Tabled 6-20-13
Passed 8-0 (Rollo absent)

ORDINANCE 13-21

TO AMEND TITLE 8 OF THE BLOOMINGTON MUNICIPAL CODE ENTITLED "HISTORIC PRESERVATION AND PROTECTION"
(Changes to Chapter 8.02 - Definitions, Chapter 8.08 - Historic Districts and Standards, Chapter 8.12 - Demolition and Public Safety, Chapter 8.16 - Administration and Enforcement and Chapter 8.20 - List of Designated Historic Districts)

WHEREAS, in an effort to ensure the City's Title 8 complies with I.C. 36-7-11, the City's Administration believes certain changes are needed to the current Title 8; and

WHEREAS, Title 8 has not been updated in approximately thirteen (13) years and the City's Administration believes certain updates are needed to better meet the needs of the Historic Preservation Commission and the Bloomington community at large;

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION 1. Section 8.02.020, entitled "Definitions", shall be amended by amending the definition of the word "Conservation District" so that it reads as follows:

Conservation District. Pursuant to Indiana Code 36-7-11-19, the provision that a district may be created which is called a conservation district, the second phase of which is the conversion to historic district status upon the conclusion of three years, subject to written objection by a majority of property owners in the district. Regulation in a conservation district is less stringent than in an historic district. In a conservation district, a certificate of appropriateness must be granted for:

(1) The demolition of any building;
(2) The moving of any building (the moving of a building does not include raising a building for purposes of foundation repair or replacement, provided the building is replaced on its original footprint once the foundation has been repaired or replaced);
(3) Any new construction of a principal building or accessory building or structure subject to view from a public way.

SECTION 2. Section 8.02.020, entitled "Definitions", shall be amended by amending the definition of the word "Interested Parties" to delete the number sequence "14-3-3.4-10" and replace it with "14-21-1-19".

SECTION 3. Section 8.02.020, entitled "Definitions", shall be amended to add a newly defined term, "Substantial Removal", which shall read as follows:

"Substantial Removal" as used in the definition of "Demolition" means an alteration, pulling down, destruction or removal of a portion of a structure which jeopardizes a structure's individual eligibility for listing in the National Register of Historic Places, or its status as a contributing structure in a national, state or local register of historical places, which shall include, but not be limited to, the removal of a defining architectural feature or element which defines or contributes to the historic character of the structure or the removal of twenty-five percent (25%) of the structure, including its roof, if the part which is removed is on a façade which is subject to view from a public thoroughfare."

SECTION 4. Chapter 8.08, entitled "Historic Districts and Standards", shall be renamed "Historic Districts, Conservation Districts, and Standards" and said name shall appear in the chapter headings listed at the beginning of this Title.

SECTION 5. The Section headings under Chapter 8.08, newly entitled "Historic Districts, Conservation Districts and Standards", shall be amended to include on additional section: "8.08.070—Removing the designation of a historic district".

SECTION 6. Section 8.08.010(b)(1) shall be deleted in its entirety and replaced with the following: "The first phase shall last three (3) years."

SECTION 7. Section 8.08.010(b)(2) shall be deleted in its entirety and replaced with the following: "At the end of the first phase, upon the expiration of the three (3) year period, the conservation district shall become a historic district, subject to subsection three (3); and"

SECTION 8. Section 8.08.010(b) shall be amended to add a new subsection (3) to read as follows:

> "The conservation district may continue past the three (3) year term, thereby avoiding the designation of a historic district, if a majority of property owners in the district object to the Commission, in writing, to the elevation to a historic district. Said objections must be received by the Commission not earlier than one hundred and eighty (180) days or later than sixty (60) days before the third anniversary of the adoption of the conservation district."

SECTION 9. Section 8.08.015(a) shall be amended by deleting the phrase "buildings or structures" and replacing it with the phrase "buildings, structures, or sites" as that phrase appears in part (a).

SECTION 10. Section 8.08.015(c) shall be amended by deleting the phrase "building or structure" and replacing it with the phrase "building, structure, or site" as that phrase appears in part (c).

SECTION 11. Section 8.08.015(d)(2) shall be amended by changing the lower case lettering in parts (a), (b), and (c) to upper case, so that they read parts, (A), (B), and (C); and, to add the word "or" after the comma at the end of part (B), so that part (d)(2) reads as follows:

> (d)(2) The exterior appearance of the building, structure, or site may not be conspicuously changed by:
>
> (A) Addition,
> (B) Reconstruction, or
> (C) Alteration.

SECTION 12. Section 8.08.020(b) shall be amended to add the following phrase "as permitted by I.C. 36-7-11-11" at the end of the last sentence of this subsection.

SECTION 13. Section 8.08.020(c) shall be amended to add the following sentence at the end of this subsection: "In accordance with I.C. 36-7-11-12, the commission may advise and make recommendations to the applicant before acting on an application for a certificate of appropriateness."

SECTION 14. Section 8.08.030(a) shall be amended by deleting the phrase "Chapters 16.04 and 16.12 of the Bloomington Municipal Code (Property Maintenance Code and Housing Quality" and replacing it with the phrase "Title 16 (Residential Rental Unit and Lodging Establishment Inspection Program) of the Bloomington Municipal Code".

SECTION 15. Section 8.08.040(b) shall be amended to add the phrase "or conservation districts" after the phrase "historic primary areas"; and, shall be further amended to strike the words "Within the primary area of an historic district, new buildings and structures, as well as buildings, structures, and appurtenances that are moved, reconstructed, materially altered, repaired, or changed in color," as they appear starting in the second line of part (b) and replace them with the words "Changes in the primary areas of historic and conservation districts, which are subject to review by staff or the Commission," so that the beginning of part (b), up to the words "must be visually compatible with" shall read as follows:

> Criteria for considering visual compatibility within historic primary areas or conservation districts: Changes in the primary areas of historic and conservation districts, which are subject to review by staff or the Commission,

SECTION 16. Section 8.08.040(b) shall be amended to add the following ", squares," after the word "buildings" and before the phrase "and places" wherever those words appear together in this subsection.

SECTION 17. A new Section, Section 8.08.070, entitled "Removing the designation of a historic district", shall be added to read as follows:

8.08.070 – Removing the Designation of a Historic District.

This Section provides the exclusive method for removing the designation of a historic district.

(a) The owner or owners of a building, structure, or site designated as a single sit historic district may sign and file a petition with the City Common Council requesting removal of the designation of the building, structure, or site as a historic district. In the case of a historic district containing two or more parcels, at least sixty percent of the owners of the real property of the historic district may sign and file a petition with the City Common Council requesting removal of the designation of a historic district.

(b) The City Common Council shall submit a petition filed under subsection (a) to the Commission. The Commission shall conduct a public hearing on the petition not later than sixty days after receiving the petition. The Commission shall provide notice of the hearing:

(1) By publication under Indiana Code 5-3-1-2(b);

(2) In the case of a historic district comprised of real property owned by fewer than fifty property owners, by certified mail, at least ten days before the hearing, to each owner of real estate within the historic district; and

(3) In the case of a single building, structure, or site designated as a historic district, by certified mail, at least ten days before the hearing, to each owner of the real estate abutting the building, structure, or site designated as a historic district that is the subject of the petition.

(c) The Commission shall make the following findings after the public hearing:

(1) Whether a building, structure, or site within the historic district continues to meet the criteria for inclusion in a historic district as set forth in this ordinance. The determination must state specifically the criteria that are applicable to the buildings, structures, or sites within the district.

(2) Whether failure to remove the designation of the historic district would deny an owner of a building, structure, or site within the historic district reasonable use of the owner's property or prevent reasonable economic return. Evidence provided by the petitioner may include information on:

(A) Costs to comply with regulations;
(B) Income generation;
(C) Availability of contractors to perform work;
(D) Real estate values;
(E) Assessed values and taxes;
(F) Revenue projections;
(G) Current level of return;
(H) Operating expenses;
(I) Vacancy rates;
(J) Financing issues;

(K) Efforts to explore alternative uses of the property;
(L) Availability of economic incentives; and
(M) Recent efforts to sell or rent the property.

(3) Whether removal of the designation of a historic district would have an adverse economic impact on the owners of real estate abutting the historic district, based on testimony and evidence provided by the owners of the real estate and licensed real estate appraisers or brokers.

(4) Whether failure to remove the designation of the historic district would have an adverse impact on the unit's historic resources, and specifically whether it would result in the loss of a building, structure, or site classified as historic by the Commission's survey.

(d) Not later than ten days after the Commission's public hearing, the Commission shall submit to the City Common Council the following:

(1) It's findings on the petition; and
(2) A recommendation to grant or deny the petition.

(e) Not later than forty-five days after receiving the Commission's findings the City Common Council shall do one of the following:

(1) Deny the petition;

(2) Grant the petition by adopting an ordinance that removes the designation of the historic district by:

(A) A majority vote, if the recommendation of the Commission is to grant the petition; or
(B) A two-thirds vote, if the recommendation of the Commission is to deny the petition.

The City Common Council shall record an ordinance adopted under subdivision (2) with the County Recorder not later than ten days after the City Common Council adopts the ordinance. The historic district designation is considered removed on the date the ordinance is recorded with the County Recorder.

(f) If the City Common Council does not grant or deny the petition within forty-five days after receiving the Commission's findings:

(1) The petition is considered granted or denied in accordance with the recommendation of the Commission; and

(2) If the petition is considered granted, the City Common Council shall, not later than fifty-five days after receiving the Commission findings:
(A) Adopt an ordinance that removes the designation of the historic district; and
(B) Record the ordinance with the County Recorder.

The historic district designation is considered removed on the date the ordinance is recorded with the County Recorder.

SECTION 18. Section 8.12.010(d)(2) shall be deleted in its entirety and replaced with the following:

(2) The property owner shall file with the administrator documented evidence that an appraisal of the property's fair market value by a licensed real estate appraiser has occurred.

SECTION 19. Section 8.12.010(d)(3)(A) shall be amended by deleting the phrase "a building is placed upon the open market shall be linked with its classification in the survey" and replacing with the following "notice of the proposed demolition must be given is herein fixed by the commission and subsequently codified as follows"; and further amended by deleting the number "9" and replacing it with the number "12"; and further amended by deleting the number "6" and replacing it with the number "12"; and further amended by deleting the number "4" and replacing it with the number "6".

SECTION 20. Section 8.16.020(b)(1) shall be amended to add the phrase "for purposes of the penalties and remedies specified in this chapter" at the end of the second sentence in this subsection, and be further amended to add the phrase "and/or" at the end of subsection (C).

SECTION 21. Section 8.16.020(b) shall be amended to create a new subsection (2) and all remaining subsections shall be renumbered accordingly. The newly created subsection (2) shall read as follows:

> (2) Any person, whether as principal agent, owner, lessee, tenant, contractor, builder, architect, engineer, or otherwise, who demolishes or removes a structure subject to regulation under this Title shall pay a fine of two thousand five hundred dollars for the first offense, five thousand dollars for the second offense and seven thousand five hundred dollars for the third offense, in addition to any and all other remedies provide for by law. Correction of the demolition or removal of a structure subjected to regulation under this Title shall not occur until an acceptable application for a certificate of appropriateness has been filed with the Historic Preservation Commission.

SECTION 22. The newly renumbered Section 8.16.020(b) (3) shall be amended to add the phrase ", except for the violation described in Section 8.16.020(b) (2)," after the word "chapter" and before the word "shall".

SECTION 23. Section 8.16.020(b) shall be amended to create a new subsection (6) to read as follows:

> (6) If a property which is subject to regulation under Section 20.09.30 of City's Municipal Code is demolished in violation of said Section, the penalties provided for in Section 20.10.020(f) of the City's Municipal Code may also apply.

SECTION 24. Section 8.16.020(c) shall be amended to add the words "or conservation" after the word "historic" and before the word "district".

SECTION 25. Section 8.16.020(c) shall be amended to create a new subsection (3) and all remaining subsections shall be renumbered accordingly. The newly created subsection (3) shall read as follows:

> (3) The interested party 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.

SECTION 26. Section 8.16.020(d) shall be deleted in its entirety and replaced with the following: "In accordance with I.C. 36-7-11-4(h), a final decision of the commission is subject to judicial review under Indiana Code 36-7-4 as if it were a final decision of a Board of Zoning Appeals."

SECTION 27. Chapter 8.20, entitled "List of Designated Historic Districts", shall be deleted in its entirety and replaced with the following:

Chapter 8.20 – List of Designated Historic and Conservation Districts

The Old Library	202 East Sixth Street
Elias Abel House	317 North Fairview Street
Seminary Park	West Second Street between College Avenue and Walnut Street
Paris Dunning House	608 West Third Street

Cochran House	405 North Rogers Street
Morgan House	532 North Walnut Street
The Depot	7th Street and Morton Street
Wylie House	307 East Second Street
Princess Theater	204 North Walnut Street
J.L. Nichols House and Studio	820 North College Avenue
Showers Bridwell House	409 North Washington Street
Farmer House	529 North Washington Street
Second Baptist Church	321 North Rogers Street
Lamp Posts	Hawthorne Street
Fieldstone Sidewalk	East side of Dunn Street between 3rd Street and 4th Street
Showers-Teter-Barrett House	508 North Washington Street
Showers-Smith Matthews-House	514 North Washington Street
Showers-Freese House	522 North Washington Street
George Henley House	512 East Eighth Street
George Wylie House	321 North Indiana Avenue
Hicks-Sperry House	625 North Walnut Street
Henley House	322 West Second Street
Elisha Ballentine House	315 East Seventh Street
Washington Street Apartments	316 North Washington Street
	503 East Smith
Tri-Delta House	812 East Third Street
Hudgins-Fagan House	323 East Sixth Street
Hudgins House	303 East Sixth Street
Parker Hawkins House	514 West Kirkwood Avenue
Prospect Hill Historic District	(28 Properties)
Smallwood Pike Buildings	414-424 North Morton Street
The property at 209 South Dunn Street	209 South Dunn Street
The building at 514 North Fess Avenue	514 North Fess Avenue
The building located at 324 East Second Street	324 East Second Street
Buskirk-Chumley Theater	112-114 East Kirkwood Avenue
Breaking Away House	756 South Lincoln Street
Parks Home	821 West Sixth Street
Fairview Historic District	(10 properties)
	221 East Kirkwood Avenue
	517 East Kirkwood Avenue
Victoria Towers	312 South Euclid Avenue
The Von Lee Theater Building	315-317 North Fess Avenue
Brummett House	(271 properties)
The duplex located at 315-317 North Fess Avenue	416 East Fourth Street and
McDoel Conservation District	615 West Sixth Street
Limestone Hitching Posts	2820—2920 East 10th Street
	112 East 3rd Street
The Garton Farmstead	The brick streets located in the public right-of-way bounded by 10th Street on the north, 7th Street on the south, Indiana Avenue on the west, and Woodlawn Avenue on the east, including Fess Avenue, Park Avenue, 8th Street and 9th Street
The Fleener Building	300 East 3rd Street
The brick streets in University Courts	314—316, 318—320 and 322—324 North College Avenue
The Home Laundry Building	1115 North College Avenue
Apartment Row	2102 West Vernal Pike
1115 North College Avenue	A part of Out Lot Number 31
2102 West Vernal Pike	-(355 properties)
430 North Washington, 209-211 East 8th Street	400 North Walnut Street
Prospect Hill Conservation District	(97 properties)

The Elks Lodge #446	700 North Walnut Street
Garden Hill Conservation District	(263 properties)
700 North Walnut Street	
Elm Heights Historic District	

SECTION 28. If any section, sentence, chapter or provision of this ordinance, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any other section, sentence, chapter, provision or application of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 29. This ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington, with approval of the Mayor, and after any required waiting and/or notice periods under Indiana law.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 6th day NOVEMBER, 2013.

DARRYL NEHER, President
Bloomington Common Council

ATTEST:

REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 13th day of NOVEMBER, 2013.

MARK KRUZAN, Mayor
City of Bloomington

SYNOPSIS

This ordinance seeks to do two things: (1) amend Title 8 to ensure compliance with I.C. 36-7-11; and (2) amend Title 8 to alleviate problems the Historic Preservation Commission has recently experienced in terms of noncompliance and enforcement. The ordinance suggests three major changes to ensure Title 8 complies with the Indiana Code. First, it changes the manner in which conservation districts are established and maintained. Second, it changes the manner in which a property owner continues his/her quest to demolish a protected building if the Commission fails to issue a certificate of appropriateness. Third, it establishes the exclusive method by which a property or district designated as historic may remove said designation. Additionally, the ordinance suggests three major changes to alleviate problems the Commission has recently experienced. First, the word "moving" is defined so as to exclude from review those instances where a designated property is only lifted from its foundation to make repairs to said foundation. Second, a new definition is created to define the phrase "substantial removal" to better advise property owners of how much of a structure can be removed without having to first obtain Commission approval. Third, the penalty provisions of the Title have been enhanced in the following manner: (1) demolition of a protected structure shall result in an initial fine of $2,500 and increase up to $7,500.00 per day until the violation is corrected—which does not occur until an acceptable application is submitted to the Commission; and (2) a reference is made to Title 20 putting property owners on notice that a demo delay violation may result in the City's refusal to issue occupancy permits for no more than two years.

Copies to: HAND
Legal (5)
CA/CA (2)
Clerk (2)
Planning
Engineering
PW