, the Administrator shall also notify in writing the owner or owners of each structure, site or landmark, and the owners of all real estate located within a designated historic district. The Administrator shall also notify the city building official of the designation. Within thirty (30) days after approval of such an ordinance, the Administrator shall file with the Harvey County Register of Deeds a certified copy of the ordinance.

SECTION 15. Same; Effect of Designation on Zoning. The designation of a structure, site, landmark or district shall in no way alter the uses permitted by the existing or any future zoning classification of the properties so designated.

SECTION 16. Application to Rescind Historic Designation. A structure, site, landmark or district, which has been given historic designation under the provisions of this Ordinance, may be considered for rescission of such designation under the following procedure.

- (a) The Commission shall not consider the rescission of any such designation sooner than at least one year from the adoption of an ordinance making such designation unless the Commission also determines that such consideration is warranted due to some substantial change of circumstances (such as through a substantial calamity or destruction of the subject property) which has not been caused by the owner of any interest in the subject property.
- (b) Consideration of the rescission of such designation may be initiated by either: (1) a majority vote of the Commission, except, however, that no structure, site or landmark owned by either the City of Newton or the City of North Newton shall be considered for rescission of such designation without prior approval of the governing body; or (2) by application of any owner of such a structure, site or landmark, or by any owner of property within a proposed site or district.
- (c) An application for the rescission of such a designation need not be in any particular form or format, except that it shall set forth in detail the changed circumstances justifying the rescission or otherwise setting forth the basis for the application in reference to the application of the designation guidelines and criteria for designation as set forth in this Ordinance in reference to the subject property.
- (d) All such applications shall be submitted to the Administrator, and shall be accompanied by an application fee in the same amount as for an original designation and by a certificate of a licensed abstractor providing the name and address of the owner or owners of record of all ownership, equitable or lien interests in such structure, site, landmark or district. As to nominations made by the Commission, the Commission shall be responsible for procuring the required abstractor's certificate.
- (e) Upon receipt thereof, the Administrator shall cause the matter to be placed on the agenda for the next regularly scheduled meeting of the Commission for which any agenda submission deadline has not expired.
- (f) A public hearing shall be conducted upon the matter in the same manner as conducted for original designations under this ordinance, subject to the same notice requirements as set forth in this ordinance as to hearings on original designations.

- (g) Revisions of historic designation shall be based solely upon a re-evaluation of the criteria and the merits by which such designations are considered, and the mere consent to such designation by the holder of any interest in the property, or the absence of such consent, shall be given no weight.

SECTION 17. Certification of Appropriateness; When Required. A Certificate of Appropriateness shall be required before any of the following actions may be undertaken affecting the exterior architectural appearance of any designated historic structure, site or landmark, or of any structure within a designated historic district:

- (a) Any construction, alteration or removal requiring a building permit from the city;
- (b) Any demolition in whole or in part requiring a demolition permit from the City; or
- (c) Any construction, alteration, demolition or removal affecting a significant exterior architectural or historical feature as specified in the ordinance designating the landmark. However, such requirement shall not apply to such repairs and maintenance measures minimally required to prevent loss or harm to the structure resulting from accidental or natural causes.

Nothing in this Ordinance shall be construed to prevent the Ordinary Maintenance and Repair of a structure or building.

SECTION 18. Same; Application. A copy of every application for a building or demolition permit, including any accompanying plans and specifications, affecting the exterior architectural appearance of a designated historic structure, site or landmark, or of any structure within a designated historic district will be forwarded by the building official to the Administrator and shall initiate an application for a Certificate of Appropriateness. The building inspection department shall not issue a building or demolition permit until a Certificate of Appropriateness or Certificate of Economic Hardship has been issued by or on behalf of the Commission. Application for review of construction, alteration, demolition or removal not requiring a building permit for which a Certificate of Appropriateness is required shall be initiated on a form prepared by the Commission.

SECTION 19. Same; Review of Application by or on Behalf of the Joint Historic Preservation Commission.

- (a) Any applicant may request a meeting with the Commission before the application is received or during the review of the application. The Commission shall consider the completed application at a regular or special meeting. The Commission shall review the application and issue or deny the Certificate of Appropriateness within thirty (30) days of receipt of the application. Written notice of the decision shall be provided to the applicant and the building inspection department within seven (7) days following the determination and shall

be accompanied by a Certificate of Appropriateness in the case of approval. Unless the applicant has consented to an extension of such time, a failure of the Commission to approve an application within thirty (30) days of receipt of the application shall constitute a denial of the application. The Commission shall take all reasonable efforts to expedite consideration of an application so as to avoid unnecessary delays and inconvenience.

(b) The Administrator is hereby delegated authority to conduct an administrative review of certain applications, and to grant a Certificate of Appropriateness, if compliance is found with the applicable review standards, without the necessity of the matter being reviewed by the Commission. If compliance is not found, the Administrator shall refer the application to the Commission. Such delegated authority to conduct administrative reviews and approvals shall be limited to the following:

- 1) Maintenance and minor repair to the exterior when using identical or like-kind materials and which does not alter the original appearance, design, profile and size of the current feature. This includes all windows, doors, porches, roofing, etc.
- 2) Installation of signs and awnings when not directly connected to a historic property.
- 3) Minor alterations to exterior of buildings including the addition of mechanical or electrical equipment when not affecting character-defining aspects of historical properties.
- 4) Installation of fire safety equipment or minor alterations to meet the Americans with Disabilities Act.
- 5) Interior modifications that do not affect or remove character-defining elements of interior spaces, including the installation of mechanical, plumbing or electrical systems that require minimal changes to existing features.

SECTION 20. Same; Denials of Applications. Except for denials that are deemed to occur due to the failure of the Commission to act within the time allotted, a denial of a Certificate of Appropriateness by the Commission shall be accompanied by a statement of the reasons for the denial. The Commission shall make recommendations to the applicant concerning changes, if any, in the proposed project that would cause the Commission to reconsider its denial and shall confer with the applicant and attempt to resolve as quickly as possible the differences between the owner and the Commission. The applicant may resubmit an amended application or reapply for a building or demolition permit that takes into consideration the recommendations of the Commission.

SECTION 21. Same; Appeals. Any applicant dissatisfied with a denial of an application for a Certificate of Appropriateness may file an appeal to the governing body of the City in which such historic structure, site, landmark or district is located, which appeal must be submitted in writing to the City Clerk within fourteen (14) days of the date of notification of that determination. The governing body shall conduct a public hearing upon, consider and determine any such appeal within sixty (60) days of the filing of the appeal. Any failure by the governing body to act within such time, unless an extension of such time is agreed upon by the applicant, shall constitute a denial of the appeal.

SECTION 22. Same; Standards for Review. In considering an application for a Certificate of Appropriateness or any appeal of a denial thereof, the Commission and the governing body shall be guided by the following general standards in addition to any design criteria in this ordinance and in the ordinances designating the historic structure, site, landmark or district.

- (a) Every reasonable effort shall be made to provide a compatible use for a property that requires minimal alteration of a building, structure, site or object and its environment, or to use a property for its originally intended purpose.
- (b) The distinguishing original qualities of character of a building, structure or site and its environment shall not be destroyed. The removal or alteration of any historic materials or distinctive architectural features should be avoided when possible.
- (c) All building, structures and sites shall be recognized as products of their own time. Alterations that have no historical basis and that seek to create an earlier appearance shall be discouraged.
- (d) Changes that may 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.
- (e) Distinctive stylistic features or examples of skilled craftsmanship that characterize a building, structure or site shall be treated with sensitivity.
- (f) Deteriorated architectural features shall be repaired rather than replaced, wherever 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 duplication of feature, substantiated by historic, physical or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.

- (g) The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- (h) Every reasonable effort shall be made to protect and preserve archaeological resources affected by, or adjacent to, any project.
- (i) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property or neighborhood.

SECTION 23. Same; Design Criteria. The purpose of the following Design Criteria is to encourage preservation of intact significant properties, restoration of significant properties, restoration of significant properties that have already undergone extensive alterations, and new construction, as long as such complements existing buildings and streetscapes. It is not the intention of these criteria to discourage new architectural styles. In considering any application for a Certificate of Appropriateness, the Commission shall consider the Standards for Review listed herein, and the following design criteria.

- (a) Alterations. Specific design criteria for exterior alterations of structures, sites and landmarks shall be based on the U.S. Secretary of the Interior Standards for Rehabilitation, as published in section 36, Code of Federal Regulation, part 67, and as revised from time to time, and by further reference to such specific design criteria as the Commission may require for the designation of the landmark.
- (b) New construction and additions to existing buildings and structures.
 - (1) The design for new construction shall be sensitive to and take into account the special characteristics that the historic designation was established to protect. Such consideration may include, but should not be limited to, building scale, height, orientation, site coverage, spatial separation from other buildings, facade and window patterns, entrance and porch size and general design, materials, textures, color, architectural details, roof forms, emphasis on horizontal or vertical elements, walls, fences, landscaping and other features deemed appropriate by the Commission.
 - (2) New buildings need not duplicate older styles of architecture but must be compatible with the architecture within an historic district. Styles of architecture will be controlled only to ensure that their exterior design, materials and color are in harmony with neighboring structures.
- (c) Demolition, relocation and land surface change.
 - (1) Demolition in whole or in part of individual structures shall ordinarily not be permitted. Exceptions are allowed only if a structure has been

substantially damaged through fire, windstorm, flood or deterioration and if there is reasonable proof that it would not be economically or physically feasible to rehabilitate. Other exceptions may be allowed if a structure does not possess the integrity, originality, craftsmanship, age or historical significance to merit preservation. However, demolition of past additions which have not gained historical significance and which have disguised or sheathed original elements or facades are encouraged, as long as the intention is to restore such elements or facades.

(2) Structures should not be removed from their original site. Exceptions will be allowed only if there is substantial evidence that it would not be practical or economical to utilize the building on its present site. If a structure lies in the path of a public improvement project involving the City, and if the building is worthy of preservation by virtue of its integrity, originality, craftsmanship, age or historical significance, relocation may be considered as an alternative.

(3) Substantial change of land surface within the boundaries of an historic structure, site, landmark or district should not be permitted. Exceptions will be allowed only if there is substantial evidence that the change would not be detrimental to the historical and architectural character of surrounding structures or landscaping.

(d) Signage guidelines. The Commission shall receive copies of any request for permit, appeal or variance regarding a sign to be located on an historic structure, site or landmark, or within an historic district. The Commission shall review and approve such requests under the procedures set forth within this section for other permits, subject to the following guidelines.

(1) Signs should be designed and placed so as to appear an integral part of the building design, in proportion to the structure and environment and to respect neighboring properties.

(2) Signs must be installed such that they avoid damage to the building especially the historic elements.

(3) Obscuring or disrupting important design elements is discouraged. Signs should be designed with appropriateness relative to the services of the establishment served.

(4) Signs should be maintained if they are determined to be an original part of the building or if they have acquired significance by virtue of their age, design, materials, craftsmanship or historical significance.

- (5) Illumination of signs should be properly shielded or diffused so as to eliminate glare and be of a low enough wattage not to detract from or set apart the structure.
 - (6) Descriptive signs as an integral part of the structure are encouraged. Such signs could include building dates, historic descriptions, commemorations, etc.
 - (7) Freestanding signs may be considered if appropriate and necessary to preserve the character of an historic structure, site, landmark or district.
- (e) Accessory structures and landscaping.
- (1) Existing characteristics such as trees, walls, stairs, paving materials, fencing, walkways and other similar structures or site features that reflect the history and development of an historic structure, site, landmark or district shall be retained.
 - (2) Landscaping should be appropriate to the scale and the unique features of the historic structure, site, landmark or district.
 - (3) Accessory structures to a designated structure, site or landmark shall be appropriate to and compatible with the architectural features of the primary structures.
- (f) General rules of application. Within each of the designated categories, the Design Criteria will be applied more stringently to properties of greater significance than those with lesser significance as determined by their respective designation. The Commission may prepare and adopt more specific design guidelines as it deems necessary to supplement the provisions of this Ordinance for the review of certificates of appropriateness; provided, however that the governing bodies must first approve such additional design guidelines before said guidelines shall become effective.

SECTION 24. Certificate of Economic Hardship; Purpose. A Certificate of Economic Hardship serves as an alternative whenever a Certificate of Appropriateness would otherwise be required. The purpose of the Certificate of Economic Hardship is to provide relief where the application of this Ordinance would otherwise impose undue hardship.

SECTION 25. Same; Application. Application for a Certificate of Economic Hardship shall be made on a form prepared by the Commission. Such application may be made in conjunction with or separately from an application for, or upon the denial of, a Certificate of Appropriateness. The Commission shall hold a public hearing concerning such applications within thirty (30) days of the receipt of application. Every reasonable effort shall be made to limit the costs to the applicant and to assure efficient processing of the application. The

Commission shall require the submission of financial documents, professional reports and expert testimony only when they are necessary to review an application. The Commission may solicit expert testimony or request that the applicant for a Certificate of Economic Hardship make submissions concerning any or all of the following information before it makes a determination on the application.

- (a) An estimate of the cost of the proposed construction, alteration, demolition or removal, and an estimate of any additional costs that would be incurred to comply with the recommendations of the Commission for changes for the issuance of a certificate of appropriateness.
- (b) A report from qualified bonded persons with experience in rehabilitation as to the structural soundness of any structures on the property and their suitability for rehabilitation.
- (c) The estimated market value of the property in its current condition, and after completion of the proposed construction, alteration, demolition, or removal, and after any changes recommended by the Commission; and, in the case of a proposed demolition, the estimated market value after renovation of the existing property for continued use.
- (d) In the case of a proposed demolition, an estimate from an architect, developer, real estate consultant, appraiser or other real estate professional experienced in rehabilitation as to the economic feasibility of rehabilitation or reuse of the existing structure on the property.
- (e) If the property is income producing, the annual gross income from the property for the previous two (2) years; itemized operating and maintenance expenses for the previous two (2) years; and depreciation, deduction and annual cash flow before and after debt service, if any, during the same period.
- (f) The remaining balance on any mortgage or other financing secured by the property and annual debt service, if any, for the previous two (2) years.
- (g) All appraisals obtained within the previous two (2) years by the owner or applicant in connection with the purchase, financing or ownership of the property.
- (h) Any listing of the property for sale or rent, price asked and offers received, if any, within the previous two (2) years.
- (i) The assessed value of the property according to the two (2) most-recent assessments.
- (j) The amount of the real estate taxes and any special assessments for the previous two (2) years.

- (k) The form of ownership or operation of the property, whether sole proprietorship, for profit or not-for-profit corporation, limited partnership, joint venture, or other.
- (l) Any other information considered necessary by the Commission to a determination as to whether the property does yield or may yield a reasonable return to the owners.

SECTION 26. Same; Determination. The Commission shall review all evidence and information required of an applicant for a Certificate of Economic Hardship and make a determination within thirty (30) days of receipt of the application whether the denial of the application will deprive the owner of the property of reasonable use of or reasonable economic return on the property. Written notice of the determination shall be provided in the same manner as notification of a determination concerning a certificate of appropriateness. Unless the applicant has consented to an extension of such time, failure of the Commission to act within such thirty (30) day period shall be deemed to be a denial of the application. The Commission shall take all reasonable efforts to expedite consideration of an application so as to avoid unnecessary delays and inconvenience. The Commission shall have the authority to establish procedures for expedited consideration and approval or denial of an application by a subcommittee of the Commission or by the Administrator as to applications that meet specified criteria for such consideration; provided, however, that the governing bodies shall approve any such procedure and criteria prior to its implementation.

SECTION 27. Same; Appeals. Any applicant dissatisfied with a denial of an application for a certificate of economic hardship may file an appeal to the governing body of the City in which such historic structure, site, landmark or district is located, which appeal must be submitted in writing to the City Clerk within fourteen (14) days of the date of notification of that determination. The governing body shall conduct a public hearing upon, consider and determine any such appeal within sixty (60) days of the filing of the appeal. Any failure by the governing body to act within such time, unless an extension of such time is agreed upon by the applicant, shall constitute a denial of the appeal.

SECTION 28. Property Owned by Public Agencies. In the Cities of Newton and North Newton, many of the historically and architecturally significant structures, sites and landmarks are owned by public entities. The preservation of such structures, sites and landmarks is established as national policy in the National Historic Preservation Act of 1966, as amended. This Act declares that the historical, architectural, archeological and cultural heritage of Kansas is an important asset of the state and that its preservation and maintenance should be among the highest priorities of government. To accomplish the adopted policies of the federal and state governments and to accomplish the purposes of this chapter, the following regulations promote the preservation of publicly owned historically and architecturally significant buildings, sites, structures and objects.

- (a) For properties owned by the City of Newton or North Newton, the governing body thereof authorizes the submission of an application to list any such structure, site or landmark on the Register of Kansas Historic Places the National Register of Historic Places. For properties owned by other units of government within

either of such cities, the authorization of the pertinent unit of government should be obtained before submission of such an application.

- (b) To further the purposes of this Ordinance, the Cities of Newton and North Newton may individually or mutually enter into agreements with other units of government. The Cities shall specifically seek to negotiate an agreement with the state historic preservation officer whereby the state delegates certain responsibilities to the Cities, including, but not limited to, the review of building and/or demolition permit applications. Such agreements may address:
- (1) Designation of historic structures, sites and landmarks;
 - (2) Administration or the use of preservation fund resources;
 - (3) Improvements to historic structures, sites and landmarks and properties adjacent thereto;
 - (4) Demolition and clearance of all or a portion of historic structures, sites and landmarks and structures and properties in close proximity thereto;
 - (5) Efforts to encourage the maintenance of historic structures, sites and landmarks; and
 - (6) Other mutually acceptable provisions.
- (c) Proposed improvements to an historic structure, site, structure or landmark owned by a public entity, or as to a structure or site owned by a public entity and located within an historic district, shall be reviewed and approved according to the procedures and regulations set forth in this Ordinance. Proposed demolition or clearance of an historic structure, site, structure or landmark owned by a public entity, or as to a structure or site owned by a public entity and located within an historic district, shall be reviewed and approved according to the procedures and regulations set forth in this Ordinance.

SECTION 29. Use of Consultants. Whenever, in the course of reviewing of National Register nominations or taking other actions affecting properties which are normally evaluated by a professional in a particular discipline, the Commission does not have a member from such professional discipline, then notification thereof shall be made to the governing body of the City in which the subject property is located, and the governing body shall make arrangements for the use of a consultant from such professional discipline, or shall follow such other direction in this regard as the State Historic Preservation Office shall provide.

SECTION 30. Exceptions and Variances. Nothing in this Ordinance shall serve to disqualify any such property for exceptions and variances to the building codes and Zoning Ordinances of the Cities as available to non-designated properties.

SECTION 31. Minimum Maintenance Requirement. All designated historic structures, sites and landmarks, whether owned or controlled privately or by any public body, shall receive reasonable care, maintenance and upkeep appropriate for its protection, preservation, enhancement, perpetuation or use in compliance with the terms of this Ordinance and with the applicable codes of the Cities.

SECTION 32. Effective Date. This Ordinance shall not be effective unless it is duly adopted by the governing bodies of both the City of Newton, Kansas, and the City of North Newton, Kansas; and, upon such adoption, this ordinance shall take effect and be in force from and after its summary publication in the official newspapers of said Cities.

SECTION 33. Repealer. Newton Ordinance No. 4818-14, Newton Ordinance No. 4278-98 and North Newton Ordinance No. 429 are each hereby repealed.

PASSED AND ADOPTED by the governing body of the City of Newton, Kansas, this
10th day of March, 2020.



Mayor

ATTEST:



City Clerk

PASSED AND ADOPTED by the governing body of the City of North Newton, Kansas,
this 9th day of March 2020.



Mayor

ATTEST:



City Clerk