

ARTICLE 7-8-9 HISTORIC PRESERVATION ORDINANCE

7-8-9-010 Purpose.

The purpose of creating this Historic Preservation Ordinance is to protect and enhance the historical and aesthetic attraction to tourists and visitors and thereby promote and stimulate business, and to provide for the protection, enhancement, perpetuation, and use of places, districts, sites, buildings, structures, and works of art having a special historic, architectural, cultural, or aesthetic interest or value, and to provide reasonable flexibility for property owners to improve and maintain their properties below certain thresholds, and for special circumstances.

7-8-9-020 Definitions.

This article specifically adopts and incorporates the definitions contained in O.C.G.A. § 44-10-22 of terms used within this article as defined in that code section, including, but not limited to, the following:

- A. "Certificate of Appropriateness" means a document approving a proposal to make a material change in the appearance of a designated historic property or, within a designated historic district, of a structure, site, or work of art located within said district. The Certificate of Appropriateness must be obtained from the Commission before such material change may be undertaken.
- B. "Commission" means the Marietta Historic Preservation Commission created or established pursuant to O.C.G.A. § 44-10-24, created within this article.
- C. "Contemporary building" means those buildings or structures other than historic.
- D. "Council" or "City Council" means the persons elected Mayor and Council as provided in the City Charter.
- E. "Designation" means a decision by the Council to designate a property or district within the city as a "historic property", or "historic district", and thereafter to prohibit all material changes, except as set forth herein, in appearance of such property, or within such district, prior to issuance of a certificate of appropriateness by the Commission.
- F. "District representative" means a person who meets eligibility requirements defined below in 7-8-9-030 A.5, elected to represent a specific historic district on matters specific to that historic district.
- G. "Eligible Voter" means a property owner of a parcel of property within a proposed Historic District.
- H. "Exterior architectural features" means the architectural style, general design, and general arrangement of the exterior of a building or other structure including, but not limited to, the kind or texture of the building material; the type and style of all windows, doors, and signs; and other appurtenant architectural fixtures, features, details, or elements relative to the foregoing which are visible from the public right-of-way.
- I. "Historic district" means a geographically definable area, urban or rural, which contains structures, features, sites, works of art or a combination thereof which:
 - 1. Has special character, historical, or aesthetic interest or value;
 - 2. Represents one or more periods or styles of architecture typical of one or more eras in the history of the city, county, state, region, or nation;
 - 3. Causes such area, by reason of the aforementioned factors, to constitute a visibly perceptible section of the city.

- J. "Historic preservation jurisdiction" means the area within the corporate area of the City of Marietta or area otherwise subject to the jurisdiction of the council.
- K. "Historic property" means a structure, site, or work of art including the adjacent area necessary for the proper appreciation or use thereof, deemed worthy of preservation by reason of its value to the city, county, state, or region for one or more of the following reasons:
 1. It is an outstanding example of a structure representative of its era;
 2. It is one of the few remaining examples of a past architectural style;
 3. It is a place or structure associated with an event or person of historic or cultural significance to the city, county, state, or region; or
 4. It is a site of natural or aesthetic interest that is continuing to contribute to the cultural or historical development and heritage of the city, county, state, or region.
- L. "Housecleaning" means the upkeep of property that does not constitute a material change in appearance and includes such tasks as cleaning, minor repair, and general maintenance of property.
- M. "Material change in appearance" means a change that will affect the exterior architectural features of a historic property; or of any structure, site, or work of art within a historic district that can be seen from a street, sidewalk or area of public gathering; and may include any one or more of the following but shall not include exterior paint or paint color alterations:
 1. A reconstruction or alteration of the size, shape, or facade of a historic property that can be seen from a public street, public sidewalk or area of public gathering including relocation of any doors or windows or removal or alteration of any architectural features, details, or elements other than demolition unless it is required below;
 2. Demolition of a historic property;
 3. Commencement of excavation of any historic property, as defined herein, or within a historic district, except for construction, repair and maintenance of underground utility, storm drain facilities, and other underground features;
 4. A change in location of advertising visible from the public way on any historic property or within a historic district;
 5. The erection, alteration, restoration, or removal of any building or other structure within a historic district, including but not limited to walls, fences, steps, pavements, or other appurtenant features, except (1) changes to existing exterior paint color; (2) the alteration and removal of walls, fences, steps, pavements, or other appurtenant features that cannot be seen from a public street, public sidewalk, or other public gathering.
- N. "Occupant" a generic term used for the purpose of directing a mailing to a property for notice purposes.
- O. "Principal" includes but is not limited to a stock holder of the company, manager, officer that has been designated as the individual to vote for the entity in the election.
- P. "Property Owner or Private Property Owner" includes any natural person, corporation, or partnership, LLC, and all legal entities which own property in fee simple.
- Q. "Public gathering" includes areas of assembly on public right-of-way, public parks, or other publicly owned properties designated for such use.
- R. "Resident" shall be a person who meets the requirements for determining residence as defined in O.C.G.A. 21-2-217.

7-8-9-030 Historic Preservation Commission.

- A. Creation and Composition. There is created the Marietta Historic Preservation Commission, as follows:

1. The city council shall appoint all members of the historic preservation commission who shall reside within the incorporated city limits. The composition of the Commission shall be as follows:

Each of the seven council members shall nominate one individual. Each member nominated will be subject to the approval of the majority of city council. These seven members should have demonstrated a special interest, experience or education in history, architecture, or preservation. Unless no qualified persons are willing to serve, at least six members shall be professionals in the fields of history (including but not limited to urban planning, archeology, conservation, and historic preservation) or architecture (including landscape architecture).
 2. All members shall serve without compensation except for reimbursement of expenses as approved by the council.
 3. All commission members and anyone serving the commission in a technical assistance/professional staff capacity shall attend at least one informational or educational meeting per year pertaining to historic preservation.
 4. Members may be removed for cause after a hearing before the Council.
 5. As each Historic District is approved by the City Council, the owners of such district that are eligible to vote as set forth herein shall vote for and elect two district representatives from among their number, by a majority of those voting. For districts that contain only residentially zoned property the elected representatives must also be residents of the district. If the owners are an entity, then the principal that is eligible to vote for that entity shall be eligible to be elected. Notwithstanding anything contained herein to the contrary, all representatives shall be residents of the City of Marietta. The initial election shall be carried out by the City of Marietta staff and the election shall then occur bi-annually thereafter. The elected members(s) shall serve for a two year term and the election shall occur bi-annually. If there is a vacancy, the election for the unexpired term shall occur in the same manner as the election for the full term. Once elected, the two district representative elected from that district shall serve as ex-officio voting members of the Historic Preservation Commission for any item that is heard by the Historic Preservation Commission that pertain only to the district they are elected to represent. For purposes of the City Code, they shall not serve on or affect the Historic Preservation Commission or any other City body for the action of any item not concerning the Historic District from which they are elected. Notwithstanding anything to the contrary contained herein, if an ex-officio voting member is not in attendance, that member or position shall not count as part of the quorum requirement.
- B. Term of Office. Commission members shall serve for a period of three years. In order to achieve staggered terms for purposes of continuity, initial appointments shall be as follows: three members shall be appointed for one year; three members shall be appointed for two years, and one shall be appointed for three years.
- C. Organization. The commission shall select a chairperson who shall preside over the meeting. The commission shall meet no less frequently than once a month
1. The commission shall adopt rules and regulations, which do not conflict with the provisions of O.C.G.A. Tit. 44, Ch. 10, which shall only be effective after submittal to and if approved by the city council.
 2. The city shall provide the technical, administrative, professional and clerical assistance as required by the commission.
 3. Except as provided in A.5, a majority of the voting members of the commission shall constitute a quorum.

4. No commission member shall participate in the discussion on or vote on any matter in which he or she may have a conflict of interest as defined within City Charter or Code or Official Code of Georgia Annotated. Any commissioner who owns an interest in property within the district may recuse himself or herself and shall be allowed to present the application as a private citizen without violating this Code.
5. Meetings of the commission shall be held according to the schedule adopted by the commission, at the call of the chairperson or at such other times as majority of the commission may determine. The secretary shall inform all members of the board at least 48 hours in advance of any meeting.
6. During a public hearing, each side shall be allowed 15 minutes to present their argument. The chairperson may request representatives from each side to speak for the entire group. If more than one speaker represents a group, the 15 minutes shall be divided among the various speakers. In no case, however, shall any group be allowed more than the allotted time no matter how many speakers represent the group unless extended by a majority vote of the commission members present.
7. At the public hearing, the applicant or any other party may appear on his/her own behalf or be represented by agent or attorney. No cases shall be considered if the applicant or his/her agent does not appear and a new application must be filed for the commission to reconsider the request.
8. Failure for any commissioner to attend three consecutive meetings without just cause shall be considered resignation from the commission. Upon such resignation, resignation by other means, or other vacancies occurring in office, the chairperson shall inform the city council as promptly as possible, so that the city council may appoint a replacement to fill the unexpired term.
9. Failure for any district representative to attend three consecutive meetings at which there is business specific to their district without just cause shall be considered resignation from the commission. Upon such resignation, resignation by other means, or other vacancies occurring in office, the chairperson shall inform the city staff as promptly as possible, so that the city staff may conduct an election for a replacement to fill the unexpired term.
10. The commission may create a listing of material changes detailing specific instances when an administrative certificate of appropriateness can be approved. The items on this list must be approved at a formal hearing of both the historic preservation commission and the city council.

D. Jurisdiction and Authority. The commission shall be authorized to:

1. Prepare and maintain an inventory of all property within its historic preservation jurisdiction having the potential for designation as historic property;
2. Recommend to the council specific places, districts, sites, buildings, structures, or works of art to be designated by ordinance as historic properties or historic districts;
3. Review applications for certificates of appropriateness for historic resource protection and grant or deny the same in accordance with O.C.G.A. § 44-10-28 and this article;
4. Recommend to the council that the designation of any place, district, site, building, structure, or work of art as a historic property or as a historic district be revoked or removed;
5. Restore or preserve any historic properties acquired by the city as requested by city council;

6. Promote the acquisition by the city of conservation easements in accordance with O.C.G.A. §§ 44-10-1 through 44-10-8 (all conservation easements shall be in the name of the City of Marietta and shall be subject to acceptance by the city council);
 7. Conduct educational programs on historic properties located within its historic preservation jurisdiction and on general historic preservation activities;
 8. Make investigations and studies of matters relating to historic preservation as the city council or commission may from time to time deem necessary or appropriate for the purposes of this article, subject to approval of the city council;
 9. Seek out local, state, federal and private funds for historic preservation, and make recommendations to the council concerning the most appropriate use of any funds acquired;
 10. Consult with historic preservation experts in the historic preservation division of the department of natural resources, or its successor and the Georgia Trust for Historic Preservation, Inc.;
 11. Submit to the historic preservation division of the department of natural resources, or its successor a list of historic districts designated as such pursuant to O.C.G.A. § 44-10-26;
 12. Participate in private, state and federal historic preservation programs and with the consent of council enter into agreements to do the same;
 13. The commission shall employ persons, if necessary, to carry out the purposes of this article, subject to approval of the city council. The council must approve any expenditure for this purpose.
- E. Preservation of Historic Property.
1. Where such action is authorized by the council and is reasonably necessary or appropriate for the preservation of a unique historic property, the commission may enter into negotiations with the owner for the acquisition by gift, purchase, exchange, or otherwise for the property or any interest therein.
 2. The commission shall monitor the condition of designated historic properties or properties within a designated historic district within the city to determine whether they are being allowed to deteriorate by neglect.
- F. Records. The director of the Department of Development Services or his/her designee shall be secretary for the commission and shall keep a record of all applications for certificates of appropriateness, all renewals thereof, and of all of its proceedings. Also, the city clerk's office shall keep a listing of the classification of all buildings within historic districts pertaining to their classification as either a historic building or a contemporary building and a copy of the minutes of the meetings.
- G. The historic board of review and the historic preservation committee shall be served and advised by a common attorney as engaged by the city with concurrent advisement from said two boards. Current serving city attorney shall not be eligible to represent concurrently the two boards.

7-8-9-040 Adoption of a designation ordinance.

No ordinance designating any property as historic property, or any ordinance designating any district as a historic district, nor any amendments thereto may be adopted by the council, nor may any property be accepted or acquired as historic property by the council, unless all procedural requirements have been met as set forth in this subsection.

- A. Requirements for Designation. In designating property as historic property or as a historic district, the council and commission shall comply with the notice requirements set forth in Section 7-8-9-040.

1. Designation of Historic Property. Subject to Subsection B., below, in designating a property as a historic property, the commission shall set forth the name or names of the owners of the property, and shall require that a certificate of appropriateness be obtained from the commission prior to any material change in the appearance of the designated property, as set forth in Section 7-8-9-020 (M.1-5) except as noted in City of Marietta Code Section 7-8-9-050. Prior to any designation of a historic property, the owner or owners of the private property shall be given the opportunity to concur in or object to the designation. If the owner of the private property does not consent to the proposed historic designation, the historic property cannot be listed as a historic property under this chapter. Additionally, where the owner or owners of private property consent to the nomination, the rules and or guidelines under which they have consented to the designation may not thereafter be changed to be more restrictive without the consent of the owner or owners of the historic property.
2. Designation of Historic District. Subject to Subsection B., below, designation of a district as a historic district shall include a description of the boundaries of the district, shall list each property located therein, shall set forth the name or names of the owners of each property, and shall require that a certificate of appropriateness be obtained from the historic preservation commission prior to any material change in the appearance of any structure, site, or work of art located within the designated historic district, as set forth in Section 7-8-9-020 (M.1-5) except as noted in City of Marietta Code Section 7-8-9-050. Prior to any designation of a historic district, owners of private properties shall be given an opportunity to concur in or object to the designation. If at least 60 percent of private property owners within a proposed district do not consent to the nomination, the area cannot be designated as a historic district. Additionally, where the 60 percent of the private owners within a proposed district consent to the nomination, the rules and or guidelines under which they have consented to the designation may not thereafter be changed to be more restrictive without the consent of at least 60 percent of the private property owners within that district.
3. Each property owner within the proposed Historic District shall have one (1) vote per parcel of property owned by such owner. If a parcel of property is owned by more than one (1) person or legal entity, the vote of the "owner" of that property shall be the vote of the majority of owners.
4. If the parcel of property is a substandard lot (as defined by the City of Marietta Zoning Ordinance or a non buildable lot) and there is no structure built on the lot and it is vacant of any business or residence, there shall be no vote allowed for said parcel.
5. A vote on a district (or a substantially similar district) shall not be conducted more than once every twelve (12) months. The voting on a district shall be open for only a sixty (60) day period from the time that notice or voting cards are mailed. The vote shall take place only after the guidelines are approved and the proposed district boundaries have been delineated by the Historic Preservation Commission.
6. A property owner may not change his or her vote once it has been cast or returned to the City.
7.
 - a. Voting cards or ballots shall be sent by certified mail to each owner that is eligible to vote as set forth herein for property that is within the proposed district mailed to the last address shown, on the ad valorem tax records of the City of Marietta for the most current year the City has in its possession. A letter giving notice that voting is taking place in the proposed Historic District shall be sent via regular mail to "Occupant" to the property address.

- b. Voting cards or ballots must be returned within sixty (60) days to the Director of the Department of Development Services.
 - c. Approval of the vote by property owners in the proposed Historic District shall mean that the affirmative vote of the total eligible to vote to approve or vote for the district by the required percentage set forth in 7-8-9-040 A 2.
- B. Procedural Steps for Designation as Historical Property or District. No ordinance designating any property as a historic property and no ordinance designating any district as an historic district, nor any amendments thereto may be adopted by council nor may any property be accepted or acquired as historic property by council until the following procedural steps are taken:
 - 1. The commission shall, subject to city council approval, make or cause to be made an investigation and shall report on the historic, cultural, architectural, or aesthetic significance of each place, district, site, building, structure, or work of art proposed for designation or acquisition. This report shall be submitted to the division of historic preservation of the Georgia Department of Natural Resources or its successor which will be allowed 30 days to prepare written comments concerning the report;
 - 2. The commission and council shall each hold a public hearing on the proposed ordinance and a public hearing on the design guidelines. Notice of the hearing(s) for the Ordinance shall be published at least three times in the principal newspaper of general circulation within the City of Marietta; and written notice of the hearing shall be mailed to all owners and occupants of such properties. Notice of the hearing(s) for the Guidelines shall be published at least one time in the principal newspaper of general circulation within the City of Marietta; and written notice of the hearing shall be mailed to all owners and occupants of such properties. All the notices shall be published or mailed not less than ten nor more than 20 days prior to the date set for the public hearing; and
 - 3. Following the public hearing, council may adopt the ordinance as prepared, adopt the ordinance with any amendments it deems necessary, or reject the proposal.
- C. Notice to Owner/Occupiers. Within 30 days immediately following the adoption of the ordinance 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 council, which notice shall apprise said owners and occupants of the necessity for obtaining a certificate of appropriateness prior to undertaking any material change, as set forth herein, in the appearance of the historic property designated or within the historic district designated.
- D. Approval of Guidelines. Design guidelines or preservation guidelines must be approved by both the Historic Preservation Commission and City Council at least one meeting prior to the establishment of a historic district or designation of a historic property that would be required to comply with said guidelines.
- E. Adoption into Zoning Map. The designated property or district shall be listed by the Planning and Zoning Director on the official zoning map of the City of Marietta or, in the absence of an official zoning map, the designated property or district shall be shown on a map of the city and kept as a public record in the City Clerk's Office to provide notice of such designation in addition to other notice requirements specified by this article.
- F. Except as may hereinafter be modified; the City Council may remove the designation as a Historic Property or Historic District by a majority vote of those Council Members voting.
- G. An Historic District may be amended by the addition of properties of Property Owners who have consented in writing to the addition of their properties, who have acknowledged in writing receipt of the Historic Preservation Ordinance and Guidelines and who have waived in writing all other notices. The Commission and Council shall each hold a public hearing on

the proposed ordinance of which the properties of said Owners have consented to be included as an addition to the said Historic District. The property or properties may be included in the existing district by first a majority vote of the Commission and then a majority vote of the Council. There will be no action required of the existing properties within the Historic District for an amendment adding additional properties under the same guidelines. The properties comprising the amended addition will be subject to the Ordinance as if part of the original formation of the Historic District.

7-8-9-050 Application for certificate of appropriateness.

- A. The Commission shall approve the application and issue a Certificate of Appropriateness unless it finds that the proposed material change in appearance would have a substantial adverse effect on the aesthetic, historical, architectural, or cultural significance and value of the historic property or the historic district; notwithstanding the above, the proposed improvements may be approved if the project is of special merit by virtue of exemplary architecture, materials, and/or specific features that enhance the beauty and value of the property and the neighborhood to a greater extent than the existing property.
- B. Except as set forth within this Ordinance, A Certificate of Appropriateness is required before any of the following is commenced within the historic district:
 - 1. The demolition of any historic building. Provided, however, that the action of the Historic Preservation Commission shall constitute a recommendation and no certificate of appropriateness hereunder shall become final until approved by the Marietta City Council. Further provided, however, that any certificate of appropriateness approved by the City Council must be implemented by commencement of substantial and ongoing construction within the period of twelve (12) months from the date of final approval by the City Council and if substantial and ongoing construction is not so commenced the final certificate issued by the City Council shall expire and be void at the end of the twelve (12) month period. Further provided that the City Manager or his designee may grant a six (6) month extension of the certificate of appropriateness based upon a written request of the applicant.

The following additional requirements shall be met:

- a. Except as provided in Subparagraph (c) below, any applicant requesting a demolition permit shall be required to provide a date certain for the commencement of new construction of a new building to replace the demolished building which shall be no greater than 90 days from the completion of demolition.
 - b. Any applicant requesting a demolition permit shall be required to brick, stucco or otherwise reface any and all deteriorating walls that are open to public viewing as part of the demolition permit if no date certain exists to build a new structure or if due to other circumstances a new structure cannot be built in a manner provided in Subparagraph (a) above.
 - c. Any applicant requesting a demolition permit who certifies that a new building will not be constructed on the demolition site shall restore the site within thirty (30) days of completion of demolition to a condition which is safe, properly drained, stabilized, grassed and is otherwise in compliance with the Marietta City Code. The City Manager or his designee is hereby authorized to grant a 30-day extension based upon a request from the applicant.
- 2. Any new construction of a principal building; or new accessory building or structure subject to view from a public street or walk;

3. Additions or changes adding to existing fences, steps, sidewalks, streets and paving, or construction of a new fence, steps, sidewalks, streets and paving, subject to view from a public street or walk;
 4. Material Change in Appearance of the exterior of existing buildings by additions, reconstruction, alteration, or rehabilitation, subject to view from a public street or walk.
 5. The painting of exterior unpainted surfaces subject to view from a public street or walk.
- C. Application Requirement. After the designation by ordinance of a historic property or of a historic district as set forth in Section 7-8-9-040, no material change in the appearance of the historic property or of a historic structure, site, or work of art within the historic district, as defined in Section 7-8-9-020 (M.1-5) and referenced in Subsection 7-8-9-050 B., shall be made or be permitted to be made by the owner or occupant thereof unless and until application for a certificate of appropriateness has been submitted to and approved by the Commission, except as set forth herein.
1. Such application shall be accompanied by such drawings, photographs, plans, or other documentation showing the proposed exterior changes or new construction, where necessary. Detailed drawings shall not be required.
- D. Exemptions. The following shall be exempt from the provisions of this article:
1. The Department of Transportation and any contractors, including cities and counties, performing work funded by the Department of Transportation are exempt from this article.
 2. Local governments are exempt from the requirements of obtaining a certificate of appropriateness; provided, however, that local government shall notify the Commission 45 days prior to beginning an undertaking that would otherwise require a certificate of appropriateness and allow the Commission an opportunity to comment.
 3. Minor repairs:
 - i. Minor repairs that do not alter the historic or architectural features existing on the building. Examples of items falling within this category, which do not require a certificate of appropriateness, are the following:
 - a. The painting of existing surfaces where the surface was previously painted;
 - b. A change in color to a previously painted surface;
 - c. New roofs or caps on roofs which are not visible from public rights-of-way and which do not change the character of the roof;
 - d. Roof repair or replacement where the color is the same as the roof it replaced or gray or black or white;
 - e. The replacement of HVAC where such replacement is in the same location and of the same scale (or slightly larger to accommodate higher energy efficient equipment) as that of the original equipment. Excluded from the exception in this paragraph are window units;
 - f. The replacement of gutters where the replacement is in the same location and of the same scale as that of the original equipment;
 - g. The replacement of awnings where the replacement is in the same location and of the same scale as that of the original equipment;
 - h. Housekeeping repairs, replacement of components due to normal wear, and maintenance on the exterior appearance of existing buildings subject to view from a public street or walk..
 - i. The replacement of historic windows (nonhistoric windows would be exempt) with like kind;
 - j. New gutters where none existed before;

- ii. In the event an applicant is not certain about whether an item requires a certificate of appropriateness or not, an application shall be submitted to staff for review. In the event staff determines that they have the authority to approve the application because the change to the building is a minor repair, as defined in this section, then staff is given the authority to do so. In the event staff is not certain about whether the application would be considered a minor repair or a structural change then staff shall submit the application to the commission for consideration.
- E. Effective Period. Except for a final certificate of appropriateness issued pursuant to Section 7-8-9-050 (B)(1), once a certificate of appropriateness has been approved, the action permitted under the certificate shall be commenced within three years. However, if a project under consideration for a certificate of appropriateness is submitted in phases and may be commenced accordingly, each phase shall be good for successive period of three years (i.e. three years for the first phase, three years for the second phase, etc. . . .). The certificate of appropriateness may be renewed prior to expiration of the terms set forth herein by application to the Commission for renewal. Said renewals shall be granted unless there are significant changes in the district that would be adverse to the granting of the renewal. Notwithstanding any other provision under this Code Section, all actions permitted shall be governed by the applicable construction codes and ancillary ordinances governing construction as of the date of the issuance of permit.
- F. Variances. Where, by reason of unusual circumstances, the strict application of any provision of this article would result in practical difficulty or undue hardship upon any owner of any specific property, the Commission, in passing upon applications, shall have the power to vary or modify strict adherence to the provisions or to interpret the meeting of the provision so as to relieve such difficulty or hardship; provided however, that such variance, modification, or interpretation shall remain in harmony with the general purpose and intent of the provisions so that the architectural or historic integrity or character of the property shall be conserved and substantial justice done. In granting variations, the Commission may impose such reasonable and additional stipulations and conditions as will, in its judgment, best fulfill the purpose of this article. Variances for undue hardship shall only be granted where the undue hardship arises from circumstances not caused, controlled, or contributed to by the owner or occupant. Variances may also be issued for projects deemed to have “special merit” as described in section 7-8-9-50A.
- G. Appeals. Any person adversely affected by any determination made by the Commission relative to the issuance or denial of a certificate of appropriateness has 30 days to appeal such determination to the City Council. The Council or other governing body may approve, modify and approve, or reject the determination made by the Commission if the Council or other governing body found that the Commission abused its discretion in reaching its decision. Further appeal may be taken in the manner provided by Georgia law.
- H. Enforcement and Penalty for Violation.
 - 1. Once a certificate of appropriateness has been issued, the work must conform to the certificate as issued. Failure to comply shall be grounds for the building inspector or the Commission to issue a cease and desist order.
 - 2. The City Council, Commission, or building inspector shall be authorized to institute any appropriate action or proceeding in a court of competent jurisdiction to prevent any material change in the appearance of a designated historic property or district, except those changes made in compliance with the provisions of an ordinance adopted in conformity with this article, or to prevent any illegal act or conduct with respect to such historic property or historic district. Violations of any ordinance adopted in conformity

with this article shall be punished in the same manner as provided by charter or local law for the punishment of violations under Zoning Ordinance Section 718.08.

- I. Effect on Building and Demolition Permits. Any activity that does not require a building permit will not be required to obtain a certificate of appropriateness. Also, notwithstanding anything to the contrary contained herein, in cases where the application covers a material change in the appearance of a structure which would require the issuance of a building permit or demolition permit, the rejection of an application for a certificate of appropriateness by the Commission shall be binding upon the building inspector or other administrative officials charged with issuing such permits; and, in such case, no permit shall be issued.

7-8-9-060 Commission actions on applications.

- A. Public Comment. The Commission shall hold a hearing at which each proposed certificate of appropriateness is discussed. The city shall mail written notice of the hearing to all owners of the subject property and adjacent properties. The Commission shall give the property owner and/or applicant an opportunity to be heard at the certificate of appropriateness hearing.
- B. Approval of Applications and Issuance of Certificates. Except for a final certificate of appropriateness issued pursuant to Section 7-8-9-050 (B)(1), the Commission shall approve the application and issue a certificate of appropriateness, or recommend approval pursuant to Section 7-8-9-050 (B)(1), if it finds that the proposed material change in appearance would have a substantial adverse effect on the aesthetic, historical, architectural or cultural significance and value of the historic property or the historic district. In making this determination, the Commission shall consider, in addition to any pertinent factors, the historical and architectural value and significance; architectural style; general design; arrangement, texture, and material of the architectural features involved; and the relationship thereof to the exterior architectural style and pertinent features of other structures in the immediate neighborhood.
 1. Guidelines.
 - a. Where the definitions provided herein are not sufficient to make a determination on any application, the Commission shall follow the approved design/preservation guidelines established.
 - b. The Commission may also seek expert or technical advice but shall not bind itself or the city or the Council for payment without prior approval from the Council.
 - c. Subject to 7-8-9.050(B)(2), nothing contained herein shall be construed as to prevent a new building being constructed in any historic district. The Commission shall not arbitrarily or unreasonably prevent a new building being constructed in any historic district.
 2. Prohibited Actions. The Commission shall not consider interior arrangement or uses having no effect on exterior architectural features in its review of applications nor is the interior of a building subject to this chapter. The Commission has no authority to review such interior arrangements in its review of applications for certificate of appropriateness.
 3. Exempt Material Changes. Nothing in this article shall require a certificate of appropriateness or be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in or on a historic property, which maintenance or repair does not involve a material change in design, material, or outer appearance thereof, nor to prevent any property owner or occupant from making any use of his property not prohibited by other laws, ordinances, or regulations. Refer to Subsection 7-8-9-050 D. for a listing of specific exemptions.

- C. Rejection of Applications. Except for the final certificate of appropriateness issued pursuant to Section 7-8-9-050 (B)(1), in the event the Commission denies an application, or recommends denial pursuant to Section 7-8-9-050 (B)(1), it shall state its reasons for doing so at the meeting and shall transmit a record of such action and the reasons therefore, in writing, to the applicant within seven days of the meeting. The Commission may suggest alternative courses of action it thinks proper if it disapproves of the application submitted. The applicant, if so desired, may make modifications to the plan and may resubmit the application at any time after doing so.
- D. Time for Consideration. Except for the final certificate of appropriateness issued pursuant to Section 7-8-9-050 (B)(1), the Commission shall approve or reject, or recommend approval or rejection pursuant to Section 7-8-9-050 (B)(1), an application for a certificate of appropriateness within 45 days after the filing thereof by the owner or occupant of a historic property or of a structure, site, or work of art located in a historic district. Following the review period, the Commission shall present its recommendation at the next regularly scheduled meeting of the City Council, pursuant to Section 7-8-9-050 (B)(1), evidence of approval shall be by recommendation of a certificate of appropriateness by the Commission. Failure of the Commission to act within the 45-day period shall constitute approval, and no other evidence of approval shall be needed. The city shall provide confirmation of automatic approval to the applicant except for the Certificate of Appropriateness for Demolitions as herein provided in 7-8-9-050 (B)(1).

7-8-9-070 Continuances of application(s) or certificate(s) of appropriateness

Notwithstanding anything contained herein, any application for any certificate of appropriateness previously granted in accordance with the Code of the City of Marietta prior to the effective date of this chapter (or issued after the effective date of this chapter but for which an application as filed and pending prior to the effective date hereof) shall remain valid as set forth in the ordinance as of the date the application was filed and shall not be subject to this chapter. Any certificate of appropriateness granted or any application for a certificate of appropriateness filed to or by the Historic Preservation Commission prior to its cessation and while the prior Historic Preservation Commission is in existence shall remain valid pursuant to this section and shall not be subject to this chapter.

7-8-9-080 Severability.

In the event that any portion of this chapter be declared or adjudged invalid, unenforceable, or unconstitutional, such adjudication shall be applicable only to the affected language and all other provisions shall remain in full force and effect.