

The Historical Preservation Ordinance

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The preservation movement has one great curiosity. There is never retrospective controversy or regret. Preservationists are the only people in the world who are invariably confirmed in their wisdom after the fact.

John Kenneth Galbraith

The rational and emotional sides of Houston's collective nature have become badly mixed up and defining architecture preserved are being duped.

Acting on Mayor Bob Lanier's administrative initiative, city council voted in December 1993 to have a preservation ordinance drafted. The first version appeared in March. After undergoing review, public comment, and evisceration at the hands of the developer-friendly Planning and Zoning Commission, the draft ordinance appeared on city council's agenda on 28 September 1994. There it currently languishes, along with several amendments proposed by council member Lloyd Kelley to mitigate the damage inflicted by the Planning and Zoning Commission.

City administration officials have asked preservationists and property-rights advocates to meet with Marvin Katz, chairman of the Planning and Zoning Commission, to work toward a compromise on several contested provisions of the ordinance. Meanwhile, Houston's "rugged individualists," public- and private-sector proponents of the status quo, are busy promulgating their usual specious arguments against establishing a public policy that could make a difference to local preservation efforts. For example, advocates for a proposed tree preservation ordinance can expect to see arguments like this one, recently printed in the *Houston Chronicle's* Viewpoint column:

It is incredible that he would even consider taking private property [in the name of historical preservation] without paying for it, much less advocate it. How in the world can City Council try to fight crime when one of its own members is advocating "stealing" property? Not only is it immoral, it is an unconstitutional taking of private property, prohibited by both the state and U.S. Constitutions.

Two themes underlie most of the antipreservation sentiment. One is that the city should not be able to designate properties as historic without the consent of the owners. The second is that historic

designation would harm property values and place stringent limits on maintenance and future alterations to the property. These themes are reflected in allegations, jeremiads, and time-tested propagandist statements intended to erode public support for an enforceable, effective preservation ordinance, and thereby to sway the eventual council vote.

Neither of these assertions is true, although, to the unwary, the argument that designation should be voluntary rather than mandatory may seem valid. If the ordinance were to allow only voluntary designation, it would presumably be acceptable to owners, perhaps even to self-styled libertarians. Such an ordinance, however, would be inherently flawed. A single property owner who decides not to comply with voluntary controls can destroy their effectiveness. Those who destroy historic landmarks often reduce the value of properties in the surrounding area. In Houston, where preservation has always been voluntary, the principle speaks for itself: approximately 250 buildings located in National Register of Historic Places districts or listed individually on the Register have been demolished since they were originally listed. In the Market Square Historic District, absence of an enforceable public policy to provide predictability and stability is obstructing revitalization efforts. Fearing loss of their investment, many businesses are reluctant to open offices or new commercial enterprises in a historic district the city refuses to protect.

Historical preservation is a valid public purpose and should not require owner consent. The U.S. Supreme Court has long recognized that designation of a property as historic is not an unconstitutional "taking" that requires compensation, any more than government enforcement of building codes, parking ordinances, or property taxes. Property owners have a right to a reasonable return on or use of their land, but the Constitution does not guarantee them the most profitable use and does not require compensation for a loss of speculative profits resulting from the government's doing its job to protect the public welfare.

Some opponents of an ordinance without owner consent and owner "opt out" provisions argue that the city should use carrots instead of sticks, a program of incentives rather than restrictions to



Edward J. Duhamel, architect, Burns Building, 421 Main Street, 1883, demolished 1993.



C. D. Hill, architect, South Texas National Bank Building, 213 Main Street, 1910, with wings added by William Ward Watkin, 1922, demolished 1986.

encourage preservation. Preservationists agree that incentives are valuable and that the city could use them to encourage preservation activity. However, Houston's record clearly demonstrates that incentives alone do not stimulate a significant level of preservation activity. Federal rehabilitation tax credits for historic buildings and a property tax abatement approved in 1981 have been available for more than a decade for local preservation projects, but without the critical framework of a protective ordinance they have done little to stimulate restoration and rehabilitation projects.

While the ordinance has been under consideration, city council has voted several times to extend the 1991 moratorium against demolishing historic buildings. Owners of protected properties have protested every extension. Ironically, demolition of these buildings could be accomplished more easily under the much-debated ordinance, even as it was originally drafted, than under the moratorium, which was originally intended as a stopgap. As the *Houston Business*

Journal observed recently, "this never-ending moratorium is far more burdensome to property owners than a strong, reasonable historic preservation ordinance would be."

While preservation in Houston has sometimes been disparaged as the trivial pursuit of dilettantes, the social and economic benefits of local preservation programs elsewhere have been confirmed by numerous studies, including a 1987 National League of Cities survey that identified preservation as one of the tools most often used for economic development. Far from being a "frill," preservation in towns and cities throughout the United States has made good economic sense. The fundamental building block of all these preservation programs is a strong local ordinance, and every major American city other than Houston has adopted such an ordinance as a matter of public policy. ■

