

**CITY OF MARINE CITY**  
**HISTORICAL COMMISSION**  
**AGENDA**

***Regular Meeting: Tuesday, January 15, 2013; 6:00PM***

**Marine City Fire Hall: 200 South Parker Street, Marine City, Michigan**

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL:** Chairperson Scott Tisdale; Commissioners William Beutell, Heather Bokram, Amber Menchaca, and Judith White; and, City Manager John Gabor
4. **ELECTION OF OFFICERS**
5. **APPROVE AGENDA (Additions / Deletions)**
6. **APPROVE MINUTES**
  - A. Historical Commission Regular Meeting ~ October 16, 2012
7. **COMMUNICATIONS**
8. **PUBLIC COMMENT** *Residents are welcome to address the Historical Commission. Please state name and address. Limit comments to five (5) minutes.*
9. **UNFINISHED BUSINESS**
10. **NEW BUSINESS**
  - A. Historic District Ordinance
  - B. Study Committee Update ~ Creation of New Historic District
11. **ADJOURNMENT**

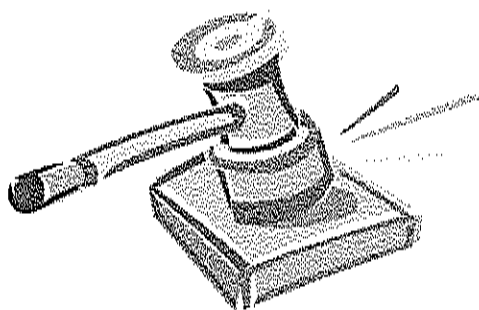
# Election of Officers

---

Current Officers for Historical Commission:

Chairperson: Scott Tisdale

Vice Chairperson: Kim A. Turner



*Note: The last election of officers was held on October 18, 2011.*

6A

**City of Marine City  
Historical Commission Meeting  
October 16, 2012**

A regular meeting of the Historical Commission was held in the Fire Hall, 200 South Parker Street, Marine City, Michigan, on Tuesday, October 16, 2012, and was called to order by Chairperson Scott Tisdale at 6:00 PM.

**Present:** Chairperson Tisdale; Commissioners Beutell, Bokram, Lepley, Turner and White; City Manager Gabor; and, City Clerk Kade.

**Absent:** Commissioner Menchaca

**Approve Agenda**

Motion by Commissioner White, seconded by Commissioner Lepley, to approve the Agenda, as presented. All Ayes. Motion Carried.

**Approve Minutes**

Motion by Commissioner Beutell, seconded by Commissioner White, to approve the regular Historical Commission Minutes of April 17, 2012, as presented. All Ayes. Motion Carried.

**Communications**

No communications were presented.

**Public Comment**

There were no residents to address the Commission.

**Unfinished Business**

***Historic District Ordinance***

The City Attorney had prepared a revised, proposed Historic District Ordinance, which incorporated the amendments proposed by Commissioner Patrick Phelan, and approved by the City Commission at its March 1, 2012 Meeting.

Motion by Commissioner White, seconded by Commissioner Tisdale, to approve the Historic District Ordinance of the City of Marine City, as presented, and to return the Ordinance to the City Commission for adoption. All Ayes. Motion Carried.

### **New Business**

None

### **Other Business**

Commissioner White suggested that the Historical Commission work on forming a new Historic District on South Water Street, which would include the Water Works building, Lighthouse, and Guy Center.

Motion by Commissioner Tisdale, seconded by Commissioner Bokram, to form a Study Group to research the creation of a new Historic District, and to make a recommendation to the Historical Commission. All Ayes. Motion Carried.

Members of the Study Group were chosen, as follows:

Commissioner Rebecca Lepley

Commissioner Kim Turner

Commissioner Judith White

Alternate: Commissioner Heather Bokram

Commissioner White also recommended that the Historical Commission plan field trips to buildings by George Dewitt Mason; and, that they select a community to tour other historic districts.

### **Adjournment**

Motion by Commissioner Beutell, seconded by Commissioner White, to adjourn at 6:21 PM.  
All Ayes. Motion Carried.

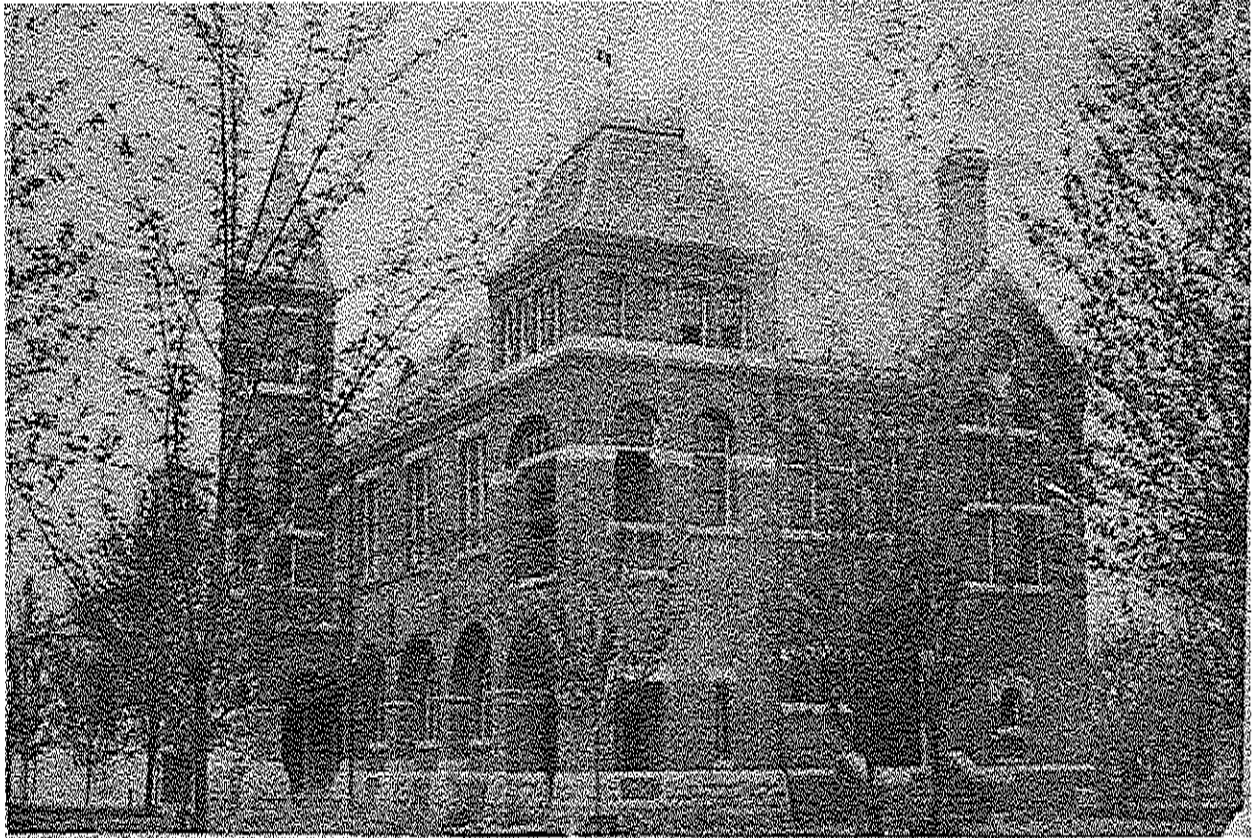
Respectfully submitted,

Diana S. Kade  
City Clerk

10A

# HISTORIC DISTRICT ORDINANCE

---



**Reconsideration of Historic District Ordinance**

**CITY OF MARINE CITY  
ST. CLAIR COUNTY, MICHIGAN  
ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF MARINE CITY, ST. CLAIR COUNTY, MICHIGAN, TO REPEAL THE EXISTING HISTORIC DISTRICT RESTORATION COMMISSION AND REPLACE SAME WITH AN HISTORIC DISTRICT ORDINANCE.**

**THE CITY OF MARINE CITY ORDAINS:**

**SECTION 1.** The Ordinance creating the Historic District Restoration Commission, sections 155.095 through 155.109 is hereby repealed.

**SECTION 2.** The Historic District Ordinance of the City of Marine City set forth as follows is hereby adopted.

1.1 Short title.

This Ordinance shall be known as the "Historic District Ordinance of the City of Marine City".

1.2 Statement of purpose.

Historic preservation is hereby declared to be a public purpose and the City Commission of the City of Marine City may hereby regulate the construction, addition, alteration, repair, moving, excavation, and demolition of resources in historic districts within the City limits. The purpose of this Ordinance is to:

- a. Safeguard the heritage of the City of Marine City by preserving districts which reflect elements of its history, architecture, archaeology, engineering, or culture.
- b. Stabilize and improve property values in each district and surrounding areas.
- c. Foster civic beauty.
- d. Strengthen the local economy and encourage tourism.
- e. Promote the use of historic districts for the education, pleasure, and welfare of the citizens of the City of Marine City and of the State of Michigan.

The City of Marine City has established an historic district as set forth in section 155.130 of the Code of Ordinances. The City may, by ordinance, establish additional districts.

1.3 Definitions.

- a. **Alteration** means work that changes the detail of a resource but does not change its basic size or shape.
- b. **Appropriate** means proposed work meeting the requirements of Section 1.11 of this Ordinance.
- c. **Certificate of Appropriateness** means the written approval of a permit application for work that is Appropriate and does not adversely affect a Resource.
- d. **Committee** means an historic district study committee appointed by the City Commission.
- e. **Demolition** means the razing or destruction, whether entirely or in part, of a Resource and includes, but is not limited to, Demolition by Neglect.
- f. **Demolition by Neglect** means neglect in maintaining, repairing, or securing a Resource that results in deterioration of an exterior feature of the resource or the loss of structural integrity of the resource.
- g. **Denial** means the written rejection of a permit application for work that is Inappropriate and that adversely affects a Resource.
- h. **Department** means the department of history, arts and libraries.
- i. **Fire Alarm System** means a system designed to detect and annunciate the presence of fire or by-products of fire. Fire alarm system includes smoke alarms.
- j. **Historic District** means an area, or group of areas, not necessarily having contiguous boundaries that contain one or more Resources that are related by history, architecture, archaeology, engineering, or culture, and not less than one Historic Resource.
- k. **Historic Preservation** means the identification, evaluation, establishment, and protection of Resources significant in history, architecture, archaeology, engineering, or culture.
- l. **Historic Resource** means a publicly or privately owned building, structure, site, object, feature or open space that is significant in the history, architecture, archaeology, engineering, or culture of the city of Marine City, state of Michigan, or the United States.



- m. ***Inappropriate*** means proposed work that does not meet the requirements of Section 1.11 of this Ordinance.
- n. ***Notice to Proceed*** means the written permission to issue a permit for work that is Inappropriate and that adversely affects a resource, pursuant to a finding under section 399.205(6) of Public Act 169 of 1970, as amended.
- o. ***Open Space*** means undeveloped land, a naturally landscaped area, or a formal or man-made landscaped area that provides a connective link or buffer between other Resources.
- p. ***Ordinary Maintenance*** means keeping a Resource unimpaired and in good condition through ongoing minor intervention, undertaken from time to time, in its exterior condition. Ordinary Maintenance does not change the external appearance of the Resource except through the elimination of the usual and expected effects of weathering. Ordinary Maintenance does not constitute Work for purposes of this Ordinance.
- q. ***Proposed Historic District*** means an area, or group of areas not necessarily having contiguous boundaries, that has delineated boundaries and that is under review by a Committee or standing committee for the purpose of making a recommendation as to whether it should be established as an Historic District or added to an established Historic District.
- r. ***Repair*** means to restore a decayed or damaged Resource to good or sound condition by any process. A repair that changes the external appearance of a resource constitutes Work for the purposes of this Ordinance.
- s. ***Resource*** means one or more publicly or privately owned historic or non-historic buildings, structures, sites, objects, features, or open spaces located within an Historic District.
- t. ***Smoke Alarm*** means a single-station or multiple-station alarm responsive to smoke and not connected to a system. As used in this subdivision, a "*single-station alarm*" means an assembly incorporation of a detector, the control equipment, and the alarm sounding device into a single unit, operated from a power supply either in the unit or obtained at the point of installation. "*Multiple-station alarm*" means two or more single-station alarms that are capable of interconnection such that actuation of one alarm causes all integrated separate audible alarms to operate.

- u. **Work** means construction, addition, alteration, repair, moving, excavation, or demolition.

1.4 Historic District Study Committee and the Study Committee report.

Before establishing an Historic District, the City Commission shall, by resolution, create an Historic District Study Committee. The resolution shall define the composition of the committee; the purpose for which it is being established; and how and when it will be dissolved. After being established, the City Commission shall appoint members to the Committee. The Study Committee shall contain representation of at least one member appointed from one or more duly organized local historic preservation organizations. The Study Committee shall do all of the following:

- a. Conduct a photographic inventory of resources within each proposed historic district following procedures established by the State Historic Preservation Office of the Michigan State Housing Development Authority.
- b. Conduct basic research of each proposed historic district and historic resources located within that district and determine the interest of each property owned in participating in such a district.
- c. Determine the total number of historic and non-historic resources within a proposed historic district and the percentage of historic resources of that total. In evaluating the significance of historic resources, the Committee shall be guided by the selection criteria for evaluation issued by the United States Secretary of the Interior for inclusion of resources in the National Register of Historic Places, as set forth in 36 CFR, part 60, and criteria established or approved by the State Historic Preservation Office of the Michigan State Housing Development Authority.
- d. Prepare a preliminary Historic District Study Committee report that addresses at a minimum all of the following:
  - 1) The charge of the Committee.
  - 2) The composition of Committee membership.
  - 3) The historic district(s) studied.
  - 4) The boundaries of each proposed historic district in writing and on maps.
  - 5) The history of each proposed historic district.
  - 6) The significance of each district as a whole, as well as a sufficient number of its individual resources to fully represent the variety of resources found within the district, relative to the evaluation criteria.

- 7) Transmit copies of the preliminary report for review and recommendations to the local planning body, the State Historic Preservation Office of the Michigan State Housing Development Authority, the Michigan Historical Commission, and the State Historic Preservation Review Board.
  - 8) Make copies of the preliminary report available to the public pursuant to section 399.203(4) of Public Act 169 of 1970, as amended.
- e. Not less than sixty (60) calendar days after the transmittal of the preliminary report, the Historic District Study Committee shall hold a public hearing in compliance with Public Act 267 of 1976, as amended. Public notice of the time, date and place of the hearing shall be given in the manner required by Public Act 267. Written notice shall be mailed by first class mail not less than fourteen (14) calendar days prior to the hearing to the owners of properties within the proposed historic district, as listed on the most current tax rolls. The report shall be made available to the public in compliance with Public Act 442 of 1976, as amended.
- f. After the date of the public hearing, the Committee and the City Commission have not more than one year, unless otherwise authorized by the City Commission, to take the following actions:
- 1) The Committee shall prepare and submit a final report with its recommendations and the recommendations, if any, of the local planning body to the City Commission as to the establishment of an Historic District. If the recommendation is to establish an Historic District, the final report shall include a draft of the proposed ordinance.
  - 2) After receiving a final report that recommends the establishment of an Historic District, the City Commission, at its discretion, may introduce and pass or reject an ordinance. If the City Commission passes an ordinance establishing an Historic District, the City shall file a copy of the ordinance, including a legal description of the property or properties located within the Historic District with the Register of Deeds. The City Commission shall not pass an ordinance establishing a contiguous historic district less than sixty (60) days after a majority of the property owners within the proposed historic district, as listed on the tax rolls of the local unit, have approved the establishment of the historic district pursuant to a written petition.

- g. A writing prepared, owned, used, in the possession of, or retained by a committee in the performance of an official function of the Historic District Commission should be made available to the public in compliance with Public Act 442 of 1976, as amended.

#### 1.5 Establishing additional, modifying, or eliminating historic districts.

- a. The City Commission may establish by ordinance additional Historic Districts, including proposed districts previously considered and rejected, may modify boundaries of an existing historic district, or may eliminate an existing historic district. Before modifying, eliminating, or establishing additional Historic Districts, an historic district study committee appointed by the City Commission shall follow the procedures as stated in section 399.203(1-3) of Public Act 169 of 1970, as amended. To conduct these activities, the City Commission may retain the initial committee only if the original committee has not been dissolved, or establish a new committee in accordance with Section 1.4 to consider only specific proposed districts and then be dissolved. The committee shall consider any previously written committee reports pertinent to the proposed action.
- b. In considering elimination of an historic district, a committee shall follow the procedures set forth in section 399.203 (1-3) of Public Act 169 of 1970, as amended for the issuance of a preliminary report, holding a public hearing, and issuing a final report but with the intent of showing one or more of the following:
  - 1) The Historic District has lost those physical characteristics that enabled the establishment of the district.
  - 2) The Historic District was not significant in the way previously defined.
  - 3) The Historic District was established pursuant to defective procedures.

#### 1.6 The Historic District Commission.

The City Commission may establish by ordinance a commission to be called an historic district commission. The commission may be established at any time, but not later than the time the first historic district is established. Each member of the commission shall reside within the city limits. The commission shall consist of seven (7) members. Members shall be appointed by the City Commission. A majority of the members shall have a clearly demonstrated interest in or knowledge of historic preservation. Members shall be appointed for a term of three (3) years, except the initial appointments of three (3) members for a term of two (2) years and two (2)

members for a term of one (1) year. Subsequent appointments shall be for three-year terms. Members shall be eligible for reappointment. In the event of a vacancy on the Commission, interim appointments shall be made by the City Commission within sixty (60) calendar days to complete the unexpired term of such position. Two (2) members shall be appointed from a list submitted by duly organized local historic preservation organizations. If such a person is available for appointment, one member shall be an architect who has two years of architectural experience or who is duly registered in the state of Michigan.

The City Commission may prescribe powers and duties of the commission, in addition to those prescribed in this Ordinance, that foster historic preservation activities, projects, and programs in the local unit.

1.7 Historic District Commission meetings, record keeping and rules of procedure.

- a. The Historic District Commission shall meet at least quarterly or more frequently at the call of the Commission.
- b. The business that the Commission may perform shall be conducted at a public meeting held in compliance with the Open Meetings Act, Public Act 267 of 1976, as amended. Public notice of the date, time, and place of the meeting shall be given in the manner required by Public Act 267. A meeting agenda shall be part of the notice and shall include a listing of each permit application to be reviewed or considered by the Commission.
- c. The Commission shall keep a record of its resolutions, proceedings and actions. A writing prepared, owned, and used in the possession of or retained by the Commission in the performance of an official function shall be made available to the public in compliance with the Freedom of Information Act, Public Act 442 of 1976, as amended.
- d. The Commission shall adopt its own rules of procedure and shall adopt design review standards and guidelines to carry out its duties under this Ordinance.

1.8 Delegation of minor classes or work.

The Commission may delegate the issuance of Certificates of Appropriateness for specified minor classes of work to its staff, or to another delegated authority. The Commission shall provide to its delegated authority specific written standards for issuing Certificates of Appropriateness under this subsection. The Commission shall review the Certificates of Appropriateness issued by the delegate on at least a quarterly

basis to determine whether or not the delegated responsibilities should be continued.

1.9 Ordinary maintenance.

Nothing in this Ordinance shall be construed to prevent ordinary maintenance or repair of a resource within an historic district or to prevent work on any resource under a permit issued by the inspector of buildings or other duly delegated authority before the Ordinance was enacted.

1.10 Review by the Commission.

The Commission shall review and act upon only exterior features of a resource and shall not review and act upon interior arrangements unless specifically authorized to do so by the City Commission or unless interior work will cause visible change to the exterior of the resource. The Commission shall not disapprove an application due to considerations not prescribed in subsection 399.205(3) or Public Act 169 of 1970, as amended.

1.11 Design review standards and guidelines.

- a. In reviewing plans, the Commission shall follow the U.S. Secretary of Interior's *Standards for Rehabilitation* and guidelines for rehabilitating historic buildings as set forth in 36 CFR, part 67. Design review standards and guidelines that address special design characteristics of historic districts administered by the Commission may be followed if they are equivalent in guidance to the Secretary of Interior's *Standards* and guidelines and are established or approved by the State Historic Preservation Office of the Michigan State Housing Development Authority.
- b. In reviewing plans, the Commission shall also consider all of the following:
  - 1) The historic or architectural value and significance of the resource and its relationship to the historic value of the surrounding area.
  - 2) The relationship of any architectural features of the resource to the rest of the resource and to the surrounding area.
  - 3) The general compatibility of the design, arrangement, texture, and materials proposed to be used.
  - 4) Other factors, such as aesthetic value, that the Commission finds relevant.
  - 5) Whether the applicant has certified in the application that the

property where work will be undertaken has, or will have before the proposed project completion date, a fire alarm system or smoke alarm complying with the requirements of the Stille-DeRossett-Hale Single State Construction Code Act 1972 PA 230, MCL 125.1501 to 125.1531.

1.12 Permit applications.

- a. A permit shall be obtained before any work affecting the exterior appearance of a resource is performed within an historic district. The person, individual, partnership, firm, corporation, organization, institution, or agency of government proposing to do that work shall file an application for a permit with the inspector of buildings. Upon receipt of a complete application, the inspector of buildings shall immediately refer the application, along with all required supporting materials that make the application complete to the Commission. A permit shall not be issued and proposed work shall not proceed until the Commission has acted on the application by issuing a Certificate of Appropriateness or a Notice to Proceed as prescribed in this Ordinance. A commission shall not issue a certificate of appropriateness unless the applicant certifies in the application that the property where work will be undertaken has, or will have before the proposed project completion date, a fire alarm system or a smoke alarm complying with the requirements of the Stille-DeRossett-Hale Single State Construction Code Act, 1972 PA 230, MCL 125.1501 to 125.1531.
- b. The Commission shall file Certificates of Appropriateness, Notices to Proceed, and Denials of applications for permits with the inspector of buildings. A permit shall not be issued until the Commission has acted as prescribed by this Ordinance.
- c. If an application is for work that will adversely affect the exterior of a resource the Commission considers valuable to the City of Marine City, the State of Michigan, or the nation, and the Commission determines that the alteration or loss of that resource will adversely affect the public purpose of the city, state, or nation, the Commission shall attempt to establish with the owner of the resource an economically feasible plan for the preservation of the resource.
- d. The failure of the Commission to act on an application within sixty (60) calendar days after the date a complete application is filed with the Commission, unless an extension is agreed upon in writing by the applicant and the Commission, shall be considered to constitute approval.
- e. The local unit may charge a reasonable fee to process a permit

application.

1.13 Denials.

If a permit application is denied, the decision shall be binding on the inspector or other authority. A Denial shall be accompanied by a written explanation by the Commission of the reasons for denial and, if appropriate, a notice that an application may be re-submitted for Commission review when the suggested changes have been made. The Denial shall also include the notification of the applicant's right to appeal to the State Historic Preservation Review Board and to the circuit court.

1.14 Notice to proceed.

Work within an historic district shall be permitted through the issuance of a Notice to Proceed by the Commission if any of the following conditions prevail and if the proposed work can be demonstrated by a finding of the Commission to be necessary to substantially improve or correct any of the following conditions:

- a. The resource constitutes a hazard to the safety of the public or to the structure's occupants.
- b. The resource is a deterrent to a major improvement program that will be of substantial benefit to the community and the applicant proposing the work has obtained all necessary planning and zoning approvals, financing, and environmental clearance.
- c. Retaining the resource will cause undue financial hardship to the owner when a governmental action, an act of God, or other events beyond the owner's control created the hardship, and all feasible alternatives to eliminate the financial hardship, which may include offering the resource for sale at its fair market value or moving the resource to a vacant site within the Historic District, have been attempted and exhausted by the owner.
- d. Retaining the resource is not in the interest of the majority of the community.

1.5 Appeal of a commission decision.

- a. An applicant aggrieved by a decision of the Commission concerning a permit application may file an appeal with the State Historic Preservation Review Board. The appeal shall be filed within sixty (60) calendar days after the decision is furnished to the applicant. The appellant may



submit all or part of the appellant's evidence and arguments in written form. The State Historic Preservation Review Board shall consider an appeal at its first regularly scheduled meeting after receiving the appeal. A permit applicant aggrieved by the decision of the State Historic Preservation Review Board may appeal the decision to the circuit court having jurisdiction over the Historic District Commission whose decision was appealed to the State Historic Preservation Review Board.

- b. Any citizen or duly organized historic preservation organization in the City of Marine City, as well as resource property owners, jointly or severally aggrieved by a decision of the Historic District Commission may appeal the decision to the circuit court, except that a permit applicant aggrieved by a decision rendered under this Ordinance may not appeal to the court without first exhausting the right to appeal to the State Historic Preservation Review Board.

#### 1.16 Work without a permit.

When work has been done upon a resource without a permit, and the Commission finds that the work does not qualify for a Certificate of Appropriateness, the Commission may require an owner to restore the resource to the condition that the resource was in before the inappropriate work or to modify the work so that it qualifies for a Certificate of Appropriateness. If the owner does not comply with the restoration or modification requirement within a reasonable time, the Commission may seek an order from the circuit court to require the owner to restore the resource to its former condition or to modify the work so that it qualifies for a Certificate of Appropriateness. If the owner does not comply or cannot comply with the order of the court the Commission or its agents may enter the property and conduct work necessary to restore the resource to its former condition or modify the work so that it qualifies for a Certificate of Appropriateness in accordance with the court's order. The costs of the work done shall be charged to the owner, and may be levied by the City of Marine City as a special assessment against the property. When acting pursuant to an order of the circuit court, the Commission or its agents may enter a property for purposes of this section.

#### 1.17 Demolition by neglect.

Upon a finding by the Commission that an historic resource within an historic district or a proposed historic district subject to its review and approval is threatened with Demolition by Neglect, the Commission may do either of the following:

- a. Require the owner of the resource to repair all conditions contributing to

### Demolition by Neglect.

- b. If the owner does not make repairs within a reasonable time, the Commission or its agents may enter the property and make such repairs as necessary to prevent Demolition by Neglect. The costs of the work shall be charged to the owner, and may be levied by the City of Marine City as a special assessment against the property. The Commission or its agents may enter the property for purposes of this section upon obtaining an order from the circuit court.

### 1.18 Review of Work in proposed districts.

Upon receipt of substantial evidence showing the presence of historic, architectural, archaeological, engineering, or cultural significance of a proposed historic district, the City Commission may, at its discretion, adopt a resolution requiring that all applications for permits within the proposed historic district be referred to the Historic District Commission as prescribed in section 12 of the Ordinance. The Historic District Commission shall review permit applications with the same powers that would apply if the proposed historic district was an established historic district. The review may continue in the proposed historic district for not more than one (1) year, or until such time as the City Commission approves or rejects the establishment of the historic district by ordinance, whichever occurs first.

### 1.19 Emergency moratorium

If the City Commission determines that pending work will cause irreparable harm to resources located within an established or proposed historic district, the City Commission may by resolution declare an emergency moratorium on all such work for a period not to exceed six (6) months. The City Commission may extend the emergency moratorium for an additional period not to exceed six (6) months, upon finding that the threat of irreparable harm to resources is still present. Any pending permit application concerning a resource subject to an emergency moratorium may be summarily denied.

### 1.20 Penalties for violations.

- a. A person, individual, partnership, firm, corporation, organization, institution, or agency of government that violates this act is responsible for a civil violation and may be fined not more than \$5,000.00.
- b. A person, individual, partnership, firm, corporation, organization, institution, or agency of government that violates this act may be ordered by the court to pay the costs to restore or replicate a resource unlawfully constructed, added to, altered, repaired, moved, excavated or demolished.

1.21 Acceptance of gifts or grants.

The City Commission may accept state or federal grants for historic preservation purposes; may participate in state and federal programs that benefit historic preservation, and may accept public or private gifts for historic preservation purposes. The City Commission may appoint the Historic District Commission to accept and administer grants, gifts, and program responsibilities.

1.22 Acquisition of historic resources.

If all efforts by the Commission to preserve a resource fail, or if it is determined by the City Commission that public ownership is most suitable, the City Commission, if considered to be in the public interest, may acquire the resource using public funds, public or private gifts, grants or proceeds from the issuance of revenue bonds. The acquisition shall be based upon the recommendation of the Commission. The Commission is responsible for maintaining publicly owned resources using its own funds, if not specifically designated for other purposes, or public funds committed for that use by the City Commission. Upon recommendation of the Commission, the City may sell resources acquired under this section with protective easements included in the property transfer documents, if appropriate.

**SECTION 2. SEVERABILITY.**

This Ordinance and each of the various parts, sections, subsections, sentences, phrases and clauses hereof are hereby declared to be severable. If any part, section, subsection, sentence, phrase or clause is determined to be invalid or unenforceable by a court of competent jurisdiction, it is hereby provided that the remainder of this Ordinance shall not be affected thereby and shall remain in full force and effect.

**SECTION 3. REPEAL OF ORDINANCES IN CONFLICT HEREWITH.**

Any and all Ordinances of the City of Marine City or any parts or provisions thereof, to the extent that they are contrary to or inconsistent with the provisions of the within Ordinance, are hereby expressly repealed.

**SECTION 4. PUBLICATION.**

This Ordinance shall be published in accordance with the terms, provisions and requirements of the City Charter of the City of Marine City, Michigan, and in accordance with and to the extent required by the statutes of the State of Michigan.

**SECTION 5. EFFECTIVE DATE OF ORDINANCE.**

This Ordinance shall take effect on the \_\_\_ day of \_\_\_\_\_, 20\_\_ in accordance with the provisions and requirements of the City of Marine City. The City Clerk is hereby directed to publish this Ordinance within fifteen (15) days after the date of adoption as required by Section 7.2 of the City Charter of the City of Marine City.

**ORDINANCE DECLARED ADOPTED.**

---

Charles R. Browne, Mayor  
City of Marine City, Michigan

The foregoing is a true and complete copy of an Ordinance adopted by the City Commission of the City of Marine City, County of St. Clair, State of Michigan, at a regular meeting held on the \_\_\_ day of \_\_\_\_\_ 20\_\_, and public notice of said meeting as given pursuant to and in accordance with the requirements of Act 267 of the Public Acts of 1976, as amended, being the Open Meetings Act, and the Minutes of said meeting have been or will be made available as required by said Act.

Members Present:

Members Absent:

It was moved by Commissioner \_\_\_\_\_, and supported by Commissioner \_\_\_\_\_, to adopt the Ordinance.

Ayes:

Nays:

The Ordinance was declared adopted by the Mayor and has been recorded in the Ordinance Book.

---

Diana S. Kade, City Clerk  
City of Marine City, Michigan

INTRODUCED:  
ADOPTED:  
PUBLISHED:  
EFFECTIVE:

**FROM THE NOVEMBER 15, 2012 CITY COMMISSION MEETING MINUTES:**

***Proposed Historic District Ordinance (Introduction of Ordinance)***

City Attorney James Downey distributed a Memorandum regarding the legal issues concerning the introduction of the proposed Historic District Ordinance at the November 1<sup>st</sup> City Commission Meeting. City Attorney Downey addressed each issue, and provided his legal opinion, as follows:

- ***Commissioner Meli's concern about the definition "Alteration".*** City Attorney Downey stated that the City was obligated to use the definitions set forth by the State in adopting its local Ordinance; and, that the type of expansion to the building foreseen by Commissioner Meli was not prohibited by this definition.
- ***Commissioner Skotarczyk's recommendation to remove the definition "Department".*** City Attorney Downey recommended keeping the definition in place because it was defined specifically by the Local Historic Districts Act at MCL Section 399.201a(h).
- ***Commissioner Hendrick felt a civil fine of \$5,000 was too high.*** City Attorney Downey stated that the penalty provision used in the proposed Ordinance came directly from the state enabling statute, which the City was obligated to observe.
- ***Commissioner Hendrick pointed out that any additional future changes to the exterior of City Hall would fall under the proposed Ordinance.*** City Attorney Downey said that Commissioner Hendrick was correct that any future changes to 300 Broadway would be governed by the new Ordinance.
- ***Commissioners Hendrick and Skotarczyk inquired as to the need for language at the beginning of proposed Section 1.6.*** City Attorney Downey stated that the City was bound by the language of the enabling statute, and must adopt the opening language of the proposed Section 1.6, and the Local Historic Districts Act at MCL Section 399.212.
- ***An ongoing source of concern was whether a property owner could opt out of an historic district, or whether the City could pass an Ordinance which restricts it from granting historic designations without the consent of all property owners within the proposed district.*** City Attorney Downey responded that the answer to both was "No". He said a property owner may express concerns at a public hearing, but ultimately, that determination is left to the City Commission alone. City Attorney Downey discussed the appeal remedy, and said a property owner's initial appeal would be to the City Commission before appealing to the Circuit Court. He noted that this would be a hefty burden to place on a property owner.

Discussion ensued after City Attorney Downey concluded his statements.

Commissioner Skotarczyk commented that the Commission would only be adopting an ordinance, and that they already had one historic district.

Commissioner Hendrick said that there was nothing wrong with the original Ordinance, and that they should keep the Ordinance as-is.

Commissioner Skotarczyk reported that the 300 Broadway restoration had been slowed down, and that the new Ordinance would protect the City buildings.

Commissioner Hendrick commented that it would make it worse.

Commissioner Meli commented that 300 Broadway was being restored under the old Ordinance, and things were being accomplished.

Commissioner Lovett commented that the purpose of the proposed Ordinance was to protect the buildings and heritage of the community.

Motion by Commissioner Lovett, seconded by Commissioner Skotarczyk, to introduce an Ordinance of the City of Marine City to repeal the existing Historic District Restoration Commission and replace same with an Historic District Ordinance. Ayes: Browne, Lovett, Phelan. Nays: Hendrick, Meli, Skotarczyk. Motion Failed.

# KANE, CLEMONS, JOACHIM AND DOWNEY

PROFESSIONAL CORPORATION  
ATTORNEYS AND COUNSELORS AT LAW  
721 ST. CLAIR RIVER DRIVE P.O. BOX 333  
ALGONAC, MICHIGAN 48001

JOHN C. KANE (1920-1998)  
THOMAS M. CLEMONS, JR.  
GEORGE J. JOACHIM  
JAMES T. DOWNEY, JR.

TELEPHONE  
AREA CODE 810  
794-4961  
FAX (810) 794-3641

## MEMORANDUM

**TO:** MARINE CITY COMMISSIONERS

**FROM:** JAMES T. DOWNEY, JR. *JTD*

**DATE:** 11-15-12

**SUBJECT:** LEGAL ISSUES CONCERNING INTRODUCTION  
OF PROPOSED HISTORIC DISTRICT ORDINANCE

Good Evening, Commissioners—

There are several issues which arose at the November 1 City Commission Meeting which I address in turn.

- A. Commissioner Meli expressed concern about the definition of **Alteration** found at section 1.3.a on page two of the proposed ordinance. His concern was that such a definition might be limiting if, and when, the Commission were to decide to expand the building at 300 Broadway. There are two responses to this issue: (1) the definition of **Alteration** used in the proposed ordinance comes directly from the state statute which provides the City the authority to adopt a local ordinance; specifically, **Alteration** is defined by the Local Historic Districts Act ("LHDA") at MCL section 399.201a(a). This definition is identical to that used in our proposed section 1.3.a. The City is obligated to use the definitions set forth by the state in adopting its local ordinance; and (2) the type of expansion foreseen by Commissioner Meli is not prohibited by this definition, as the Mayor and several Commissioners noted. It means simply that a proposed exterior change would be overseen by the historic district commission, and the work performed on the expansion must be approved, as set forth by the ordinance.
- B. Commissioner Skotarczyk observed that the definition of **Department** found at section 1.3.h on page two of the proposed ordinance may be obsolete due to a disbanding of said department on, or about, 2009. I recommend keeping this definition in place because it too is defined specifically by the LHDA at MCL section 399.201a(h). There is no harm in leaving the definition in place. If the department

were to be reconstituted, we would not have to amend our ordinance to accommodate that change.

- C. Commissioner Hendrick noted that at section 1.20.a of the proposed ordinance, a violation might result in a civil fine of \$5,000.00, a figure she felt was too high. The penalty provision used in the proposed ordinance comes directly from the state enabling statute, which the City is obligated to observe. The LHDA at MCL section 399.215 mandates a penalty of "not more than \$5,000.00." It is important to note that the civil penalty for a specific violation need not be \$5,000.00 in every, or any, case. It simply sets forth the maximum penalty allowed. The question was also raised: who imposes this penalty? An alleged violation of the ordinance would result in a civil infraction ticket being issued to the offending property owner and filed with the 72<sup>nd</sup> District Court. The property owner would either admit responsibility to the violation or request a formal hearing before our local District Court Judge. At a formal hearing, the City would bear the burden of proving by a preponderance of evidence that a violation of the ordinance occurred. As the City's prosecuting official in such matters, I could seek the historic district commission's input with respect to an appropriate fine and share that recommendation with the Court upon its finding of responsibility to the violation.
- D. Commissioner Hendrick correctly noted that if the proposed ordinance is adopted, then any future exterior changes to 300 Broadway would be governed by the new ordinance.
- E. Commissioners Hendrick and Skotarczyk inquired of the need for the language at the beginning of proposed section 1.6. The referenced language states in pertinent part that the Commission "may establish by ordinance a commission to be called an historic district commission. The commission may be established at any time, but not later than the time the first historic district is established." Specifically, the Commissioners ask why this is necessary when such a commission has been previously established and when an historic district has already been established by section 155.130 of the Marine City Code. There are two responses to this issue: (1) the LHDA at MCL section 399.204 requires that the historic commission created by local ordinance be called the "historic district commission." Again, the City is bound by the language of the enabling statute. In the current Marine City Code section 155.095, the subject commission is known as the "Historical District Restoration Commission. For that reason alone, the City must adopt the opening language of proposed section 1.6;" and (2) the LHDA at MCL section 399.212 states:

This act does not affect...historical commissions appointed by local governing bodies to foster historic preservation. An existing local historical commission...may be designated as a historic district commission, if its membership and structure conform, or are revised to conform, to the provisions of [MCL section 399.204].



The current section 155.097 of the Marine City Code, which establishes criteria for service on the commission, deviates slightly from the mandate of the statute, so if this Commission wished simply to ratify the existing historic commission as the new "historic district commission," it would be proper form for this Commission to adopt an ordinance establishing a new "historic district commission" with terms of service consistent with the new section 1.6. This may particularly be advisable given the murky status of that original group.

- F. One issue not raised on November 1, but that seems an ongoing source of concern, is whether a property owner may opt out of an historic district, or whether the City might pass an ordinance which restricts it from granting historic designations without the consent of all property owners within the proposed district. The answer to both of these questions is "No." A property owner may express concerns at the public hearing set forth at proposed section 1.4.e, but ultimately, that determination is left to the City Commission alone. The Michigan Attorney General has opined that the LHDA does not allow cities to pass ordinances that require unanimous consent of effected property owners in order to declare historic districts. (Mich. AG Opinion No. 6919, October 10, 1996). The Attorney General found that the administrative and judicial review processes set forth in the LHDA, and in our proposed sections 1.10 through 1.16, provided adequate protections to aggrieved property owners.

I look forward to addressing these and any other issues you may have with respect to the proposed ordinance.

10B

# Study Committee Update

## Creation of New Historic District

---

