

ORDINANCE NO. 04-

AN ORDINANCE REPEALING ARTICLE VI, "CULTURAL AND ARCHEOLOGICAL RESOURCES" OF CHAPTER 114, "RESOURCE PROTECTION STANDARDS" AND ADDING A NEW ARTICLE VI, "HISTORIC RESOURCES" TO CHAPTER 114 OF THE CODE OF ORDINANCES IN ORDER TO IMPLEMENT THE COMPREHENSIVE PLAN BY IDENTIFYING AND ENCOURAGING THE PROTECTION OF RESOURCES WHICH REFLECT ELEMENTS OF THE CITY'S HISTORY; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.

WHEREAS, VISION 2005, the Future Land Use Element, and the Housing Element of the City's Comprehensive Plan articulate goals, objectives and policies for development of a historic preservation program; and

WHEREAS, following numerous public workshops and hearings on the matter, the Planning Advisory Board has considered the recommendation of the staff and the public input and has recommended by a vote of ___ to ___ that the provisions of the Code of Ordinances be amended; and

WHEREAS, after considering the recommendation of the Planning Advisory Board and City staff, following a public hearing on the subject, and providing the staff and the public an opportunity to present testimony and evidence, the City Council has determined that it is in the best interest of the City of Naples to approve/deny Text Amendment Petition No. 04- ;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NAPLES, FLORIDA:

Section 1. Article VI, "Cultural and Archeological Resources" of Chapter 114 of the Code of Ordinances of the City of Naples, Florida, is hereby repealed.

Section 2. Article VI, "Historic Resources" is hereby added to Chapter 114 of the Code of Ordinances of the City

of Naples, Florida, as follows (with underline indicating additions):

Section 114-161. Purpose

The purpose of this article is to implement the goals, objectives and policies of the comprehensive plan by identifying and encouraging the protection of resources which reflect elements of the city's cultural, architectural and historical heritage.

114-162. Intent:

The designation and encouragement of preservation and protection of historic resources within the city is necessary and proper to promote the general welfare of the public through the following efforts:

- a. Encourage the continuance, conservation and improvement of land uses in a manner appropriate to the preservation of the cultural, architectural and historical heritage of the city.
- b. Foster civic pride in the beauty and notable accomplishments of the past.
- c. Preserve and enhance environmental quality and the residential character and desirable aesthetic features of the city.
- d. Encourage property owners against destruction of, or addition of, features likely to have adverse effects on the historic, architectural or cultural character of a designated structure.
- e. Encourage the preservation of the historic integrity and appearance of significant structures.
- f. Encourage the protection of historic property against destruction, or encroachment of structures, uses or features likely to have adverse effects on its historic, architectural or cultural character.
- g. Discourage developments in the visual environs of such property which would detract from its character.

114-163. Definitions:

Building means any structure having a roof and used or built for the shelter or enclosure of persons, animals or property of any kind.

Certificate of appropriateness means a written document, issued by the city pursuant to this article, permitting specified alteration, relocation, demolition, or other work.

Conservation easement means a right or interest in real property in order to retain the structural integrity or physical appearance of historically significant structures.

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Contributing describes a structure within the boundaries of a nationally designated historic district which may not qualify to be designated as a significant structure, but is considered significant because it adds to the sense of time and place and historical development of the historic district.

Historic district means an area designated on the National Register, which may contain within definable geographic boundaries two or more significant structures and which may have within its boundaries other structures that, while not of such historic or architectural significance to be designated as significant structures, nevertheless contribute to the overall visual characteristics of the historic district.

Local historic register is comprised of historic resources designated by resolution as significant and worthy of preservation according to this article, as administered by the City of Naples Community Development Department. The register includes sites, buildings, structures, and objects.

National Register of Historic Places means the list of cultural resources designated significant and worthy of preservation, authorized by the National Historic Preservation Act of 1966 and administered by the U.S. Department of the Interior's National Park Service. The register includes districts, sites, buildings, structures, and objects.

Owner means any person or persons having title, in fee.

Rehabilitation means the act or process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the property which are significant to its historical, architectural, and cultural values.

Restoration means the act or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time by means of the removal of later work or by the replacement of missing earlier work.

Significant describes a structure designated on the National Register or on the local historic register, pursuant to procedures described in this article, that is worthy of rehabilitation, restoration, and preservation because of its historic or architectural significance.

Structure means anything constructed or erected, the use of which

requires a permanent location on the ground or attachment to something having a permanent location on the ground. For the purposes of this article, *structure* includes buildings, fences, bridges, gazebos, monuments, street markers, signs and light poles.

Substantial improvement (for structures located east of the coastal building zone line) means any combination of repairs, reconstructions, rehabilitations, additions, alterations, or other improvement of a structure taking place over a 12-month period, beginning on the date a certificate of occupancy is issued, the cost of which equals or exceeds 49.9 percent of the market value either (a) before the improvement or repair is started, or (b) if the structure has been damaged and is being restored to the before damage condition. For the purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the building. The term does not, however, include either:

- (1) Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which have been identified by the building official and which are the minimum necessary to ensure safe living conditions; or
- (2) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

Substantial improvement (for structures located west of the coastal building zone line) means any combination of repairs, reconstructions, rehabilitations, additions, alterations, or other improvement of a structure taking place over a 5 year period, beginning on the date a certificate of occupancy is issued, the cost of which equals or exceeds 49.9 percent of the market value either (a) before the improvement or repair is started, or (b) if the structure has been damaged and is being restored to the before damage condition. The amount of improvements allowed will be recaptured at a rate of 20 percent per year, and will be based on the market value of the structure after the previous improvement. Except when the structure has been substantially improved as a single improvement or repair, the cumulative total cost does not include nonstructural interior finishings listed in Florida Statutes 161.54(12). For the purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of

the building commences, whether or not that alteration affects the external dimensions of the building. The term does not, however, include either:

- (1) Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which have been identified by the building official and which are the minimum necessary to ensure safe living conditions; or
- (2) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

Unreasonable or undue economic hardship means an onerous and excessive financial burden that destroys reasonable and beneficial use of property and that would amount to the taking of property without just compensation, or failure to achieve a reasonable economic return in the case of income-producing properties.

114-164. Resource identification and annual update:

For informational purposes only, the city will identify and maintain a list of all properties that qualify as historic resources according to the criteria set forth in Section 114-168.

On a yearly basis, the Planning Advisory Board shall arrange a review and update of the city's historic resources inventory in a public meeting, with input from the Design Review Board, the Collier County Historical Society and other interested parties. The inventory shall be recorded in the City Clerk's Office.

114-165. Applicability:

The provisions of this article apply to sites, buildings, structures, and objects which are voluntarily nominated and approved for designation on the local historic register. Where specified, certain programs exclusively apply to properties on the National Register of Historic Places.

114-166. Local Historic Register nomination:

The property owner determines the nomination of any specific site, building, structure, or object to the local historic register. ~~The nomination of a district to the local historic register requires participation of 51% of owners in the proposed district boundary.~~ **Nominations may be submitted by: (1) the property owner, or (2) the Collier County Historical Society or the Planning Advisory Board with consent of the property owner.** ~~for individual nominations, or with the consent of 51% of owners within a proposed district.~~ The owner may meet with the Community Development

51% participation applies to national districts

Director or his designee to discuss the meaning of designation, the advantages, both historically and financially, of historic preservation of the property. The application for historic designation shall be accompanied by information necessary to demonstrate that the proposed designation is consistent with the criteria of Section 114-168. If a property owner withdraws the application prior to approval of historic designation, then the historic designation process shall terminate **for that owner only**.

114-167. Local Historic Register designation:

The Planning Division shall review the application for designation and shall prepare a written staff analysis including the location, photograph, historical significance, and specific criteria qualifying the designation. Property owners within 500 feet of the subject site shall be notified of the date, time, location of **the Planning Advisory Board and City Council** public hearing regarding the application. Upon consideration of the criteria and guidelines set forth in Section 114-168, the City Council shall hold a public hearing to adopt a resolution to approve, approve with conditions, or deny, a petition for local historic register designation.

114-168. Criteria for Local Historic Register designation:

a. **Considering the recommendation of the Planning Advisory Board**, the city council shall make a determination as to whether a nominated site, building, structure, or object meets one or more of the following historic criteria:

1. It is associated with Naples civic life or a person, ethnic culture, activities, or event, which influenced in an important way, the development of the United States, Florida or Naples.
2. It represents a style of living that is disappearing and worthy of note. It has a sentimental value to the community by virtue of its age, name or appearance, or because of stories and legends that have been associated with it.
3. It is **considered** a "landmark" or traditional point of historic interest in Naples because of its age, appearance or prominent location.
4. By providing a physical link to the past, it has potential for revealing information of a historic nature to help all of us to better understand our cultural, economic, and social heritage.
5. It is over 50 years old, and has become a part of the historic community.

b. **Considering the recommendation of the Planning Advisory Board**, the city council shall make a determination as to whether a

nominated district, site, building, structure, or object meets one or more of the following architectural and construction criteria:

1. It is unique or one of a few examples in the city of a particular architectural style or period. It displays particular styles, materials, or methods of construction which are unique or cannot, or are not likely to, be duplicated today.
2. It is the work of a well-known or locally important architect or master builder, or the quality of craftsmanship is particularly well-executed, and the integrity of the original design has been retained.
3. It has interesting, eye-catching or unique detailing, or is an architectural curiosity or picturesque work of particular artistic merit for the area that is particularly pleasing or inspires imagination, creativity and enjoyment. (People like to draw it, photograph it or paint it.)
4. It is, or could be, an important element or visual feature in the character of the neighborhood, either alone or in conjunction with similar buildings in the neighborhood. It tends to identify, lend character, contribute to the architectural continuity, or give flavor to the street, neighborhood or city.

114-169. Effect of designation:

National Register designation is a federal recognition program for historically significant structures. Local historic register designation is administered by the city and runs with the property. The following incentives may be applicable to specific sites, buildings, structures, and properties designated on the National Register or on the local historic register.

- a. Recognition: The city **may** issue a plaque for display by the property owner to identify a structure or property on the National Register or the local historic register.
- b. Financial assistance: Historically designated districts, sites, buildings, structures, and objects shall be eligible for any financial assistance set aside for historic preservation projects by the State of Florida or the federal government, provided they meet the requirements of those financial assistance programs.
- c. Tax credits:
 1. Income producing properties on the National Register are eligible for investment tax credits for certified rehabilitations pursuant to the Tax Reform Act of 1986

and any other programs offered through the National Trust for Historic Preservation.

2. National Register and local historic register properties are eligible for any ad valorem tax exemptions instituted by the City of Naples or Collier County as authorized by Florida Statutes Section 196.1997.

d. FEMA exemption: Structures on the National Register are exempted from the substantial improvement requirements. If the improvements to a National Register historic structure is determined to meet the following criteria by the Building Official or his designee, the building will retain its pre-Flood Insurance Rate map flood insurance rating:

1. The structure is listed individually on the National Register or is a contributing structure in a National Register historic district.
2. The improvement of the structure must not render the structure ineligible for continued designation as a historic structure.

The exemption to the substantial improvement rule means the structure does not have to be elevated to or above the Base Flood Elevation, or be renovated with flood-resistant materials that are not historically sensitive. To reduce the flood damage potential, mechanical and electrical equipment may be located above the Base Flood Elevation or otherwise flood-proofed, or the lowest floor of an addition may be built with flood-resistant materials and provided with hydrostatic openings.

e. Building code exemption: Repairs and alterations necessary for the preservation, restoration, rehabilitation or continued use of a local historic register building or structure may be made without conformance to the technical requirements of the Standard Building Code when the proposed work has been approved by the Building Official or his designee, pursuant to the authority granted by other divisions or statutes and further provided that:

1. The restored building will be no more hazardous based on consideration of life, fire and sanitation safety than it was in its original condition.
2. Plans and specifications are sealed by a Florida registered architect or engineer.
3. The Building Official or his designee has required the minimum necessary correction to be made before use and occupancy which will be in the public interest of health, safety and welfare.

f. Zoning code exemption: The Community Development Director or his designee may, by written administrative decision, approve any waiver request for any local historic register site, building, structure, or object for matters involving a deviation of **25%** or less from setbacks, lot width, depth, area requirements, land development regulations, height limitations, open space requirements, parking requirements, and other similar zoning waivers, including adjustments to nonconformities, not related to a change in use of the property in question. Deviations that exceed **25%** of the required standards listed above shall be considered by city council.

1. Before granting a waiver the Community Development Director, his designee, or city council must find:

- i. That the waiver will be in harmony with the general appearance and historic character of the site.
- ii. That the waiver will not be injurious to the area involved or otherwise detrimental to the public health, safety or welfare.
- iii. That the proposed work is designed and arranged on the site in a manner that minimizes visual impact on the adjacent properties.

2. In granting any waiver, the Community Development Director, his designee, or city council may prescribe any appropriate conditions necessary to protect and further the interest of the area and abutting properties, including but not limited to:

- i. Landscape materials, walls and fences as required buffering.
- ii. Modifications to the orientation of points of ingress and egress.
- iii. Modifications of site design features.

g. Conservation Easement: Conservation easements are perpetual, undivided interests in property that run with the land and are binding on all subsequent owners, however may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements and must be recorded in the same manner as other easements. Conservation easements may be conveyed to a charitable corporation or trust whose purposes include preserving sites or properties of historical, architectural, archaeological, or cultural significance. For ad valorem tax purposes, real property that is burdened by a conservation easement may be assessed and taxed on a basis that reflects

the existence of the easement. For National Register properties, the dedication of a conservation easement is considered a charitable contribution for federal income tax purposes.

- h. Transfer of Development Rights (TDRs):** TDRs are intended to permit an owner of a local register designated historic structure to transfer the undeveloped zoning potential for the property to increase the zoning potential on another site. The development rights shift from one historic sending lot to another eligible receiving lot in order to preserve light, air and architectural amenities among historic properties. A property owner of a local register designated property is entitled to transfer rights to develop one dwelling unit to add to the development potential of a property in an eligible receiving zone. Receiving zones include multifamily zoning districts and mixed use zoning districts.

114-170. Consistency review:

Consistency review shall be required for any new construction, exterior alteration, relocation, or demolition for property designated on the local historic register. No permits shall be issued by the Community Development Department for any work requiring consistency review unless such work complies the criteria listed below. Any project approved for historic consistency pursuant to the provisions of this section shall expire 12 months from the date of issuance, unless the authorized work is commenced within this time period.

a. Review procedure

The Community Development Department shall review new construction, exterior alterations, relocation, or demolition for local historic register properties and determine to approve, approve with conditions, approve with an effective date deferred up to 3 months in the case of demolition or relocation, or deny projects according to consistency with historic character. No decision shall result in an unreasonable or undue economic hardship for the owner.

b. Criteria

1. *Alterations or new construction.* Findings of consistency for alterations or new construction shall be determined based upon the following criteria:

- i. The proposed work does not adversely affect the historic character of the property or the relationship and congruity between the subject property and its neighboring structures.

- ii. The removal of historic materials, alteration of the features and spaces that characterize the property, or changes that create a false sense of historical development are avoided.
- iii. Alterations and new construction differentiates from the old structure, yet is compatible with the massing, size, scale, and architectural features of the property or its environment.

2. *Demolition.* For local historic register properties, a demolition permit may be issued with a delayed effective date of up to 3 months in order to explore alternatives to demolishing the structure. The determination for demolition approval shall be based upon the following criteria:

- i. The degree to which the structure contributes to the historic or architectural significance of the area;
- ii. Whether loss of the structure would adversely affect the historic or architectural integrity of the area;
- iii. Whether architectural plans have been presented to the Board for the reuse of the property, and the appropriateness of said plans to the character of the area, if applicable;
- iv. Whether the structure poses an imminent threat to public health or safety;
- v. Whether the applicant has demonstrated that retention of the structure would create an unreasonable or undue economic hardship;
- vi. Whether there is a compelling public interest requiring the demolition.

3. *Relocation.* Relocation of historic structures from their original location shall be discouraged; however, a relocation may be approved based on a finding that no reasonable alternative is available for preserving the structure on its original site. The relocation permit may be issued with a delayed effective date of up to 3 months in order to explore alternatives to relocating the structure.

c. Unreasonable or undue economic hardship.

Where strict enforcement of the provisions of this section would result in an unreasonable or undue economic hardship to the applicant, the provisions of this section board may be varied or modified. The fact that compliance would result in some increase in costs shall not be considered unreasonable or undue economic hardship if the use of the property is still economically viable.

114-171. Future land use map and zoning map:

Following local historic register designation, the Community Development Director shall initiate action at the earliest possible date to amend the city's future land use map and zoning map to identify local historic register sites, buildings, structures and objects.

114-172. Appeal:

Any party aggrieved by a decision or interpretation of this division made by the Community Development Director or Building Official shall have the right to appeal said interpretation, decision or denial to the city council by filing a written notice of appeal with the Community Development Director within 30 working days from the date of such decision, interpretation or denial. The Community Development Director shall provide the city council with a copy of said notice of appeal. The notice of appeal shall be provided to the applicant by certified mail, return receipt requested, and shall state the decision which is being appealed, the grounds for the appeal, and a brief summary of the relief which is sought. Within 30 working days of the date of filing the appeal, or the first regular city council meeting which is scheduled, whichever is later in time, the city council shall hear the appeal and issue a final decision. Nothing contained herein shall preclude the city council from seeking additional information prior to rendering a final decision.

Section 3. That is the intention of the City Council and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the City of Naples, Florida, and that the sections of this ordinance may be renumbered to accomplish such intention.

Section 4. If any word, phrase, clause, subsection or section of this ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of any remaining portions of this ordinance.

Section 5. That all sections or part of sections of the Code of Ordinances, all ordinances or parts of ordinances, and all resolutions or parts of resolutions in conflict therewith, be and the same are hereby repealed to the extent of such conflict.

Section 6. This ordinance shall take effect immediately upon adoption at second reading.

APPROVED AT FIRST READING THIS _____ DAY OF _____, 2004.

PASSED AND ADOPTED AT SECOND READING AND PUBLIC HEARING IN OPEN AND REGULAR SESSION OF THE CITY COUNCIL OF THE CITY OF NAPLES, FLORIDA THIS _____ DAY OF _____, 2004.

Bill Barnett, Mayor

Attest: Approved as to form and legality:

Tara A. Norman, City Clerk

Robert D. Pritt, City Attorney