

ORDINANCE NO. 22 - _____

AN ORDINANCE AMENDING CHAPTER 11 (HISTORIC PRESERVATION) OF TITLE 6 (ZONING REGULATIONS) OF THE NAPERVILLE MUNICIPAL CODE

RECITALS

1. **WHEREAS**, the City of Naperville is a home rule unit of local government under the laws and Constitution of the State of Illinois.
2. **WHEREAS**, under the Constitution of the State of Illinois, home rule units of government have broad authority to pass ordinances and promulgate rules and regulations that protect the public health, safety, and welfare of their residents.
3. **WHEREAS**, the City has a compelling interest relative to preservation of certain improvements within the City which may be sought to be designated as Landmark structures while balancing those interests against the rights and interests of owners of private property.
4. **WHEREAS**, in an effort to protect the public health, safety, and welfare, the City of Naperville has a clear and compelling interest in exercising its home rule authority as set forth herein.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NAPERVILLE, DUPAGE AND WILL COUNTIES, ILLINOIS, in exercise of its home rule authority that:

SECTION 1: Recitals incorporated. The foregoing Recitals are hereby incorporated in this Section 1 as though fully set forth herein.

SECTION 2: Amendment to Title 6, Chapter 11 of the Naperville Municipal Code. Title 6 (Zoning Regulations), Chapter 11 (Historic Preservation) of the Naperville Municipal Code is hereby amended by adding the underlined language and deleting the stricken language as follows:

TITLE 6 – ZONING REGULATIONS

CHAPTER 11 HISTORIC PRESERVATION

SECTION:

6-11-1: PURPOSE - *

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6-11-2: DEFINITIONS:

The following definitions of word use shall apply:

ALTERATION: - INTERIOR:	* * *
LANDMARK:	Any improvement which has been designated as a "landmark" by ordinance of the City Council pursuant to the provisions of this Chapter.
<u>LANDMARK APPLICATION:</u>	<u>A bona fide application to Landmark an improvement as set forth in Section 6-11-3 hereof. Bona fide as used herein means an application that is made in good faith and not to manipulate or conflict with the spirit of preservation, which is the intent of this Chapter, by disingenuously blocking legitimate, good faith applications. An application which is submitted with the express or implicit purpose of being denied so as to block future legitimate applications from being made for the designated three-year period shall not be deemed a bona fide application.</u>
<u>NOTICE OF INTENT TO SUBMIT A LANDMARK APPLICATION (NOTICE OF INTENT):</u>	<u>A Notice of Intent to Submit a Landmark Application has the meaning set forth in Section 6-11-3:2 hereof.</u>
ORIGINAL MATERIAL:	* * *
OWNER, PROPERTY OWNER OR OWNER OF REAL PROPERTY:	Any person(s) or entity holding legal or equitable title to real property located within the City, as shown on the record of the applicable Township Assessor's Office.
<u>OWNER CONSENT:</u>	<u>The written consent of the Owner to designation of an improvement as a Landmark as described in Section 6-11-3.</u>
REVEAL:	* * *
<u>REQUEST TO SUBMIT A LANDMARK APPLICATION WITHOUT OWNER CONSENT (OR REQUEST):</u>	<u>A Request to Submit a Landmark Application without Owner Consent, or Request, has the meaning set forth in Section 6-11-3 hereof.</u>

TAX PARCEL:	*	*	*
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6-11-3: DESIGNATION OF LANDMARKS:

1. PurposeEffect of Landmarking: Upon an improvement being Landmarked under the provisions of this Chapter, only that portion of the exterior of the improvement that is visible from the right-of-way shall be subject to compliance with Section 6-11-6 (Certificate of Appropriateness). Therefore, a Certificate of Appropriateness will be required prior to any alteration, construction, demolition, or material change of the exterior of the Landmarked improvement which is visible from the right-of-way. All other exterior components and the interior of a Landmarked structure are not subject to compliance with Section 6-11-6.

2. Notice of Intent to Submit a Landmark Application: Any person or entity, including the property Owner of Record and the Historic Preservation Commission, but not including members of the City Council, may Notice of Intent to Submit a Landmark Application (Notice of Intent) to the Owner of record of an improvement located within the corporate limits of the City of Naperville.

The Notice of Intent shall confirm that the improvement in question is at least fifty (50) years old, include a brief description of the improvement requested to be Landmarked, and identify which of the Criteria for Designation of Landmarks set forth in Section 6-11-3:5 hereof form the basis for the desire to Landmark the improvement.

Said Notice of Intent, along with a copy of Section 6-11-3 (Designation of Landmarks) of the Naperville Municipal Code then in effect, shall be delivered to the Owner by the applicant by: (i) personal delivery; (ii) certified mail/receipt requested; and/or (iii) by overnight mail by a nationally recognized delivery service.

2.1. Within fourteen (14) calendar days of receipt of a Notice of Intent to Landmark, the Owner of the property on which the improvement sought to be Landmarked is located shall provide a written response to the applicant indicating either a consent to the request to Landmark (Owner Consent) or a refusal of the request to Landmark (denial of Owner Consent). If the Owner fails to respond to the Notice of Intent to Designate a Landmark within said timeframe, it shall be presumed that the Owner Consent has been denied.

2.2. If Owner Consent to the request to designate an improvement as a Landmark is given, then the procedures set forth in Section 6-11-3:4 hereof shall be followed.

3. Request to Submit a Landmark Application without Owner Consent: Owner Consent to Landmark an improvement shall be required unless the City Council approves a Request to Submit a Landmark Application without Owner Consent in accordance with the following provisions:

3.1. If Owner Consent to a Notice of Intent to Designate a Landmark has been denied, the applicant may send a Request to Submit a Landmark Application without Owner Consent to the individual members of the City Council, to the City

Zoning Administrator, and to the Owner of the improvement in question, seeking approval of said Request. Notice of the Request shall be sent by email to each member of the City Council and to the City Zoning Administrator at their City email addresses, and by personal delivery or overnight mail by a nationally recognized delivery service to the Owner of the improvement.

The Request to Submit a Landmark Application without Owner Consent shall include the Notice of Intent and must be submitted within fourteen (14) calendar days of the Owner's denial of the Request (either by Owner's affirmative written denial or by a default denial due to Owner's failure to respond).

3.2 Under New Business at either the first or second regular City Council meeting which is held following receipt of a Request to a Submit Landmark Application without Owner Consent, one or more City Council members may request that a motion to consider said Request be added as an agenda item at a future City Council meeting. If this Request is supported by at least three (3) City Council members, the matter shall be included as an agenda item at a future City Council meeting subject to compliance with the notice provisions provided in Section 6-11-3:3.2.1 herein. If the Request is not raised by one or more City Council members under New Business at either the first or second regular City Council meeting that is held following receipt of the Request by the Zoning Administrator, or if the Request is timely raised but fails to receive the support of at least three (3) City Council members under New Business, the Request shall be considered denied.

3.2.1 At least fifteen (15) days prior to the City Council meeting at which the Request to Submit a Landmark Application without Owner Consent will be on the City Council agenda, City staff shall send notice by certified mail/receipt requested, or by overnight mail by a nationally recognized delivery service, to the applicant and the Owner of the improvement sought to be Landmarked. Said notice shall include the Request and the date of the City Council meeting at which the matter will be scheduled.

At the City Council meeting at which the Request is scheduled, or any continuance thereof, the City Council will consider any information provided in the Request and any response, comments, or materials provided by the Owner of the improvement, the applicant, and members of the public for the limited purpose of determining whether a hearing on a Landmark Application is warranted without Owner Consent given the totality of the circumstances.

3.2.2 The positive vote of at least five (5) City Council members shall be required to approve applicant's Request to Submit a Landmark Application without Owner Consent. A positive vote shall allow for submission of a full Landmark Application under the provisions set forth in Section 6-11-3:4 of this Chapter. Such positive vote shall not be considered a finding that Landmarking is warranted for the improvement in question.

3.2.2.1 City Council approval of a Request to Submit a Landmark Application without Owner Consent shall be valid for forty-five (45) calendar days after such approval is granted.

3.3 A denial of a Request to Submit a Landmark Application without Owner Consent shall be deemed final if: (i) a Request is not brought up under New Business at either the first or second City Council meeting following receipt of the Request or if the Request is timely raised but fails to receive the support of at least three (3) City Council members under New Business as set forth in Section 6-11-3:3.2 above; (ii) if five (5) members of the City Council do not vote in favor of the Request as set forth in Section 6-11-3:3.2.2 above; or (iii) if the Landmark Application is not submitted to the City within forty-five (45) days of City Council approval of the Request as set forth in Section 6-11-3:3.2.2 above.

3.4 No alteration or demolition of the improvement for which a Request to Submit a Landmark Application without Owner Consent has been received by the City shall occur until a denial of the Request is final.

3.5 No additional Requests to Submit a Landmark Application without Owner Consent shall be made as to the same improvement within a three (3) year period from the date of a final denial as set forth in Section 6-11-3:3.3.

3.6 An applicant may, at any time, submit a written withdrawal of its Request to Submit a Landmark Application without Owner Consent. Notice of withdrawal of the Request shall be given individually to the Owner in the same manner as described in Section 6-11-3:3.1 above, to each City Council member, and to the City Zoning Administrator. Upon receipt of such withdrawal by the Zoning Administrator, the matter shall be deemed closed and no further action shall be required on the part of the applicant, the City, or the Owner.

4 Landmark Application Procedures: A Landmark Application shall be filed with the Zoning Administrator, who shall promptly review the application to determine whether it is complete. A Landmark Application shall be in writing and shall include the following:

~~1.2. An application seeking a landmark designation for a certain improvement shall be in writing and shall include the following:~~

4.2 If the applicant is not the Owner, either: (i) a copy of the Owner Consent; or (ii) a copy of the minutes of the City Council meeting at which the City Council approved a Request to Submit a Landmark Application without Owner Consent which must reflect that the Application is being filed within forty five (45) days of the date of that meeting.

~~4.3~~ 1.2.1 Contact information of the persons or entities seeking the landmark designation (applicant) including their names, addresses, telephone numbers, email addresses and designation designating of one-(1) person to serve as the primary point of contact.

4.41.2.2. The legal description and common address of the improvement in question.

4.51.2.3. The name and address of the current owner of the improvement in question.

~~1.2.4. An affidavit signed by the applicant certifying that notice of the application for landmark designation of the improvement in question has been sent to the current owner of the improvement by first class U.S. Postal mail, if the applicant is not the owner.~~

~~1.2.5. Written documentation signed by the owner of the improvement in question indicating whether the owner consents to the application for designation, or an affidavit by the applicant specifying why such documentation is unavailable, if the applicant is not the owner.~~

4.51.2.4. A written report containing: a) a description of the real property on which the improvement south to be Landmarked is located; b) an analysis of the historic, architectural and aesthetic value of the proposed Landmark in relation to the criteria set forth in Section 6-11-3:25 under standards for designation of Landmark; c) a list of significant exterior architectural features of the property; and d) other reasons and data in support of the proposed designation.

4.61.2.5. A plat of survey of the property if available and dated photographs of the improvement in question.

4.71.2.6. Any other information that the applicant deems relevant.

4.81.2.7. Such other information as the Historic Preservation Commission may request or prescribe from time to time.

~~1.3. An application for landmark designation shall be filed with the Zoning Administrator, who shall promptly review the application to determine whether it is complete.~~

4.91.4. Non-owner applicant: If the Owner has not consented to the Landmark Application but the City Council has determined that the Landmark Application should be forwarded to the Historic Preservation Commission for consideration without Owner Consent applicant seeking to designate an improvement as a landmark is not the owner of the improvement, the Zoning Administrator shall transmit a copy of the completed Landmark Application to the property owner by first class U.S. Postal mail, certified mail/receipt requested, or by overnight mail by a nationally recognized delivery service.

Within sixty (60) calendar days thereafter, the Owner of the improvement to which the Landmark Application applies may submit a written response to any analysis or evidence presented in the Landmark Application to the Zoning Administrator. The Zoning Administrator shall forward a copy of the Owner's response to the applicant, and may also provide evidence in support of or in opposition to the proposed landmark designation. Such evidence may consist of, but is not limited to, reports prepared by experts or specialists in one or

more areas of expertise, inspection reports, photographs, and bids for repair or restoration.

~~1.4.1. If the owner is opposed to the designation due to the physical condition of the improvement, the owner may submit evidence to show that the improvement has deteriorated and/or is subject to one or more adverse conditions such that the cost to restore or repair the improvement to a condition that complies with the standards for issuance of an occupancy permit under the provision of Title 5 would meet or exceed the assessed valuation of the improvement as shown on the most recent tax bill multiplied by one hundred fifty percent (150%). In the event that the property has been exempt from taxation, such that the foregoing calculation cannot be applied, the owner may submit evidence to demonstrate that the cost to restore or repair the improvement to a condition that complies with the standards for issuance of an occupancy permit under the provision of Title 5 would meet or exceed fifty percent (50%) of the replacement cost of such building or structure.~~

Upon written request of the owner, the Zoning Administrator may grant an extension of the sixty (60) day time limit to submit a written response for up to an additional thirty (30) days.

~~4.10 1.5. Upon receipt of the owner's response or at the conclusion of the sixty (60) day time limit or the extended time limit per Section 6-11-3:1.4 if no response is received, the Zoning Administrator shall transmit copies of the completed Landmark Application and allany documentation pertaining to the Landmark Application, including the Owner's response if the Owner is not the applicant, to the Historic Preservation Commission.~~

Except as provided herein, an application for Landmark designation shall be valid for a period of one hundred fifty (150) calendar days from the date on which the completed application is transmitted by the Zoning Administrator to the Commission. Any application for Landmark designation which is not granted or denied under the provisions of this Section within said one hundred fifty (150) calendar day period shall automatically lapse and become null and void without further action by the City, except that the application may be extended for a period up to sixty (60) calendar days upon the written request of the applicant or owner prior to the expiration date. If the applicant is not the property owner, a request for an extension of time shall require written documentation signed by the owner indicating consent to such extension.

~~1.6. Upon receipt of the completed application for landmark designation and any documentation included by the applicant and/or owner if the owner is not the applicant, the Commission may request additional information as necessary to form findings and recommendations to the City Council. Such information shall be promptly provided.~~

4.11 ~~4.7.~~ Within thirty (30) days after the completed application for landmark designation Landmark Application has been transmitted to the Commission, the Commission shall commence a meeting to consider ~~public hearing on the Landmark Application~~.

4.12 Required Notices for a Landmark Application Proceeding with Owner Consent: A voluntary Landmark Application which has Owner Consent shall not require a public hearing before the Historic Preservation Commission. Said application shall be reviewed by the Historic Preservation Commission through a regular business meeting. The following notice requirements shall be provided for such application:

4.12.1 Sign: The applicant shall post notice of the public meeting on a sign on the property being considered for designation as a landmark or at an alternate location approved by the Zoning Administrator, for a continuous period of not more than thirty (30) calendar days and not less than fifteen (15) calendar days in advance of the Historic Preservation meeting. Such sign shall:

4.12.1.1 Be a minimum size of three feet by four feet (3' x 4').

4.12.1.2 Include a title (i.e., "Notice of Public Meeting"); the case number assigned to the application; the place, the purpose, and the date and time of the public meeting; and the address and phone number of the City department where additional information may be obtained.

4.12.1.3 Include red lettering a minimum of four inches (4") high in the title, and black lettering a minimum of two inches (2") high for all other text on a white background.

4.12.1.4 The applicant shall remove the sign upon which the notice is posted within seven (7) days following the conclusion of the public meeting before the Historic Preservation Commission. Failure to remove the sign within said timeframe as provided herein may result in the imposition of a fine not to exceed fifty dollars (\$50.00) per day.

4.13 4.8-Required Notices for a Landmark Application Proceeding Without Owner Consent: A Landmark Application for which the City Council has approved a motion to allow the Landmark Application to proceed without Owner Consent shall require a public hearing before the Historic Preservation Commission. The following notices shall be provided for such application:

4.13.1 ~~4.8.1.~~ Written Notice To The Property Owner(s): ~~If the applicant is not the owner(s) of the improvement nominated for landmark designation, t~~The applicant shall give written notice of the public hearing to the Owner(s) of record of the property to which the Landmark Application applies~~improvement proposed to be designated as a landmark~~ as shown on the record of the applicable township assessor's office. The written notice shall be delivered by first class U.S. Postal mail, properly

addressed and with sufficient prepaid postage affixed thereon, not more than thirty (30) calendar days nor less than fifteen (15) calendar days in advance of the public hearing.

4.13.2 ~~4.8.2.~~ Publication: Notice of the public hearing shall be published by the City at least once in a newspaper of general circulation in the City, no more than thirty (30) calendar days nor less than fifteen (15) calendar days in advance of the public hearing. The cost of publication shall be paid for by the applicant.

4.13.3 ~~4.8.3.~~ Sign: The applicant shall post notice of the public hearing on a sign on the property being considered for designation as a landmark or at an alternate location approved by the Zoning Administrator, for a continuous period of not more than thirty (30) days and not less than fifteen (15) calendar days in advance of the public hearing. Such sign shall:

4.13.3.1 ~~4.8.3.1.~~ Be a minimum size of three feet by four feet (3' x 4').

4.13.3.2 ~~4.8.3.2.~~ ~~hg;~~ Include a title (i.e., "Notice of Public Hearing"); the case number assigned to the application; the place, the purpose, and the date and time of the public hearing; and the address and phone number of the City department where additional information may be obtained.

4.13.3.3 ~~4.8.3.3.~~ ~~hg;~~ Include red lettering a minimum of four inches (4") high in the title, and black lettering a minimum of two inches (2") high for all other text on a white background.

The applicant shall remove the sign upon which the notice is posted within seven (7) days following the conclusion of the public hearing before the Historic Preservation Commission. Failure to remove the sign within said timeframe as provided herein may result in the imposition of a fine not to exceed fifty dollars (\$50.00) per day.

4.13.4 ~~4.8.4.~~ Written Notice To Surrounding Property Owners: The applicant shall give written notice of the public hearing to the property owners of record of all tax parcels, whether tax exempt or not, lying within three hundred (300) feet, inclusive of public right-of-way, of the property lines of the property on which the improvement proposed for landmark designation is located as shown on the record of the applicable Township Assessor's Office. Such written notices shall be properly addressed, delivered personally or sent by first class U.S. Postal mail, with sufficient prepaid postage affixed not more than thirty (30) calendar days nor less than fifteen (15) calendar days in advance of the public hearing.

4.13.4.1 ~~4.8.5.~~ All written notices shall contain the following information: the case number assigned to the application, the name and address of the applicant and property owner, the common address or location of the property on which the improvement sought to be designated as a

landmark is located, location, date and time of the public hearing before the Historic Preservation Commission, a description of the nature and purpose of the public hearing, and the office address and telephone number of the City department where information concerning the application may be obtained.

4.13.5 ~~4.8.6.~~ Prior to commencement of the public hearing to consider the application, the applicant shall file a sworn affidavit, including a copy of the notices, with the City Clerk showing the names and addresses to which the written notices were sent or delivered. Said affidavit shall create a presumption that the notices have been properly given.

4.14 ~~4.9.~~ The public meeting or public hearing, as appropriate, shall be conducted by the Historic Preservation Commission and minutes of such proceedings shall be made and maintained by the City of Naperville in accordance with the provisions of the Illinois Open Meetings Act.

4.15 ~~4.10.~~ The Commission shall conclude the public meeting or public hearing, as applicable, on the Landmark Application for landmark designation, and issue findings of fact and a recommendation to grant or deny the application, within sixty (60) calendar days after the completed Landmark Application for landmark designation has been transmitted to the Commission. It shall be within the discretion of the Commission to recommend denial of ~~an application for designation of a~~ Landmark Application even if the criteria set forth in Section 6-11-3:~~52~~ are met. The Commission's findings of fact shall include the following:

4.15.1 ~~4.10.1.~~ Findings of fact related to the criteria set forth in Section 6-11-3:~~25~~;

4.15.2 ~~4.10.2.~~ A statement indicating whether the owner of the proposed landmark has responded to the application and the nature of the response pursuant to ~~Section 6-11-3:3~~;

4.15.3 ~~4.10.3.~~ A description of evidence received by the Commission relative to the proposed landmark designation pursuant to Section 6-11-3:~~4.1 – 4.94:4~~; and

4.15.4 ~~4.10.4.~~ Any other facts that the Commission finds relevant.

4.16 ~~4.11.~~ The Landmark Application for landmark designation, together with the Commission's findings of fact and recommendation, shall be forwarded to the City Council within thirty (30) calendar days following issuance of the findings of facts and recommendation.

4.17 ~~4.12.~~ The City Council shall grant or deny the Landmark Application for landmark designation using the criteria set forth in Section 6-11-3:~~25~~ or on such other bases as it deems appropriate, prior to the expiration date of the Landmark Application as provided in Section 6-11-3:~~4.104.5~~ or within an extended timeframe approved by the City Council for up to an additional thirty (30) calendar days.

If the City Council passes an ordinance approving the Landmark Application for ~~landmark designation~~, a copy of said ordinance shall be sent by the City Clerk to the applicant, the owner of the improvement in question, and the applicable Township Assessor's Office, and shall be recorded with the appropriate County Recorder.

4.18 ~~4.13.~~ From the date that a complete Landmark Application for ~~landmark designation~~ is filed to the date that the Landmark Application is granted, denied or expires, whichever comes first, no exterior architectural feature of the proposed landmark may undergo alteration, construction, or demolition if such alteration, construction, or demolition would be subject to the issuance of a certificate of appropriateness pursuant to the provisions of Section 6-11-6 after designation. Nothing in this paragraph shall prohibit any work that would not be subject to the issuance of a certificate of appropriateness or any work that is necessary to prevent or correct an imminently dangerous or hazardous condition as described in Section 6-11-10:1.

4.19 ~~4.14.~~ Landmarks shall be designated by ordinance.

4.20 ~~4.15.~~ In the event that an Landmark Application for ~~landmark designation~~ is denied by the City Council or does not proceed for any reason, no Landmark Application for ~~landmark designation~~ of the same Improvement shall be made within three (3) years of the date of final action on or expiration of the original Landmark Application, unless the owner consents to such Landmark Application and designation.

5 ~~2.~~—Criteria For Designation Of Landmarks: An application for landmark designation may be granted based on the findings that the improvement proposed to be designated as a landmark meets the following criteria:

~~5.1.2.1.~~ That it is over fifty (50) years old, in whole or in part; and

~~5.2.2.2.~~ That one or more of the following conditions exist:

5.1.1 ~~2.2.1.~~ That it was owned or occupied by a person of historic significance in national, State or local history;

5.1.2 ~~2.2.2.~~ That it has a direct connection to an important event in national, State or local history;

5.1.3 ~~2.2.3.~~ That it embodies the distinguishing characteristics of an architectural period, style, method of construction, or use of indigenous materials;

5.1.4 ~~2.2.4.~~ That it represents the notable work of a builder, designer or architect whose individual work has substantially influenced the development of the community; or

5.1.5 ~~2.2.5.~~ That it is included in the National Register of Historic Places.

3. ~~Owner's Consent: The input, and preferably the consent, of the owner shall be considered by the Commission and the City Council in reaching a determination as to whether an improvement should be designated as a landmark. However, the owner's consent shall not be required as a condition to such designation.~~

6-11-4: DESIGNATION OF HISTORIC DISTRICTS - 6-11-12: FINES AND PENALTIES:

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SECTION 3: Savings clause. If any provisions of this Ordinance or their application to any entity or circumstance are held invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability thereof shall not affect any of the remaining provisions or application of this Ordinance which can be given effect without the invalid or unenforceable provisions or application. To achieve this purpose, the provisions of the Ordinance are declared to be severable.

SECTION 4: Effective date. This Ordinance shall take effect upon passage and approval.

PASSED this _____ day of _____, 2022.

AYES:

NAYS:

ABSENT:

APPROVAL this _____ day of _____, 2022.

Steve Chirico
Mayor

ATTEST:

Pam Gallahue, Ph.D.
City Clerk