ORDINANCE 16-04

TO AMEND TITLE 20 (UNIFIED DEVELOPMENT ORDINANCE) OF THE BLOOMINGTON MUNICIPAL CODE - Re: Amending 20.09.230 ("Demolition and Demolition Delay") and 20.11.020 ("Defined Words") to Expedite the Review of Partial Demolition Requests for "Contributing" Structures in Residential Zoning Districts

WHEREAS, Ordinance 06-24 created and established Bloomington Municipal Code Section ("BMC") 20.09.230, "Demolition and Demolition Delay", in an effort to provide the City of Bloomington Historic Preservation Commission ("HPC") time to review those structures identified by the Indiana State Historic Architecture & Archeological Research Database ("SHAARD") as "Contributing", "Notable", or "Outstanding" for possible local historic designation prior to said structures being substantially modified via a partial demolition or before they are completely demolished; and

WHEREAS, prior to the summer of 2015, the SHAARD contained approximately 2,200 properties in the City of Bloomington; and

WHEREAS, in the summer of 2015, the SHAARD was updated and the update resulted in approximately 6,000 Bloomington properties being included in the SHAARD, most of which have been identified as being "Contributing"; and

WHEREAS, in the opinion of the HPC and City staff a significant number of the properties added to the SHAARD in 2015 are located in residential zoning districts and are properties whose owners will regularly seek additions or remodels that will qualify as a partial demolition under BMC 20.09.230; and

WHEREAS, it is the HPC's and Administration's opinion that the staff person assigned to assist the HPC is qualified to determine if a "Contributing" structure in a residential zoning district meets the necessary criteria for the HPC to recommend local historic designation or not to the Common Council; and

WHEREAS, in an effort to lessen the economic and time burden on residents of the City, decrease the administrative procedures required by City staff, and acknowledge the time constraints placed on the HPC, the City believes it is in the best interests of the City to allow for the staff person assigned to the Commission to render determinations on whether or not a "Contributing" structure in a residential zoning district which is being proposed for partial demolition is a structure which the HPC should consider recommending for local historic designation to the Common Council; and

WHEREAS, on January 28, 2016, the HPC considered this case, ZO-9-16, and made a positive recommendation in favor of the package of amendments to the BMC, as described herein; and

WHEREAS, on February 8, 2016, the Plan Commission considered this case, ZO-9-16, and made a positive recommendation in favor of the package of amendments to the BMC, as described herein; and

WHEREAS, pursuant to Indiana Code § 36-7-4-607(c), the Plan Commission's positive recommendation was certified on February 9, 2016, and delivered to the Common Council on February 11, 2016;

WHEREAS, the current application of the process known as Demolition Delay uses the Indiana State Historic Architectural and Archaeological Research Database, a database which upon being updated in 2015 was not independently reviewed or analyzed by the City's own experts on historic preservation; and

WHEREAS, until the City's own experts on historic preservation can review and provide analysis of the recent 2015 update to the Indiana State Historic Architectural and Archaeological Research Database, it is in the best interests of the Bloomington community to only apply the process known as Demolition Delay to the following properties: those noted in the 2001 Indiana Historic Sites and Structures Inventory Interim Report, as amended in 2007; those properties listed as Outstanding or Notable on the 2015 updated Indiana State Historic Architectural and Archaeological Research Database; and, those Contributing properties listed on the 2015 updated Indiana State Historic Architectural and Archaeological Research Database, but only if these Contributing structures are proposed for substantial demolition;

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

SECTION 1. Section 20.09.230, entitled "Demolition and Demolition Delay", shall be deleted in its entirety and replaced with the following:

20.09.230 Demolition and Demolition Delay

(a) Demolition Landscaping.
  (1) Applicability. A demolition permit application for a lot subject to the standards of Section 20.05.057: Landscaping Standards; Vacant Lot Landscaping shall meet the requirements of this section.
  (2) Vacant Lot Landscaping Plan. Any demolition permit application subject to this section shall be accompanied by a vacant lot landscaping plan meeting the standards of Section 20.05.057: Landscaping Standards; Vacant Lot Landscaping.
  (3) Exemption. A demolition permit application shall be exempt from the requirements of this section if a site plan approval for the reuse of the subject lot has been obtained and has not expired.

(b) Demolition Delay Required. No certificate of zoning compliance (hereinafter "CZC") authorizing release of a permit allowing the demolition or partial demolition of a structure that is listed as "Outstanding", "Notable" or "Contributing" on the City of Bloomington Survey of Historic Sites and Structures, or any accessory structure of the same era of construction as the principal structure that is so listed, shall be issued earlier than ninety or one hundred twenty-calendar days after notice has been given as provided herein.
  (1) The ninety-day period shall apply in all cases unless the director of HAND, or his/her designee, finds that an additional thirty-day delay period is needed in order for the HPC to responsibly consider and determine whether to recommend designation of the property. The HAND director shall make such finding only where:
    (A) There are multiple demolition permits and/or historic designation proposals pending or expected to come before the HPC during the ninety-day period; or,
    (B) The demolition request presents unusually complex public policy issues due to the location or survey classification of the structure.
    (C) The structure is located within an area that contains multiple surveyed properties, it is located within an area designated on the National Register of Historic Places, or the survey classification of the structure proposed for demolition or partial demolition is "Notable" or "Outstanding". These criteria shall be sufficient, but not necessary, to justify a determination that the one hundred twenty-day period will apply.
    (D) The HAND director, or his/her designee, will give notice of his/her determination to apply the one hundred twenty-day period to a demolition or partial demolition request in accordance the procedures outlined herein.
  (2) Staff shall give notice to the HAND director, or his/her designee, and to the property owner, or his/her representative, for any petition involving a demolition or partial demolition covered by this section.

(A) The property owner, or his/her representative, upon being notified that his/her property is subject to the provisions of this section, shall be advised that his/her application for a permit may need to be amended to include materials required by both Section–20.09.120(d), which outlines what is required for Site Plan applications, and the Rules and Regulations of the HPC, in order for the application to be considered complete and to be reviewed by all relevant City staff.

(B) Not later than thirty days after such notice is given by staff, the HAND director shall give notice to the chairperson of the HPC and to the owner, if the one-hundred-twenty-day waiting period is to be imposed.

(3) The owner, within three business days of being given the notice described herein by the planning and transportation department, shall place upon the property where the structure is located, in plain public view, a notice to the public of the proposed demolition or partial demolition of the structure.

(A) Such notice shall be in such form as approved by the staff.

(B) Such notice shall remain in place until termination of the waiting period.

(C) Noncompliance with this provision shall result in the delay period being extended by an amount of time equal to the amount of time, as reasonably determined or estimated by the staff, during which the notice was not properly in place.

(D) This section shall not apply to an application for partial demolition of a property classified as "Contributing" in a single family district if staff for the HPC reviews and releases the application. Staff's decision shall be based on the same criteria utilized by the HPC when it renders a determination about whether or not a property should be recommended for local historic designation. If staff for the HPC determines that full HPC review of an application for a partial demolition of a property classified as "Contributing" in a single family district is necessary then the owner shall post the notice described herein on the property.

(4) The HPC may conduct a hearing, in its sole discretion, during the waiting period, to determine if the HPC wishes to recommend any structure described below herein be locally designated by the common council:

(A) "Contributing" structure located in any of multifamily or non-residential zoning district.

(B) "Contributing" structure located in any single family district if the staff for the HPC determines that a review of the application necessitates full HPC review.

(C) "Notable" structure located in any zoning district of the City.

(D) "Outstanding" structure located in any zoning district of the City.

(5) Staff for the HPC may review and release an application for partial demolition of a "Contributing" structure located in a single family district.

(A) Staff, for purposes of this subsection, shall be those persons who have the same or equivalent technical expertise as the members of the HPC as outlined in Bloomington Municipal Code Section 2.16.010(c).

(B) Staff's decision shall be based on the same criteria utilized by the HPC when it renders a determination about whether or not a property should be recommended for local historic designation.

(C) If within seven (7) business days of the receipt of an application for partial demolition by the City's Planning & Transportation Department, the staff has not forwarded the matter to the HPC for further review, the application shall be released automatically and the provisions of Section 20.09.230 shall be effectuated.

(c) Exceptions. Exceptions to this section shall be as follows:

(1) Early Termination of Waiting Period. If within the ninety- or one hundred twenty-day period the HPC votes affirmatively not to recommend local historic designation to the common council; the HPC votes on a motion to recommend local designation and the motion fails; or staff for the HPC decides not to recommend local historic designation to the HPC and common council (staff's decision shall be based on the same criteria utilized by the HPC when it renders a determination about whether or not a property should be recommended for local historic designation); or the common council disapproves a recommended local historic designation of the subject property, then the remainder of the waiting period shall be considered waived and the certificate of zoning compliance shall be issued forthwith if all other requirements are met.

(2) Locally Designated Structures are Subject to Title 8 Provisions Regarding Demolition. This section shall not apply to any structure that is within a property or group of properties

locally designated as a historic district or a conservation district pursuant to Title 8, Historic Preservation and Protection of the BMC.

(3) Emergency Waiver of Waiting Period. The waiting period may be waived upon a written determination by the city HAND department that there is an emergency condition dangerous to life, health or property that requires demolition prior to the expiration of the waiting period.

(4) Structure Not Subject to Demolition Waiting Period More than Once in any One-Year Period. No structure that has been subjected to the waiting period under this section shall be subject to a second waiting period until the passage of one year from the date of expiration of the first waiting period.

(A) During this one-year period, no action of the HPC or the common council may prevent issuance or effect revocation of a certificate of zoning compliance or demolition permit that is otherwise properly issued or application for which meets all requirements of the Bloomington Municipal Code.

(B) This provision shall not apply except to the extent that the work covered by the CZC or demolition or partial demolition permit, or application therefore, is substantially identical to the work shown in the submission that occasioned the first waiting period.

(C) For purposes of this section, "work" includes the proposed demolition, partial demolition and any proposed construction, reconstruction, or alteration associated therewith.

(D) For purposes of this section, "substantially identical" means without significant deviation in any detail of any elevation or in the type, design, or location of materials that will be subject to public view.

(E) For purposes of this section, "submission" shall mean the submission that is authorized to receive approval pursuant to Section 20.09.030, Applications—General of this chapter.

(5) Withdrawal of Application. If an application for demolition or partial demolition that is subject to the demolition delay procedures of this unified development ordinance is withdrawn by the applicant, the demolition delay period shall be terminated and no certificate of zoning compliance for the withdrawn application shall be issued.

(d) Issuance of Certificate of Zoning Compliance Authorizing Demolition.

(1) If within the ninety- or one hundred twenty-day waiting period the property is placed under interim protection or is locally designated as a historic or conservation district pursuant to Chapter 8.08, Historic Districts and Standards of the BMC, then no certificate of zoning compliance authorizing demolition or partial demolition may be issued except:

(A) Upon termination of interim protection without historic or conservation district designation being placed upon the property; or,

(B) Where historic or conservation district designation is placed upon the property, in accordance with and after all approvals required by Chapter 8.08

(2) After expiration of the waiting period provided for herein, which shall include early termination of the waiting period, a certificate of zoning compliance authorizing demolition shall be issued if owner has submitted a complete application and all other requirements of the Bloomington Municipal Code are met. Moreover, the recipient of a permit or other approval subject to this subsection shall be bound to the details of the elevations, and the design, type, and location of materials depicted in the submission, as provided for and defined in Section 20.09.030, Applications—General, and may not deviate from such depiction without applying for a new certificate of zoning compliance, application for which shall commence a new waiting period.

(3) No action of the HPC may prevent issuance or effect revocation of such certificate of zoning compliance, or a demolition permit issued in reliance upon such certificate of zoning compliance, for a period of one year from the end of the waiting period.

(4) For any structure that is exempt from the waiting period of this section, a certificate of zoning compliance authorizing release of a demolition or partial demolition permit shall be issued within a reasonable time following receipt by the planning and transportation department of a complete application, provided all other requirements of the BMC are met.

SECTION 2. Section 20.11.020, entitled "Defined Words", shall be amended by deleting the term "Partial Demolition" and replacing it with the following:

"Partial demolition" means the complete or substantial removal or destruction of any exterior portion of a structure, which shall include but not be limited to:

(1) Complete or substantial removal or destruction of a porch, wing, cupola, addition, or similar feature; or
(2) Partial demolition of a roof shall include work that results in any change to the pitch of any portion of the roof, or; covering or otherwise obscuring an existing roof with a new roof of different pitch or material, or; adding any gable, dormer or other similar feature to an existing roof; or
(3) Any work resulting in the obscuring from view of forty percent or more of the exterior of any façade on the structure; or, removal or destruction of the exterior surface of forty percent or more of the area of any exterior façade on the structure; or
(4) Construction or attachment of any addition to a structure; or
(5) Replacement of any window or door where the window or door opening is enlarged or obscured from view; or
(6) Creation of any new window or door opening.

SECTION 3. Section 20.11.020, entitled "Defined Words", shall be amended by adding a new defined term, "Substantial Removal" which shall read as follows:

"Substantial removal" as used in the definition of "partial 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.

SECTION 4. Title 20 of the Bloomington Municipal Code shall be further amended in that wherever the phrase "City of Bloomington Survey of Historic Sites and Structures" is referenced in the subsections below, it shall be replaced with the following: "either one or both of the City of Bloomington Survey of Historic Sites and Structures or the Indiana State Historic Architectural and Archaeological Research Database".

Section 20.03.060(a)(2);
Section 20.03.060(c)(2);
Section 20.03.130(a)(2);
Section 20.03.130(c)(2);
Section 20.03.200(a)(2);
Section 20.03.200(c)(2);
Section 20.03.270(a)(2);
Section 20.03.270(c)(2);
Section 20.03.340(a)(2);
Section 20.03.340(c)(2);
Section 20.03.410(a)(2); and
Section 20.03.410(c)(2).

SECTION 5. Title 20 of the Bloomington Municipal Code shall be further amended by deleting the defined term "City of Bloomington Survey of Historic Sites and Structures" in Section 20.11.020, entitled "Defined Words", and replacing it with the following:

"City of Bloomington Survey of Historic Sites and Structures" shall refer to those sites and structures listed in the following: the document entitled City of Bloomington Historic Sites and Structures Table, with said Table being incorporated into this Title by reference and made a part thereof, two (2) copies of which are on file in the Office of the Clerk for the legislative body for public inspection; and any "Contributing" structure listed on the Indiana State Historic Architectural and Archaeological Research Database if said structure is the subject of a request constituting a substantial demolition of the structure as defined in Section 20.11.020, Defined Words.

SECTION 6. Title 20 of the Bloomington Municipal Code shall be further amended by inserting the term "substantial demolition" into Section 20.11.020, entitled "Defined Words" which shall read as follows:

"Substantial Demolition" means the moving or razing of a building including the removal or enclosure of fifty (50) percent or more of the structure.

SECTION 7. Title 20 of the Bloomington Municipal Code shall be further amended by adding a new defined term, "Indiana State Historic Architectural and Archaeological Research Database" to Section 20.11.020, entitled "Defined Words," which shall read as follows:

"Indiana State Historic Architectural and Archaeological Research Database" means the Indiana State Historic Architectural and Archaeological Research Database, as the same may be amended from time-to-time, created by and/or administered by the State of Indiana's Division of Historic Preservation and Archaeology.

SECTION 8. 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 9. 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 by the Common Council of the City of Bloomington, Monroe County, Indiana upon this 4th day of May, 2016.

ANDY RUFF, President
Bloomington Common Council

ATTEST:

NICOLE BOLDEN, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 9th day of May, 2016.

NICOLE BOLDEN, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 11th day of May, 2016.

JOHN HAMILTON, Mayor
City of Bloomington

SYNOPSIS

This ordinance amends Title 20 of the Bloomington Municipal Code (the Unified Development Ordinance) in three key ways. First, it reformats Section 20.09.230 so that the Section is easier to read and so that the Section's formatting is more consistent with the formatting in other sections of the Unified Development Ordinance. Second, it permits the staff person assigned to the HPC to render a determination as to whether or not a "Contributing" structure in a residential zoning district that is proposed for partial demolition either meets the requirements or does not meet the requirements for the HPC to recommend to the Common Council that said property be designated as a local historic district. Third, it modifies the definition of the term "partial demolition", the modification of which includes the addition of a new defined term, "substantial removal".

Note: The Council made the following amendments to this ordinance on the following evenings:

- *On April 6, 2016, the Council adopted:*
  - *Am 05, which amended the sixth Whereas clause, BMC 20.09.230(b), and BMC 20.09.230(b)(2)(b); and*
  - *Am 01, which deleted and replaced BMC 20.09.230(b)(5)*
- *On May 4, 2016, the Council adopted:*
  - *Am 06, which added two Whereas clauses, amended the building set-back and height step-down provisions for the downtown overlay districts in regard to buildings adjacent to historically surveyed properties, narrowed the scope of properties subject to demolition delay, incorporated by reference a table of affected properties, and added three definitions to Title 20; and*
  - *Am 02, which added a change in roofing materials to the definition of "partial demolition".*

Note: In accordance with IC 36-7-4-607(e), the ordinance as amended by the Council was returned to the Plan Commission with a Statement of Reasons for the Amendments.