

ORDINANCE No. 19-432

AN ORDINANCE TO ESTABLISH A HISTORIC PRESERVATION COMMISSION IN THE CITY OF CLARSTON; TO PROVIDE FOR DESIGNATION OF HISTORIC PROPERTIES OR HISTORIC DISTRICTS; TO PROVIDE FOR ISSUANCE OF CERTIFICATES OF APPROPRIATENESS; TO PROVIDE FOR AN APEAL PROCEDURE; TO REPEAL CONFLICTING ORDINANCES; AND FOR OTHER PURPOSES.

BE IT ORDAINED BY THE CLARKSTON CITY COUNCIL that existing City Code Sections 15-1 through 15-10 are hereby designated as Article I of Chapter 15 of the City Code, entitled "Planning" and that the following provisions are hereby adopted and designated as Article II of Chapter 15, entitled "Historic Preservation."

SECTION I

Purpose

In support and furtherance of its findings and determination that the historical, cultural and aesthetic heritage of the City of Clarkston is among its most valued and important assets and that the preservation of this heritage is essential to the promotion of the health, prosperity and general welfare of the people;

In order to stimulate revitalization of the business districts and historic neighborhoods and to protect and enhance local historic and aesthetic attractions to tourists and thereby promote and stimulate business;

In order to enhance the opportunities for federal or state tax benefits under relevant provisions of federal or state law; and

In order to provide for the designation, protection, preservation and rehabilitation of historic properties and historic districts and to participate in federal or state programs to do the same;

The Clarkston City Council hereby declare it to be the purpose and intent of this Ordinance to establish a uniform procedure for use in providing for the protection, enhancement, perpetuation and use of places, districts, sites, buildings, structures, objects, and landscape features having a special historical, cultural or aesthetic interest or value, in accordance with the provisions of the Ordinance.

SECTION II

Definitions

- A. "Building" – A building is a structure created to shelter any form of human activity, such as a house, barn, church, hotel or similar structure. Building may refer to a historically related complex such as a courthouse and jail or a house and barn.
- B. "Certificate of Appropriateness" – Means a document evidencing approval by the Historic Preservation Commission of an application to make a material change in the appearance of a designated historic property or of a property located within a designated historic district.
- C. "Exterior Architectural Features" – Means the architectural style, general design and general arrangement of the exterior of a building, structure or object, including but not limited to the kind or texture of the building material and the type and style of all windows, doors, signs and other appurtenant architectural fixtures, features, details or elements relative to the forgoing.
- D. "Exterior Environmental Features" – Means all those aspects of the landscape or the development of a site which affect the historic character of the property.
- E. "Historic District" – Means a geographically definable area, possessing a significant concentration, linkage, or continuity of sites, buildings, structures or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but

linked by association or history. A Historic District shall further mean an area designated by the Clarkston City Council as a Historic District pursuant to the criteria established in Section IV B of this Ordinance.

- F. "Historic Property" – Means an individual building, structure, site, or object including the adjacent area necessary for the proper appreciation thereof designated by the Clarkston City Council as a historic property pursuant to the criteria established in Section IV C of this Ordinance.
- G. "Material Change in Appearance" – Means a change that will affect either the exterior architectural or environmental features of a historic property or any building, structure, site, object, or landscape feature within a historic district, such as:
 - 1. A reconstruction or alteration of the size, shape or façade of a historic property, including relocation of any doors or windows or removal or alteration of any architectural features, details or elements;
 - 2. Demolition or relocation of a historic structure;
 - 3. Commencement of excavation for construction purposes;
 - 4. A change in the location of advertising visible from the public right-of-way; or
 - 5. The erection, alteration, restoration or removal of any buildings or other structure within a historic property or district, including walls, fences, steps and pavements, or other appurtenant features, except exterior paint alterations.
- H. "Object" – An object is a material thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.
- I. "Site" – A site is the location of a significant event, a prehistoric or historical occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical or archaeological value regardless of the value of any existing structure.
- J. "Structure" – A structure is a work made up of interdependent and inter-related parts in a definite pattern of organization. Constructed by man, it is often an engineering project large in scale.

SECTION III

Creation of a Historic Preservation Commission

A. Creation of the Commission:

There is hereby created a commission whose title shall be "Clarkston Historic Preservation Commission" (hereinafter "Commission")

B. Commission Position within the City Government:

The Commission shall be part of the planning functions of the City of Clarkston.

C. Commission Members: Number, Appointment, Terms and Compensation:

The Commission shall consist of three (3) members, two (2) appointed by the City Council, and one (1) appointed by the Mayor . All members shall be residents of Clarkston and shall be persons who have demonstrated special interest, experience or education in history, architecture or the preservation of historic resources.

To the extent available in the City, at least two (2) members shall be appointed from among professionals in the disciplines of architecture, history, architectural history, planning, archaeology or related professions.

Members shall serve three-year terms. Members may not serve more than two (2) consecutive terms. In order to achieve staggered terms, initial appointments shall be: one (1) member for one (1) year, to be appointed by the Mayor; one (1) member for two (2) years, appointed by the City Council; and one (1) member for three (3) years, appointed by the City Council. Members shall not receive a salary, although they may be reimbursed for expenses.

D. Statement of Commission's Power:

1. The Preservation Commission shall be authorized to:

- a. Prepare and maintain an inventory of all property within the City of Clarkston having the potential for designation as historic property;
- b. Recommend to the Clarkston City Council specific districts, sites, buildings, structures, or objects to be designated by ordinance as historic properties or historic districts;
- c. Review application for Certificates of Appropriateness, and grant or deny same in accordance with the provisions of this Ordinance;
- d. Recommend to the Clarkston City Council that the designation of any district, site, building, structure or object as a historic property or as a historic district be revoked or removed;
- e. Restore or preserve any historic properties acquired by the City of Clarkston;
- f. Promote the acquisition by the City of Clarkston of façade easements and conservation easements, as appropriate, in accordance with the provisions of the *Georgia Uniform Conservation Easement Act of 1992* (O.C.G.A., Section 44-10.1 through 8)
- g. Conduct educational programs on historic properties located within the City and on general historic preservation activities;
- h. Make such investigation and studies of matters relating to historic preservation, including consultation with historic preservation experts, the Clarkston City Council or the Commission itself may, from time to time, deem necessary or appropriate for the purposes of preserving historic resources;
- i. Seek out local, state, federal or private funds for historic preservation, and make recommendations to the Clarkston City Council concerning the most appropriate uses of any funds acquired;
- j. Submit to the Historic Preservation Division of the Department of Natural Resources a list of historic properties of historic districts designated;
- k. Perform historic preservation activities as the official agency of the Clarkston historic preservation program;
- l. Employ persons, if necessary, to carry out the responsibilities of the Commission;
- m. Receive donations, grants, funds, or gifts of historic property and acquire and sell historic properties. The Commission shall not obligate the City of Clarkston without prior consent.
- n. Review and make comments to the Historic Preservation Division of the Department of Natural Resources concerning the nomination of properties within its jurisdiction to the National Register of Historic Places; and

- o. Participate in private, state and federal historic preservation programs and with the consent of the Clarkston City Council, enter into agreements to do the same.

E. Commission's Power to Adopt Rules and Standards:

1. The Preservation Commission shall adopt rules and standards for the transaction of its business and for consideration of application for designation of Certificates of Appropriateness, such as by-laws, removal of membership provision, and design guidelines and criteria. The Preservation Commission shall have the flexibility to adopt rules and standards without amendment to this Ordinance. The Commission shall provide for the time and place of regular meetings and a method for the calling of special meetings. The Commission shall select such officers as it deems appropriate from among its members. A quorum shall consist of a majority of the members.

F. Conflict of Interest:

1. The Commission shall be subject to all conflict of interest laws set forth in Georgia Statutes and in the City of Clarkston Charter or Code of Ordinances.

G. Commission's Authority to Receive Funding from Various Sources:

1. The Commission shall have the authority to accept donations and shall ensure that these funds do not displace appropriated governmental funds.

H. Records of Commission Meetings:

A public record shall be kept of the Commission resolution, proceedings and actions.

SECTION IV

Recommendation and Designation of Historic Districts and Properties

A. Preliminary Research by the Commission:

1. Commission's Mandate to Conduct a Survey of Local Historical Resources: the Commission shall compile and collect information and conduct surveys of historic resources within the City of Clarkston.
2. Commission's Power to Recommend Districts and Buildings to the Clarkston City Council for Designation: The Commission shall present to the Clarkston City Council recommendations for historic districts and properties.
3. Commission's Documentation of Proposed Designation: Prior to the Commission's recommendation of a historic district or historic property to the Clarkston City Council for designation, the Commission shall prepare a Report for Nomination consisting of:
 - a. a physical description;
 - b. a statement of the historical, cultural, architectural and/or aesthetic significance;
 - c. a map showing district boundaries and classification {i.e. contributing or non-contributing} of individual properties therein, or showing boundaries of individual historic properties; and
 - d. representative photographs.

B. Designation of a Historic District:

1. **Criteria for selection of historic districts:** A historic district is a geographically definable area, which contains buildings, structures, sites, objects, and landscape features or a combination thereof, which:
 - a. has special character or special historic/aesthetic value or interest;
 - b. represents one or more periods, styles or types of architecture typical of one or more eras in the history of the municipality, county, state or region; and
 - c. causes such area, by reason of such factors, to constitute a visibly perceptible section of the municipality or county.
2. **Boundaries of a Historic District:** Boundaries of a Historic District shall be included in the separate ordinances designating such districts and shall be shown on the Official Zoning Map of the City of Clarkston, or in the absence of zoning, on an official map designated as a public record.
3. **Evaluation of properties within Historic Districts:** Individual properties within historic districts shall be classified as:
 - a. Contributing (contributes to the district);
 - b. Non-contributing (does not contribute to the district, as provided for in B.1.)

C. Designation of a Historic Property:

1. **Criteria for selection of Historic Properties:** A historic property is a building, structure, site, or object; including the adjacent area necessary for the proper appreciation or use thereof, deemed worthy of preservation by reason of value to the City of Clarkston, the region or the State of Georgia for one of the following reasons:
 - a. it is an outstanding example of a structure representative of its era;
 - b. it is one of the few remaining examples of a past architectural style;
 - c. it is a place or structure associated with an event or persons of historic or cultural significance to the City of Clarkston, State of Georgia, or the region; or
 - d. it is the site of natural or aesthetic interest that is continuing to contribute to the cultural or historical development and heritage of the municipality, county, state or region.

D. Requirements for Adopting an Ordinance for the Designation of Historic Districts and Historic Properties:

1. **Application for Designation of Historic Districts of Property:** Designations may be proposed by the Clarkston City Council, the Commission, or:
 - a. for historic districts – a historical society, neighborhood association or group of property owners may apply to the Commission for designation;
 - b. for historic properties – a historical society, neighborhood association or property owner may apply to the Commission for designation.
2. **Required Components of a Designation Ordinance:** Any ordinance designating any property or district as historic shall:

- a. list each property in a proposed historic district or describe the proposed individual historic property;
 - b. set forth the name(s) of the owner(s) of the designated property or properties;
 - c. require that a Certificate of Appropriateness be obtained from the Commission prior to any material change in appearance of the designated property; and
 - d. require that the property or district be shown on the Official Zoning Map of the City of Clarkston and be kept as a public record to provide notice of such designation.
3. **Require Public Hearings:** The Commission or the Clarkston City Council shall hold a public hearing on any proposed ordinance for the designation of any historic district or property. Notice of the hearing shall be published in at least three (3) consecutive issues in the principle newspaper of local circulation, and written notice of the hearing shall be mailed by the Commission to all owners and occupants of such properties. All such notices shall be published or mailed not less than ten (10) nor more than twenty (20) days prior to the date set for the public hearing. A notice sent via the United States mail to the last-known owner of the property shown on the City tax digest and a notice sent via attention of the occupant shall constitute legal notification to the owner and occupant under this ordinance.
 4. **Notification of Historic Preservation Division:** No less than thirty (30) days prior to making a recommendation on any ordinance designating a property or district as historic, the Commission must submit the report, required in Section IV.A.3, to the Historic Preservation Division of the Department of Natural Resources.
 5. **Recommendations on Proposed Designations:** A recommendation to affirm, modify or withdraw the proposed ordinance for designation shall be made by the Commission within fifteen (15) days following the Public Hearing and shall be in the form of a resolution to the Clarkston City Council.
 6. **The Clarkston City Council Actions on the Commission's Recommendation:** Following receipt of the Commission recommendation, the Clarkston City Council may adopt the ordinance as proposed, may adopt the ordinance with any amendments they deem necessary, or reject the ordinance.
 7. **Notification of Adoption of Ordinance for Designation:** Within thirty (30) days following the adoption of the ordinance for designation by the Clarkston City Council, the owners and occupants of each designated historic property, and the owners and occupants of each structure, site or work of art located within a designated historic district, shall be given written notification of such designation by the Clarkston City Council, which notice shall apprise said owners and occupants of the necessity of obtaining a Certificate of Appropriateness prior to undertaking any material change in appearance of the historic property designated or within the historic district designated. A notice sent via the United States mail to the last-known owner of the property shown on the City tax digest and a notice sent via United States Mail shall constitute legal notification to the owner and occupant under this ordinance.
 8. **Notification of Other Agencies Regarding Designation:** The Commission shall notify all necessary agencies within the City of Clarkston of the ordinance for designation.
 9. **Moratorium on Applications for Alteration or Demolition while Ordinance for Designation is Pending:** If an ordinance for designation is being considered, the Commission shall have the power to freeze the status of the involved property.

SECTION V

Application to Preservation Commission for Certificate of Appropriateness

A. Approval of Material Change in Appearance in Historic Districts or Involving Historic Properties:

After the designation by ordinance of a historic property of a historic district, no material change in the appearance of such historic property, or of a contributing or non-contributing building, structure, site or object within such historic district, shall be made or be permitted to be made by the owner or occupant thereof, unless or until the application for a Certificate of Appropriateness has been submitted to and approved by the Commission. A Building Permit shall not be issued without a Certificate of Appropriateness.

B. Submission of Plans to Commission:

An Application for a Certificate of Appropriateness shall be accompanied by such drawings, photographs, plans and documentation as may be required by the Commission.

C. Interior Alterations:

In its review of applications for Certificates of Appropriateness, the Commission shall not consider interior arrangement or use having no effect on exterior architectural features.

D. Technical Advice:

The Commission shall have the power to seek technical advice from outside its members on any application.

E. Public Hearings on Applications for Certificates of Appropriateness, Notices, and Right to Be Heard:

The Commission shall hold a public hearing at which each proposed Certificate of Appropriateness is discussed. Notice of the hearing shall be published in the principal newspaper of local circulation in the city and written notice of the hearing shall be mailed by the Commission to all owners and occupants of the subject property. The written and published notice shall be provided in the same manner and time frame as notices are provided before a Public Hearing for Rezoning.

The Commission shall give the property owner and/or applicant an opportunity to be heard at the Certificate of Appropriateness hearing.

F. Acceptable Commission Reaction to Applications for Certificate of Appropriateness:

Commission Action: The commission may approve the Certificate of Appropriateness as proposed, approve the Certificate of Appropriateness with any modifications it deems necessary, or reject it.

1. The Commission shall approve the application and issue a Certificate of Appropriateness if it finds that the proposed material change(s) in the appearance would not have a substantial adverse effect on the aesthetic, historic, or architectural significance and value of the historic property or the historic district. In making this determination, the Commission shall consider, in addition to any other pertinent factors, the following criteria for each of the following acts:

a. Reconstruction, Alteration, New Construction or Renovation:

The Commission shall issue Certificates of Appropriateness for the above proposed actions if those actions conform in design, scale, building materials, setback and site features, and to the Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.

- b. Relocation: A Decision by the Commission approving or denying a Certificate of Appropriateness for the relocation of a building, structure, or object shall be guided by:
 - 1. the historic character and aesthetic interest the building, structure or object contributes to its present setting.
 - 2. whether there are definite plans for the area to be vacated and what the effect of those plans on the character of the surrounding area will be.
 - 3. whether the building, structure or object can be moved without significant damage to its physical integrity.
 - 4. whether the proposed relocation area is compatible with the historical and architectural character of the building, structure, site or object.
- c. Demolition: A decision by the Commission approving or denying a Certificate of Appropriateness for the demolition of buildings, structures, sites, trees judged to be 50 years old or older, or objects shall be guided by:
 - 1. the historic, scenic or architectural significance of the building, structure, site, tree or object.
 - 2. the importance of the building, structure, site, tree, or object to the ambiance of a district.
 - 3. the difficulty or the impossibility of reproducing such a building, structure, site, tree, or object because of its design, texture, material, detail, or unique location.
 - 4. whether the building, structure, site, tree, or object is one of the last remaining examples of its kind in the neighborhood or the city.
 - 5. whether there are definite plans for use of the property if the proposed demolition is carried out, and what the effect of those plans on the character of the surrounding area would be.
 - 6. whether reasonable measures can be taken to save the building, structure, site, tree, or object from collapse.
 - 7. whether the building, structure, site, tree, or object is capable of earning reasonable economic return on its value.

G. Undue Hardship:

When, by reason of unusual circumstances, the strict application of any provision of this Ordinance would result in the exceptional practical difficulty or undue economic hardship upon any owner of a specific property, the Commission, in passing upon applications, shall have the power to vary or modify strict provisions, so as to relieve such difficulty or hardship; provided such variances, modifications interpretations shall remain in harmony with the general purpose and intent of said provisions, so that the architectural or historical integrity, or character of the property, shall be conserved and substantial justice done. In granting variances, the commission may impose such reasonable and additional stipulations and conditions as will, in its judgment, best fulfill the purpose of this Ordinance. An undue hardship shall not be a situation of the person's own making.

H. Deadline for Approval or Rejection of Application for Certificate of Appropriateness:

- 1. The Commission shall approve or reject an application for a Certificate of Appropriateness within forty-five (45) days after the filing thereof by the owner or occupant of a historic property, or of a building structure, site, or object located within a historic district. Evidence of approval shall be by a

Certificate of Appropriateness issued by the Commission. Notice of the issuance or denial of a Certificate of Appropriateness shall be sent by United States mail to the applicant and all other persons who have requested such notice in writing filed with the Commission.

2. Failure of the Commission to act within said forty-five (45) days shall constitute approval, and no other evidence of approval shall be needed.

I. Necessary Action to be Taken by Commission upon Rejection of Application for Certificate of Appropriateness:

1. In the event the Commission rejects an application, it shall state its reasons for doing so, and shall transmit a record of such actions and reasons, in writing, to the applicant. The commission may suggest alternative courses of action it thinks proper if it disapproves of the application submitted. The applicant, if he or she so desires, may make modifications to the plans and may resubmit the application at any time after doing so.
2. In cases where the application covers a material change in the appearance of a structure which would require the issuance of a building permit, the rejection of the application for a Certificate of Appropriateness by the Commission shall be binding upon the building inspector or other administrative officer charged with issuing building permits and, in such a case, no building permit shall be issued.

J. Requirement of Conformance with Certificate of Appropriateness:

1. All work performed pursuant to an issued Certificate of Appropriateness shall conform to the requirements of such certificate. In the event work is performed not in accordance with such certificate, the Commission shall issue a cease and desist order and all work shall cease.
2. The Commission and the Clarkston City Council shall be authorized to institute any appropriate action or proceeding in a court of competent jurisdiction to prevent any material change in appearance of a designated historic property or historic district, except those changes made in compliance with the provisions of this ordinance or to prevent any illegal act or conduct with respect to such historic property or historic district.

K. Certificate of Appropriateness Void if Construction Not Commenced:

A Certificate of Appropriateness shall become void unless construction is commenced within 6 months of date of issuance. A Certificate of Appropriateness shall be issued for a period of 18 months and is renewable.

L. Recording an Application for Certificate of Appropriateness:

The Commission shall keep a public record of all applications for Certificates of Appropriateness, and of all the Commission's proceedings in connection with said application.

M. Acquisition of Property:

The Commission may, where such action is authorized by the Clarkston City Council and is reasonably necessary or appropriate for the preservation of a unique historic property, enter into negotiations with the owner for the acquisition by gift, purchase, exchange, or otherwise, to the property or any interest therein.

N. Appeals:

Any person adversely affected by any determination made by the Commission relative to the issuance or denial of a Certificate of Appropriateness may appeal such determination to the Clarkston

City Council. Any such appeal must be filed with the Clarkston City Council within 15 days after the issuance of the determination pursuant to Section V.H1 of this Ordinance or, in the case of a failure of the Commission to act, within 15 days of the expiration of the forty-five (45) day period allowed for the Commission action, Section V.H 2 of this Ordinance. Appeals for properties within the City of Clarkston shall be made to the Clarkston City Council. The Clarkston City Council may approve, modify, or reject the determination made by the Commission, if the governing body finds that the Commission abused its discretion in reaching its decision. Appeals from decisions of the Clarkston City Council may be taken to the Superior Court of DeKalb County in the manner provided by law for appeals from conviction for the City of Clarkston ordinance violations.

SECTION VI

Maintenance of Historic Properties and Building and Zoning Code Provisions

A. Ordinary Maintenance or Repair:

Ordinary Maintenance or repair of any exterior architectural or environmental feature in or on a historic property to correct deterioration, decay, or to sustain the existing form, and that does not involve a material change in design, material or outer appearance thereof, does not require a Certificate of Appropriateness.

B. Failure to Provide Ordinary Maintenance or Repair:

Property owners of historic properties or properties within historic districts shall not allow their buildings to deteriorate by failing to provide ordinary maintenance or repair. The Commission shall be charged with the following responsibilities regarding deterioration by neglect.

1. The Commission shall monitor the condition of historic properties and existing buildings in historic districts to determine if they are being allowed to deteriorate by neglect. Such conditions as broken windows, doors and exterior openings which allow the elements and vermin to enter, or the deterioration of a buildings structural system shall constitute failure to provide ordinary maintenance or repair.
2. In the event the Commission determines a failure to provide ordinary maintenance or repair, the Commission will notify the owner of the property and set forth the steps which need to be taken to remedy the situation. The owner of such property will have 30 days in which to do this.
3. In the event that the condition is not remedied in 30 days, the owner shall be punished as provided in Section VII of this Ordinance and, at the direction of the Clarkston City Council, the Commission may perform such maintenance or repair as is necessary to prevent deterioration by neglect. The owner of the property shall be liable for the cost of such maintenance and repair performed by the Commission.

C. Affirmation of Existing Building and Zoning Codes:

Nothing in this Ordinance shall be constructed as to exempt property owners from complying with existing City building and zoning codes, nor prevent any property owner from making any use of this property not prohibited by other statutes, ordinances or regulations.

SECTION VII

Penalty Provisions

Violations of any provisions of this Ordinance shall be punished in the same manner as provided for punishment of violations of validly enacted Ordinances of the City of Clarkston.

SECTION VIII

Severability

In the event that any section, subsection, sentence, clause or phrase of this Ordinance shall be declared or adjudged invalid or unconstitutional, such adjunction shall not in any manner affect the other sections, sentences, clauses, or phrases of this Ordinance, which shall remain in full force and effect, as if the section, subsection, sentence, clause or phrase so declared or adjudged invalid or unconstitutional were not originally part thereof.

SECTION IX

Repealer

All ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION X

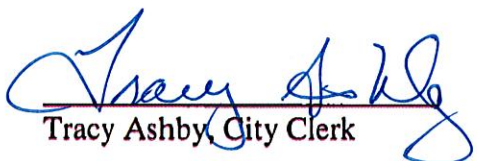
Effective Date

This Ordinance shall become effective immediately.

SO ORDAINED, this 3rd day of January, 2019.

ATTEST:

**CITY COUNCIL OF THE
CITY OF CLARKSTON, GEORGIA**


Tracy Ashby, City Clerk



Mayor Ted Terry

Approved as to Form

 1-24-19

Stephen G. Quinn, City Attorney