FILED
JUL 21 2009
CITY CLERK

GENERAL ORDINANCE NO. 10, 2009

AN ORDINANCE AMENDING *TERRE HAUTE CITY CODE,* CHAPTER 2, TO ESTABLISH A HISTORIC PRESERVATION COMMISSION AND CHAPTER 10, TO ESTABLISH HISTORIC PRESERVATION DISTRICTS AND GUIDELINES.

WHEREAS, the City Council of the City of Terre Haute, Indiana, declares that the research, protection, maintenance, restoration, rehabilitation, reconstruction, or development of historic districts is in the public interest; and,

WHEREAS, it is the intent of this Ordinance to provide a means to promote the cultural, economic, and general welfare of the public through the preservation and protection of structures and areas of historic and cultural interest within the City of Terre Haute and,

WHEREAS, it is the intent of this Ordinance to implement a comprehensive program of historic preservation by the creation and appointment of a Historic Preservation Commission and by the establishment of a historic preservation district or districts in accordance with the provisions set forth below, now therefore;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRE HAUTE, INDIANA:

SECTION 1. That *Terre Haute City Code*, Chapter 2 is hereby amended by inserting the following Section:

Sec. 2-68 Historic Preservation Commission.

a. **Establishment.**

There is hereby established the City of Terre Haute Historic Preservation Commission (hereinafter referred to as the "Commission").

b. **Composition; Appointment.**

The Commission shall consist of five (5) voting members. The voting members shall be appointed by the Mayor subject to the approval of the City Council and shall be residents of the City who are interested in the preservation and development of historic areas. The members of the Commission should include professionals in the disciplines of architectural history, planning, and other disciplines related to historic preservation, to the extent that those professionals are available in the community. Nonvoting, advisory member(s) may be appointed to the Commission by the Mayor with approval by the City Council. Commission members shall serve without compensation, except for reasonable expenses incurred in the performance of their duties.

c. **Term.**

Voting members shall serve for a term of three (3) years; however, the initial terms of members shall be for one (1) year, two (2) years, and three (3) years in order for the terms to be staggered. The term for nonvoting, advisory members shall be for three (3) years. A vacancy shall be filled by the Mayor within ninety (90) days for the duration of the term. A member may continue to serve after the expiration of the term until a replacement is appointed. The appointing authority may remove a member from the Commission for cause. The appointing authority must mail notice of the removal, along with written reasons for the removal, to the member at his or her residence address. A member who is removed may, within thirty (30) days after receiving notice of the removal, appeal the removal to the Terre Haute City Council.

d. **Commission Administrator.**

A City administrator designated by the Mayor shall serve as the ex-officio administrator of the Commission. The administrator shall provide staff assistance to the Commission, act as the Commission's secretary, and issue Certificates of Appropriateness as directed by the Commission.

e. **Officers.**

The Commission shall elect from its membership a Chairperson, Vice-Chairperson, and Treasurer who shall serve for one (1) year and who may be reelected.

f. **Rules.**

The Commission shall adopt rules consistent with this Section for the transaction of its business. The rules must include the time and place of regular meetings and a procedure for the calling of special meetings.

g. **Meetings.**

Commission meetings must be open to the public in accordance with Indiana's Open Door Law and a public record shall be kept of the Commission's resolutions, proceedings, and actions. The Commission shall hold regular meetings, at least monthly, except when it has no business pending. Special meetings may be called in a manner determined by the Commission and its rules.

h. **Powers and Duties.**

(1) The Commission shall be concerned with those elements of development, redevelopment, rehabilitation, and preservation that affect visual quality in a historic district. The Commission may not consider details of design, interior arrangements, or building features, if those details, arrangements, or features are not subject to public view, and may not make any

requirement except for the purpose of preventing development, alteration, or demolition in the historic district obviously incongruous with the historic district.

(2) The Commission shall conduct surveys to identify historic buildings, sites and structures and establish historic districts in accordance with the provisions of Section 10-382, *et seq.*

(3) The Commission may adopt preservation guidelines for architectural review. If adopted, preservation guidelines shall be published and made readily accessible to the general public.

(4) The Commission has the authority to receive funds in order to promote its stated purposes.

(5) The Commission shall promote public interest in historic preservation by initiating and carrying on a public relations and community education program.

(6) The Commission, through the City Board of Public Works and Safety, may:

(a) acquire by purchase, gift, grant, bequest, devise, or lease any real or personal property, including easements, that is appropriate for carrying out the purposes of the Commission;

(b) hold title to real and personal property; and

(c) sell, lease, rent, or otherwise dispose of real and personal property at a public or private sale on the terms and conditions that the Commission considers best.

(7) The Commission shall establish procedures that the Commission must follow in acquiring and disposing of property.

SECTION 2. That *Terre Haute City Code*, Chapter 10 is hereby amended by inserting the following Article:

CHAPTER 10
ARTICLE 4. HISTORIC PRESERVATION

Sec. 10-380 Purpose and Intent.

a. The purpose of historic preservation and protection is:

(1) To promote the educational, cultural and general welfare of the citizens of Terre Haute and to insure the harmonious and orderly growth and development of the City;

(2) To maintain established residential neighborhoods in danger of having their distinctiveness destroyed;

(3) To enhance property values and attract new residents; and

(4) To ensure the viability of the traditional Downtown area and to enhance tourism within the City.

b. These purposes are advanced through the restoration and preservation of historic areas and buildings, the construction of compatible new buildings where appropriate, and the maintenance and insurance of compatibility in regards to style, form, proportion, texture, and material between historic buildings and those of contemporary design.

c. It is the intention of the City though this Article to preserve and protect historic and architecturally worthy buildings, structures, sites, monuments, streetscapes, and neighborhoods which impart a distinct aesthetic quality to the City and serve as visible reminders of its historic heritage.

Sec. 10-381 Definitions and Terms.

The following terms shall have the following meaning unless a contrary meaning is required by the context or is specifically prescribed. Words in the present tense include the future tense. The singular number includes the plural, and the plural, the singular. The word "shall" is always mandatory. The word "person" includes a firm, a partnership, a limited liability company, or a corporation, as well as an individual. Terms not defined in this Section shall have the meanings customarily assigned to them.

a. **Alteration.** A material or color change in the external architectural features of any building, structure, or site within a historic district.

b. **COA.** Certificate of Appropriateness.

b. **City.** The City of Terre Haute, Indiana.

c. **Classifications.**

(1) Outstanding (O). The property has sufficient historic or architectural significance that it is listed, or is eligible for individual listing, in the National Register of Historic Places. Outstanding resources can be of local, state, or national importance.

(2) Notable (N). The property does not merit the outstanding rating, but it is still above average in its importance. A notable structure may be eligible for the National Register.

(3) Contributing (C). The property is at least 40 years old, but does not meet the criteria for an "O" or "N" classification. Such resources are important to the

density or continuity of the area's historic fabric. Contributing structures can be listed in the National Register only as part of a historic district.

(4) Non-Contributing (NC). The property is not included in an inventory unless it is located within the boundaries of a historic district. Such properties may be less than 50 years old, or they may be older structures that have been altered in such a way that they have lost their historic character, or they may be otherwise incompatible with their historic surroundings. These properties are not eligible for listing in the National Register.

d. **Commission.** The City of Terre Haute Historic Preservation Commission, as established in Section 2-68.

e. **Demolition.** The complete or substantial removal of any building, structure, or site located in a historic district.

f. **Historic District.** A single building, structure, object, or site or a concentration of buildings, structures, objects, spaces, or sites, the boundaries of which are described or delineated on a map approved in an ordinance adopted under this Article.

g. **Interested Party.** One of the following:

(1) Mayor;
(2) City Council;
(3) Area Plan Commission;
(4) A neighborhood association, whether incorporated or unincorporated, a majority of whose members are residents of a historic district designated by an ordinance adopted under this Article;
(5) An owner or occupant of property located in a historic district established by an ordinance adopted under this Article;
(6) Historic Landmarks Foundation of Indiana, Inc., or any of its successors; or
(7) The state historic preservation officer designated under I.C. 14-3-3.4-10.

h. **Preservation Guidelines.** Locally developed criteria which identify local design concerns in an effort to assist property owners in maintaining the character of the designated district or buildings during the process of rehabilitation or new construction.

i. **Primary Area.** The principal area of historic and/or architectural significance within a historic district as delineated on the map establishing the boundaries of the historic district.

j. **Secondary Area.** An area in a historic district delineated on the map establishing the boundaries of the historic district that is adjacent to a primary area and which has a visual relationship to the primary area and could affect the preservation of the primary area. The

purpose of designating a secondary area is to assure its compatibility and harmony with an adjacent, primary area.

k. **Routine Maintenance.** Work for which no COA is required.

l. **Streetscape.** Appearance from a public way, the distinguishing characteristics of which are created by the width of the street and sidewalks, their paving materials and color, the design of the street furniture (e. g., street lights, trash receptacles, benches, etc.) use of plant materials such as trees and shrubs, and the setback, mass, and proportion of those buildings which enclose the street.

m. **Visual Compatibility.** Those elements of design that meet the guidelines set out in Section 10-386 of this Article.

Sec. 10-382 Historic Districts and Guidelines.

a. All recommendations for the establishment of a historic district shall be in the form of a written report and must be based on the criteria outlined in this Section.

b. Commission preparation of historic district maps. In order to establish a historic district, the Commission shall first prepare a map describing the district in accordance with the following:

(1) The map shall be based on a survey conducted by the Commission which identifies historic buildings, structures, and sites located within the City.

(2) A district may be limited to the boundaries of a property containing a single building, structure, or site.

(3) The map may divide the district into primary and secondary areas as follows:

(a) Primary Area: the principal area of historic and architectural significance.

(b) Secondary Area: an area adjacent to a primary area which has a visual relationship to the primary area and could affect the preservation of the primary area. The purpose of designating a secondary area is to assure its compatibility and harmony with an adjacent primary area.

c. The Commission shall classify and designate on the map all buildings, structures, and sites within each historic district described on the map. Buildings, structures, and sites shall be classified as historic or non-historic. Historic buildings, structures, and sites must possess identified historic or architectural merit of a degree warranting their preservation. The Commission may further classify and designate all buildings and structures within a proposed historic district as follows:

(a) Outstanding
(b) Notable; or
(c) Contributing.

Non-historic buildings, structures, and sites are those not classified on the map as historic. In lieu of other classifications, the Commission may devise its own system of further classification of historic buildings, structures, and sites.

d. City Council approval of maps of historic districts. Before a historic district is established and the building classifications take effect, the map setting forth the district's boundaries and building classifications must be submitted to, and approved in an ordinance by, the City Council.

e. The Commission may recommend, and the City Council may provide that the establishment of a historic district shall occur in two (2) phases. During the first phase, which continues for a period of three (3) years from the date the ordinance is adopted, a COA is required for the following activities: the demolition of any building; the moving of any building; and any new construction of a principal building or accessory building or structure subject to view from a public way.

(1) At the expiration of the initial three (3) year period, the first phase of a conservation district continues and the second phase does not become effective if a majority of the property owners in the district object to the Commission, in writing, to the requirement that COA be issued for the following activities:

(a) a conspicuous change in the exterior appearance of historic buildings by additions, construction, alteration, or maintenance involving exterior color changes.

(b) a change in walls and fences or construction of walls and fences, if along public ways;

(c) a conspicuous change in the exterior appearance of non-historic buildings subject to view from a public way by additions, reconstruction, alteration or maintenance involving exterior color changes.

(2) The objections of a majority of the property owners must be received by the Commission not earlier than one hundred eighty (180) days or later than sixty (60) days before the third anniversary of the adoption of the ordinance.

f. Exclusion of paint colors: The appointed Commission may exclude changes in paint colors from the activities requiring the issuance of a COA under Section 10-384 of this Article before a permit may be issued or work begun.

g. Recording the fact of designation. The map establishing boundaries of a historic district shall be recorded in the Office of the Vigo County Recorder.

Sec. 10-383 Interim Protection.

a. When submitting a map to the City Council under Section 10-382 of this Article, the Commission may declare one (1) or more buildings or structures that are classified and designated as historic on the map to be under interim protection.

b. Not more than two (2) working days after declaring a building or structure to be under interim protection under this section, the Commission shall, by personal delivery or first class mail, provide the owner or occupant of the building or structure with a written notice of the declaration. The written notice must:

(1) Cite the authority of the Commission to put the building or structure under interim protection under this Section;

(2) Explain the effect of putting the building or structure under interim protection; and,

(3) Indicate that the interim protection is temporary.

c. A building or structure put under interim protection under subsection (a) remains under interim protection until the map is:

(1) Submitted to; and

(2) Approved in an ordinance or rejected by the City Council.

d. While a building or structure is under interim protection under this Section:

(1) The building or structure may not be demolished or moved; and,

(2) The exterior appearance of the building or structure may not be conspicuously changed by:

(a) Addition;

(b) Reconstruction; or

(c) Alteration.

e. The Commission may approve a COA at any time during the period of interim protection, provided the proposed change meets the criteria for considering effect of actions on historic buildings in Section 10-384 d. of this Article and any proposed preservation guidelines

prepared for the building or structure but the COA shall have no effect, and no action may be taken pursuant thereto, unless the map including the building, structure or site is approved by the City Council.

Sec. 10-384 Certificates of Appropriateness (COA).

a. Certificates of Appropriateness (COA) required. A COA must be issued by the Commission before a permit is issued for, or work is begun on any of the following:

(1) Within all areas of a historic district:

(a) The demolition of any building or structure;

(b) The moving of any building or structure;

(c) A conspicuous change in the exterior appearance of any historic building or any part of or appurtenance to such a building, including walls, fences, light fixtures, steps, paving, and signs by additions, reconstruction, alteration or maintenance involving exterior color change; or

(d) Any new construction of a principal building or accessory building or structure subject to view from a public way.

(2) Within a primary area of a historic district:

(a) A change in walls and fences, or the construction of walls and fences along public ways;

(b) A conspicuous change in the exterior appearance of non-historic buildings subject to view from a public way by additions, reconstruction, alteration, and/or maintenance involving exterior color change.

(3) Within the first phase of a two-phase establishment of a historic district as defined in Sec. 10-382 e:

(a) The moving of any building;

(b) The demolition of any building; or

(c) Any new construction of a principal building or accessory building or structure subject to view from a public way.

b. Application for COA: An application for a COA shall be made in the office of the Commission or its designee on forms provided by that office. All applications shall be subject to the rules and requirements established by the Commission. Rules may include, but are not

limited to, filing deadlines and application requirements such as sketches, drawings, photographs, descriptions, or other information which the Commission requires to make a decision.

c. Approval or denial of COA: The Commission may approve or deny COA for any actions covered by this Article. If an application for a COA is approved by the Commission, or is not acted on by the Commission within thirty (30) days after it is filed, a COA shall be issued. The Commission may grant an extension of the thirty-day limit if the applicant agrees to it. The Commission must report its findings and the reasons for its decision in written form, and supply the applicant with a copy of its report. A copy of the COA must be submitted with the application for a building or demolition permit; no building or demolition permit shall be issued unless a copy of the COA is provided by the applicant with the application.

d. Criteria for considering effect of actions on historic buildings: The Commission, in considering the appropriateness of any reconstruction, alteration, maintenance, or moving of a historic building, or any part of or appurtenance to such building, including walls, fences, light fixtures, steps, paving, and signs shall require that such work be done in a manner that will preserve the historical and architectural character of the building, structure, or appurtenance. In considering historic and architectural character, the Commission shall consider, among other things, the following:

(1) Purposes of this Article;

(2) Historical and architectural value and significance of the building, structure, site or appurtenance;

(3) Compatibility and significance of additions, alterations, details, materials, or other non-original elements which may be of a different style and construction date than the original;

(4) The texture, material, color, style, and detailing of the building, structure, site or appurtenance;

(5) The continued preservation and protection of original or otherwise significant structure, material, and ornamentation;

(6) The relationship of buildings, structures, appurtenances, or architectural features similar to one within the same historic district, including for primary areas, visual compatibility as defined in Section 10-386 b.; and,

(7) The position of the building or structure in relation to the street, public right-of-way and to other buildings and structures.

e. Demolition of buildings following failure to secure COAs: If a property owner demonstrates that a historic building is incapable of earning an economic return on its value, as

appraised by a qualified real estate appraiser, and the Commission fails to approve the issuance of a COA, the building may be demolished. However, before a demolition permit is issued or demolition proceeds, the following requirements for notice must be met:

(1) Notice of the proposed demolition must be given for a period fixed by the Commission, based on the Commission's classification on the approved map, but not less than sixty (60) days nor more than one (1) year.

(2) Notice must be posted on the premises of the building or structure proposed for demolition in a location clearly visible from the street.

(3) Notice must be published in a newspaper of general local circulation at least three (3) times before demolition, with the first publication not more than fifteen (15) days after the application for a permit to demolish is filed, and the final publication at least fifteen (15) days before the date of the permit.

The Commission may approve a COA at any time during the notice period under this subsection. If the COA is approved, a demolition permit shall be issued without further delay, and demolition may proceed.

Sec. 10-385 Staff Approvals.

The Commission may not authorize the staff of the Commission, on behalf of the Commission, to grant or deny an application for a COA for the following:

a. The demolition of a building, structure, or site;

b. The moving of a building or structure;

c. The construction of an addition to a building or structure; or

d. The construction of a new building or structure.

Sec. 10-386 Visual Compatibility.

a. New Construction, Contemporary Design, and Non-historic Buildings. To preserve and encourage the integrity of historic buildings, structures, sites, monuments, streetscapes, and neighborhoods and to ensure their compatibility with any new work, the construction of a new building or structure, and the moving, reconstruction, alteration, color change, major maintenance, or repair conspicuously affecting the external appearance of any non-historic building, structure, or appurtenance within the primary area must be generally of a design, form, proportion, mass, configuration, building material, texture, color, and location on a lot compatible with other buildings in the historic district and with places to which it is visually related.

b. Criteria for considering visual compatibility within historic primary areas: within the primary area of a historic district, new buildings, structures, as well as buildings, structures, and appurtenances that are moved, reconstructed, materially altered, or repaired, must be visually compatible with buildings and places to which they are visually related generally in terms of the following visual compatibility factors:

(1) Height. The height of proposed buildings must be visually compatible with adjacent buildings.

(2) Proportion of Building's Front Façade. The relationship of the width of a building to the height of the front elevation must be visually compatible with buildings, squares, and places to which it is visually related.

(3) Proportion of Openings within the Facility. The relationship of the width of the windows to the height of windows in a building must be visually compatible with buildings, squares, and places to which it is visually related.

(4) Relationship of Solids to Voids in Front Facades. The relationship of solids to voids in the front facade of a building must be visually compatible with buildings, squares, and places to which it is visually related.

(5) Rhythm of Spacing of Buildings on Streets. The relationship of a building to the open space between it and adjoining buildings must be visually compatible with buildings, squares, and places to which it is visually related.

(6) Rhythm of Entrances and Porch Projections. The relationship of entrances and porch projections of a building to sidewalks must be visually compatible with buildings, squares, and places to which it is visually related.

(7) Relationship of Materials, Texture, and Color. The relationship of the materials, texture, and color of the facade of a building must be visually compatible with buildings, squares, and places to which it is visually related.

(8) Roof Shapes. The roof shape of a building must be visually compatible with buildings, squares, and places to which it is visually related.

(9) Wall of Continuity. Appurtenances of a building ~~or site~~ such as walls, wrought iron fences, evergreen landscape masses, and building facades, must form cohesive walls of enclosure along the street, if necessary to ensure visual compatibility of the building to the buildings and places to which it is visually related.

(10) Scale of the Building. The size of a building, and the building mass of a building in relation to open spaces, windows, door openings, porches, and balconies must be visually compatible with the buildings and places to which it is visually related.

(11) Directional expression of front elevation. A building must be visually compatible with buildings, squares, and places to which it is visually related in its directional character, including vertical character, horizontal character, or non-directional character.

Sec. 10-387 Preservation of Historical and Architectural Character Upon Alteration or Relocation Mandated.

a. A historic building or structure or any part of or appurtenance to such a building or structure, including stone walls, fences, light fixtures, steps, paving, and signs may be moved, reconstructed, altered, or maintained only in a manner that will preserve the historical and architectural character of the building, structure, or appurtenance.

b. A historic building may be relocated to another site only if it is shown that preservation on its current site is inconsistent with Subsection a. above.

Sec. 10-388 Maintenance.

a. Historic buildings, shall be maintained to meet the applicable requirements established under state statute for buildings generally so as to prevent the loss of historic material and the deterioration of important character defining details and features.

b. Nothing in this Article shall be construed so as to prevent the ordinary repairs and maintenance of any building, provided that such repairs or maintenance do not result in a conspicuous change in the design, form, proportion, mass, configuration, building material, texture, color, location, or external visual appearance of any structure, or part thereof.

Sec. 10-389 Relationship with Zoning Districts.

Zoning districts lying within the boundaries of the historic district are subject to regulations for both the zoning district and the historic district. If there is a conflict between the requirements of the zoning district and the requirements of the historic district, the more restrictive requirements shall apply.

Sec. 10-390 Interested Parties.

a. An interested party, as defined in Section 10-381 g. has a private right of action to enforce and prevent violation of provisions of this Article or an ordinance adopted by the City under this Article, and with respect to any building, structure, or site within a historic district, and has the right to restrain, enjoin, or enforce by restraining order or injunction, temporarily or permanently, any person from violating a provision of this Article or an ordinance adopted under this Article.

b. The interested party does not have to allege or prove irreparable harm or injury to any person or property to obtain relief under this Article.

c. The interested party bringing an action under this Article does not have to post a bond unless the court, after a hearing, determines that a bond should be required in the interest of justice.

d. The interested party that brings an action under this Article is not liable to any person for damages resulting from bringing or prosecuting the action unless the action was brought without good faith or without a reasonable belief that a provision of this Article, or an ordinance adopted by a unit under this Article, had been, or was about to be violated.

e. An interested party who obtains a favorable judgment in an action under this Section may recover reasonable attorney fees and court costs from the person against whom judgment was rendered.

f. An action arising under this Article must be brought in the circuit or superior court of the county in which the historic district lies and no change of venue from Vigo County shall be allowed in the action.

g. The remedy provided in this Article is in addition to other remedies that may be available at law or in equity.

Sec. 10-391 Enforcement, Penalties, and Judicial Review.

a. Any person, whether as principal, agent, owner, lessee, tenant, contractor, builder, architect, engineer, or otherwise, who violates any provision of this Article shall be subject to a fine as follows, for each offense:

(1) not less than ten dollars ($10.00) nor more than twenty-five hundred dollars ($2,500.00) for demolition; and,

(2) not less than ten dollars ($10.00) nor more than three hundred dollars ($300.00) for all other offenses.

b. Each day of the existence of any violation of this Article shall be a separate offense.

c. The erection, construction, enlargement, alteration, repair, demolition, color change, moving, or maintenance of any building, structure, or appurtenance which is begun, continued, or maintained contrary to any provisions of this Article is hereby declared to be a nuisance and in violation of this Article and unlawful. The City may institute a suit for injunction in the Circuit Court or Superior Court of Vigo County to restrain any person or government unit from violating any provision of this Article and to cause such violation to be

prevented, abated, or removed. Such action may also be instituted by any property owner who is adversely affected by the violation of any provision of this Article.

d. The remedies provided for in this Section shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.

e. Any person or party aggrieved by a decision or action taken by the Commission shall be entitled to a judicial review hereof in accordance with I.C. § 4-22-1.

SECTION 3. If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

SECTION 4. An emergency exists for the immediate taking effect of this Ordinance, the same shall be in full force and effect from and after its passage by the Common Council of the City of Terre Haute, and its approval by the Mayor and publications as by law provided.

Introduced by: _____ Todd Nation, Councilman

Passed in open Council this _____ day of _____, 2009.

_____ Todd Nation, President

ATTEST: _____ Charles P. Hanley, City Clerk

Presented by me to the Mayor this _____ day of _____, 2009.

_____ Charles P. Hanley, City Clerk

Approved by me, the Mayor, this _____ day of _____, 2009.

_____ Duke A. Bennett, Mayor

ATTEST: _____ Charles P. Hanley, City Clerk