

ARTICLE 2
Authoritative Boards and Review Agencies

A. General.

- 1. Compensation.** All appointed members of the Planning Commission, Historic District Commission, and Board of Zoning Appeals shall serve without compensation, unless the Council shall by resolution determine that appropriate compensation should be made to the members. Such determination shall be made separately and severally for each board or commission and shall include all members of that board or commission.
- 2. Appointment.** All appointed members of the Planning Commission, Historic District Commission, and the Board of Zoning Appeals shall be appointed by the Mayor and confirmed by the City Council.
- 3. Vacancy and Removal.** All appointed members of the Planning Commission, Historic District Commission, and Board of Zoning Appeals may, after a public hearing, be removed by the Council for neglect of duty, misconduct or malfeasance in office. The Council shall file a written statement among its records of reasons for such removal. Vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired term by the Mayor with the confirmation of the City Council as herein set forth. In the case of expiration of terms, members may continue to serve until their successors are appointed and confirmed.
- 4. Officers and Rules.** The Commissions and Boards shall appoint a Chairperson and a Vice Chairperson annually, to be selected from among the voting members at a meeting in accordance with that body's rules. The terms of the Chairperson and Vice Chairperson shall be for one year, with eligibility for reelection. In the absence of both the Chairperson and Vice Chairperson, the members shall select an acting chairperson to manage the meeting before addressing business. The bodies shall adopt rules for the conduct of its business and activities and the execution of its responsibilities, in accordance with this Chapter and all relevant City Policies and Ordinances.

B. Planning Commission. Pursuant to the powers and authority vested in the City of Hagerstown, a Municipal Corporation, by and pursuant to the Land Use Article (known until October 1, 2012, as Article 66B), Section 2-101 of the Annotated Code of the Public General Laws of Maryland, as subsequently amended, there is hereby created a Planning Commission, to be known as the "Hagerstown Planning Commission."

- 1. Powers and Duties.** The powers and duties of the Hagerstown Planning Commission shall be those powers, duties, and responsibilities defined in:
 - a. The Land Use Article of the Annotated Code of the Public General Laws of Maryland, insofar as the same are applicable and pertain to Municipal Planning for the City of Hagerstown and as now set forth in the Land Use Article and as may be substantially amended.
 - b. The Natural Resources Article, Sections 5-1601 through 5-1613 of the Annotated Code of the Public General Laws of Maryland entitled "Forest Conservation Act," as may be amended; and
 - c. The Environment Article, Title 5, Subtitle 8 ("Flood Control and Watershed Management") of the Annotated Code of Maryland, as may be amended.

This Chapter shall not in any way affect the powers and duties vested in the Mayor and Council of the City of Hagerstown, as its legislative body, by any laws of the State of Maryland, nor shall it affect the powers and duties vested in the Board of Zoning Appeals by any laws of the State of Maryland or by an ordinance passed pursuant thereto.

2. Composition and Term.

- a. **Composition.** The Commission shall consist of seven members, one of whom may be a member of the Council to serve in an ex-officio capacity concurrent with his or her official term of office.
- b. **Terms.** The term of office of each appointed member shall be for five years from the date of the expiration of his or her predecessor's appointment. In cases where the appointment of a successor is delayed beyond the expiration of a member's term, that member shall continue to serve until his or her successor is appointed.

C. Historic District Commission.

1. **Authority.** The preservation of sites, structures, and districts of historical, archaeological, or architectural significance together with their appurtenances and environmental settings is a public purpose in Hagerstown. The Mayor and City Council derives authority for this ordinance by virtue of its conformance with provisions of the State of Maryland Enabling Act for Historic Area Zoning as authorized in the Land Management Article, Sections 8-101 to 8-401 of the Annotated Code of Maryland, as amended (formerly Article 66B, Zoning and Planning, Section 8.01-8.17).
2. **Creation of Commission.** There is hereby created a "Historic District Commission," as the historic preservation commission of Hagerstown, Maryland, hereinafter to be known as the HDC.
3. **Purpose.**
 - a. It is the purpose of this Commission to provide for the identification, designation and regulation, for purposes of protection, preservation and continued use and enhancement, of those sites, structures, and districts which reflect elements of archaeological, political, cultural, social, economic or architectural history.
 - b. It is the further purpose of this Commission to preserve and enhance the quality of life and to safeguard the historical and cultural heritage of Hagerstown; to strengthen the local economy; to stabilize and improve property values of such sites, structures, or districts; to foster civic beauty; and to preserve and promote the preservation and appreciation of the sites, structures, and districts for the education and welfare of the citizens of the City of Hagerstown, the County of Washington, the State of Maryland, and the United States of America.
4. **Powers and Duties.** For the purposes of this Article, the powers and duties of the Historic District Commission shall include:
 - a. **Studies.** To direct studies, reports, and surveys to identify sites, structures, or districts which are deemed to be of historical, archaeological, or architectural significance.
 - b. **Inventories.** To inventory and recommend to the Planning Commission and to the Mayor and City Council the adoption of ordinances and amendments designating sites, structures, or districts

deemed to be of historical, archaeological, or architectural significance, as “landmarks” or “historic districts.”

- c. **Staff.** Staff to the HDC shall be provided by the Planning and Code Administration Department or other agency as set forth by the City Administrator. The HDC may contract the Maryland Historical Trust, other agencies and organizations and also contract with engineers and architects and other consultants for such services as it may require, consistent with the City’s policies and procedures. The expenditures of the Historic District Commission, exclusive of gifts, shall be under such conditions and within the amounts appropriated for the purpose by the Mayor and City Council which shall provide the funds, equipment, and accommodations consistent with the intent of this article.
- d. **Permit and Plan Review.** To review building permit applications and zoning permit applications for work in historic districts and at designated landmarks in accordance with the provisions of Article 4, Section T, proposed zoning amendments, applications for special exception permits, interpretations, subdivisions and applications for zoning variances that affect landmarks and historic districts. The Zoning Administrator shall send such applications for permits, interpretations, subdivisions, special exceptions and ordinances to the Historic District Commission for comment at least 15 days prior to the date of the hearing by the Planning Commission or Board of Zoning Appeals.
- e. **Public Testimony.** To testify before all boards and commissions, including the Planning Commission and the Board of Zoning Appeals, on any matter affecting historically, archaeologically, and architecturally significant sites, structures, and districts.
- f. **Acceptance of Funds.** To accept on behalf of the City of Hagerstown such gifts, grants, and money as may be appropriate for the purposes of this Subsection and Article 4, Section T. Such money may be expended for publishing maps and brochures or for hiring consultants or performing other appropriate functions for the purpose of carrying out the duties and powers of the Historic District Commission and the purposes of this Subsection and Article 4, Section T, consistent with the City’s policies and procedures.
- g. **Interest in Real Property.** To administer on behalf of the City of Hagerstown, in accordance with guidelines set forth by the legislative body of the City, historic preservation easements, that the City of Hagerstown may have or accept as a gift or otherwise, upon authorization and approval by the legislative body of the City. Such easements may grant to the Commission, the residents of the district, and the general public the right to ensure that any site or structure and surrounding property upon which it is applied is protected, in perpetuity, from changes which would affect its historical, archaeological, or architectural significance.
- h. **Design Guidelines.** To create new and amend existing architectural and design guidelines and recommend same to the Mayor and Council for adoption which shall specify such characteristics as materials, signage, landscaping, and other design-related considerations that will be permitted, encouraged, limited, or excluded from landmarks and locally designated historic districts. The Secretary of the Interior’s *Standards for Rehabilitation* will stand as the basis for review.
- i. **Other Powers and Duties.** To undertake any other action or activity necessary or appropriate to the implementation of its powers and duties or to the implementation of the purpose of this Subsection and Article 4, Section T.

5. Membership, Terms, Meetings, Standing and Interest.

a. Membership.

- (1) The HDC shall consist of seven voting members. Two additional nonvoting “ex-officio” members who need not be residents of the City may be appointed to the HDC.
- (2) At least five of the seven voting members shall be a resident of the City.
- (3) Each member shall possess a demonstrated special interest, specific knowledge or professional or academic training in such fields as history, architecture, architectural history, planning, archaeology, anthropology, curation, conservation, landscape architecture, historic preservation, urban design or related disciplines.
- (4) At least two voting members of the HDC shall be appointed from the professional disciplines of architecture, history, architectural history, or archaeology, in accordance with the minimum professional requirements of the United States Department of the Interior for certifying local governments under 36 C.F.R. Part 61, to the extent available in the city.
- (5) At least three other voting members of the HDC shall have a specific knowledge or professional or academic training in such fields as history, architecture, architectural history, planning, archaeology, anthropology, curation, conservation, landscape architecture, historic preservation, urban design or related disciplines, such as American civilization or law.

b. Terms. The terms of the members of the HDC shall be for three-year periods with two or three positions expiring in any calendar year in order to prevent the simultaneous expiration of all terms.

c. Meetings; Standing; Minutes; Quorum; Deadline for Decisions. The HDC shall hold such regular meetings as, in its discretion, are necessary to discharge its duties. The HDC shall meet monthly and shall hold special meetings at the call of the Chairperson or of any four voting members of the HDC. Any interested person or a person’s representative is entitled to appear and be heard at any meeting conducted by the HDC. All minutes and records shall be filed with the Planning and Code Administration Department. Four voting members shall constitute a quorum. All decisions by the HDC shall be made within 15 days of the hearing and written notice thereof shall be given to the applicant. Failure by the Commission to comply with this requirement shall be deemed to constitute automatic approval of the proposed changes unless an extension of this 15-day period is agreed upon mutually by the applicant and the Commission or its staff.

d. Interest. No member of the HDC shall vote on any matter that may directly or indirectly affect the property, income, or business interest of that member.

D. Board of Zoning Appeals.

1. **Establishment of Board.** To provide for competent interpretation and the full and equitable achievement of the purposes of the ordinance there is hereby established a Board of Zoning Appeals.
2. **Composition of Board.**
 - a. **Number of Members.** The Board of Zoning Appeals shall consist of five members and they shall be appointed by the Mayor and confirmed by the City Council to serve for a term of three years. There shall be one alternate member designated by the Council who may sit on the Board when any other member of the Board is absent. When the alternate member is absent the Council may designate a temporary alternate member.
 - b. **State Enabling Law.** Board composition, appointment, terms, compensation, removal of members, vacancies, rules, meetings, administering oaths, summoning witnesses, records, general powers, appeals, stays, hearings and decisions shall be pursuant to and governed by the Land Use Article, Sections 1-206 and 4-301 to 4-306 of the Annotated Code of Maryland.
3. **Powers and Duties of the Board.**
 - a. **Administrative Appeal.** To hear and decide appeals of the decisions of the Zoning Administrator or any other City Employee empowered with the administration of the Zoning Ordinance (Article 4), in accordance with the provisions of that Article.
 - b. **Variances, Special Exceptions, Etc.** To hear and decide applications for variances, special exceptions and other zoning approvals as authorized in the Zoning Ordinance (Article 4, Section U), pursuant to the standards, guides and limitations set forth in that Ordinance.
 - c. **Floodplain Variances and Appeals.** To hear and decide appeals of the decisions of the administrator and requests for variances to the provisions of the Flood Management Ordinance (Article 6), pursuant to the standards, guides and limitations set forth in that Article.
 - d. **Nonconforming Uses.** To hear and decide cases involving the confirmation, expansion, alteration and change of nonconforming uses (Article 4, Section M).
4. **Rules and Meetings.** The Board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this ordinance. Meetings and hearings of the Board shall be held at the call of the Chairperson or, in his absence, the Acting Chairperson, who may administer oaths and compel the attendance of witnesses. All hearings of the Board shall be open to the public. The Board shall keep minutes of its proceedings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep recordings of its hearings and records of other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

E. Zoning Administrator and Administration of this Chapter.

1. **Zoning Administrator.** The provisions of this Chapter shall be administered by the Zoning Administrator as designated by the Mayor and City Council.
2. **No Approval Unless in Conformance with this Chapter.** All departments, divisions, officials and public employees of the City of Hagerstown which are vested with the duty or authority to issue permits or licenses shall issue no permit or license for any use, building or purpose if the same would be in conflict with the provisions of this Chapter. The Zoning Administrator shall have the authority to revoke an issued zoning certificate or zoning approval of a building permit in accordance with Article 4, Section S.1.g.
3. **Powers and Duties of the Zoning Administrator.** References to the Zoning Administrator shall herein also include any agent acting on behalf of the Zoning Administrator through the delegation of duties, or in an acting capacity in the absence of the Zoning Administrator.

Duties of the Zoning Administrator are:

- a. **Permit Examination.** Receive and examine all applications for zoning permits and within 30 days of receipt either issue or deny such permit.
- b. **Permit Approval.** Issue permits only where there is compliance with the provisions of this Chapter and with other City ordinances.
- c. **Board of Zoning Appeals.** Receive applications for interpretations, special exceptions, variances, and other applications subject to review by the Board, and promptly forward these applications to the Board of Zoning Appeals.
- d. **Investigation of Noncompliance.** Cause to be investigated alleged violations of this Chapter and gather evidence in support of the enforcement of the provisions of this Chapter. By virtue of this Chapter, the Zoning Administrator shall have the authority to enter upon open land for the purpose of investigating possible noncompliance with or violation of this Chapter.
- e. **Enforcement.** Among other actions, issue stop, cease and desist orders and orders in writing by certified mail for correction of all conditions found to be in violation with the provisions of this Chapter. Such written orders shall be served personally or by certified mail upon persons, firms or corporations deemed by the Zoning Administrator to be violating the terms of this Chapter. The Zoning Administrator shall be authorized to seek and obtain administrative search warrants in the furtherance of the enforcement of this Chapter. See Article 8 of this Chapter pertaining to violations and penalties. The Zoning Administrator may adopt a policy for the assessment of reinspection fees in enforcement cases.

When a site plan is approved in error by the responsible authority and/or a building permit or zoning certificate is approved in error by the Zoning Administrator or his or her agent, and the work is constructed in accordance with the permit, there shall be no violation of this Code and the Zoning Administrator is prohibited from initiating enforcement action, provided:

- (1) No fraud or misrepresentation had been practiced in obtaining the permit;

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- (2) At the time of the permit's issuance, no appeal or controversy regarding its issuance was pending before any body;
 - (3) The applicant has acted in good faith, expending funds or incurring obligations in reliance on the permit;
 - (4) Failure to enforce the violated provision is not contrary to the public interest; and
 - (5) Does not involve issues of compliance with the Floodplain Management Ordinance (Article 6 of this Code).
- f. **Right of Entry and Administrative Search Warrants.** The Zoning Administrator is authorized to enter a structure or premises at reasonable times to inspect subject to constitutional restrictions on unreasonable searches and seizures or with consent of the owner or tenant or occupant of the structure or premises. If entry is refused or not obtained, the Zoning Administrator is authorized to obtain an administrative search warrant subject to the following conditions:
- (1) The Zoning Administrator may apply to a Judge of the District Court or Circuit Court for an administrative search warrant to enter any premises to conduct any inspection required or authorized by law to determine compliance with the provisions of this Chapter.
 - (2) The application for an administrative search warrant shall be in writing and sworn to by the applicant before the Judge issuing the warrant and shall particularly describe the place, structure, premises, etcetera, to be inspected and the nature, scope and purpose of the inspection to be performed by the applicant.
 - (3) A Judge of a court referred to in this subsection may issue the warrant on finding that:
 - (a) The applicant has sought access to the property for the purpose of making an inspection and has been unable to obtain consent for the search.
 - (b) The requirements of Subsection f.(2) of this subsection have been met.
 - (c) Probable cause for the issuance of the warrant has been demonstrated by the applicant by specific evidence of an existing violation of any provision of this Chapter or any rule or regulation adopted under this Chapter.
 - (4) An administrative search warrant issued under this subsection shall specify the place, structure, premise, vehicle, or records to be inspected. The inspection conducted may not exceed the limits specified in the warrant.
 - (5) An administrative search warrant issued under this subsection authorizes the applicant and other officials or employees of the City to enter specified property to perform the inspection or other functions authorized by law to determine compliance with the provisions of this Chapter.
 - (6) An administrative search warrant issued under this subsection shall be executed and returned to the Judge by whom it was issued, within:

- (a) The time specified in the warrant, not to exceed ten days.
- (b) If no time period is specified in the warrant, ten days from the date of its issuance.
- g. **Legal Proceedings.** With the approval of the Mayor and City Council, or when directed by them, institute in the name of the City any appropriate action or proceedings to prevent unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use; to restrain, correct or abate such violation as to prevent the occupancy of or use of any building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.
- h. **Records.** Record and file all applications for zoning permits with accompanying plans and documents. All applications, plans and documents shall be a public record.
- i. **Zoning Map.** Maintain a map or maps showing the current zoning classification of all land in the city.
- j. **Policies and Procedures.** Establish and publish application procedures for permits, appeals and actions pursuant to this Chapter and forms implementing its requirements.
- k. **Review of Site Plans and Subdivisions.** Review all development review plans and permits to assure that the requirements of this Chapter have been satisfied.
- l. **Interpretation of the Chapter.** Interpret the applicability of the provisions of this Chapter in matters where the text does not clearly provide guidance.
- m. **Maintenance of Records.** Maintain all records pertaining to the provisions of this Chapter in his office and make said records open to public inspection, consistent with City-wide public information policies.
- n. **Application Clearinghouse.** Receive appeals and other applications described in this Chapter and forward cases to the appropriate Board or Commission.
- o. **Reasonable Accommodation.** Upon the adoption of uniform policies and procedures that are endorsed by the Mayor and City Council by Resolution, the Zoning Administrator is authorized to receive applications for, review and issue decisions regarding the provision of reasonable accommodations to the Zoning Ordinance in the furtherance of the Americans With Disabilities Act (42 U.S.C. § 12101 *et seq.*) and the Federal Fair Housing Act (42 U.S.C. § 3601 *et seq.*)