

Chapter 5

BUILDINGS AND BUILDING REGULATIONS*

* **Editors Note:** Ord. No. 1512, §§ 1--8, adopted July 23, 2001, amended ch. 5 in its entirety, in effect repealing and reenacting ch. 5 to read as herein set out. Formerly, ch. 5 pertained to similar subject matter and derived from Ord. No. 848, § 1, adopted December 16, 1974; Ord. No. 973, §§ 1, 2, adopted March 17, 1980; Ord. No. 1049, § 1, adopted July 25, 1983; Ord. No. 1131, § 1, adopted July 27, 1987; Ord. No. 1164, § 1, adopted October 17, 1988; Ord. No. 1243, § 1, adopted July 13, 1992; Ord. No. 1250, § 1, adopted October 12, 1992; Ord. No. 1261, §§ 1, 2, adopted April 26, 1993; Ord. No. 1263, §§ 1, 2, adopted April 26, 1993; Ord. No. 1327, § 1, adopted October 30, 1995; Ord. No. 1336, § 1, adopted January 22, 1996; Ord. No. 1457, § 1, adopted July 26, 1999.

Charter References: Abatement of dilapidated, dangerous buildings, § 14.2.

Cross References: Housing commission, § 2-146 et seq.; zoning board of appeals, § 2-130 et seq.; fire prevention and protection, Ch. 8; housing code, Ch. 12; chief building official to enforce housing code, § 12-18; minimum space and location requirements for housing, § 12-81 et seq.; minimum standards for safe and sanitary maintenance for housing, § 12-99 et seq.; public improvements, Ch. 20; rates and charges, Ch. 21; permit fee for moving buildings, § 21-31; streets and sidewalks, Ch. 22; subdivisions, Ch. 23; water and sewer and sewerage disposal, Ch. 28; stormwater runoff and control, Ch. 29; downtown development authority, Ch. 30.

Art. I. Construction Board of Appeals, §§ 5-1--5-4

Art. II. Michigan Building Code, §§ 5-5, 5-6

Art. III. Michigan Mechanical Code, §§ 5-7, 5-8

Art. IV. Michigan Electrical Code, § 5-9

Art. V. Soil Erosion and Sedimentation Control, §§ 5-10--5-16

Art. VI. Michigan Plumbing Code, § 5-17

Art. VII. West Main Street Historic District, §§ 5-18--5-31

Art. VIII. Fees, § 5-32

Art. IX. Floodplain Management

ARTICLE I.

CONSTRUCTION BOARD OF APPEALS

Sec. 5-1. Construction board of appeals.

In compliance with the provisions of the Michigan Construction Code Act, PA 230 of 1972, as amended, a construction board of appeals shall be created. The construction board of appeals shall exercise those powers granted by state law.

(Ord. No. 1512, § 1, 7-23-01)

Sec. 5-2. Membership.

The construction board of appeals shall consist of seven (7) members. Members shall be appointed for two-year terms by the city manager. Members shall be qualified by experience or training to perform the duties of members of the board of appeals. To the extent possible, each construction discipline as well as at-large members shall represent the board as follows:

One (1) licensed residential contractor, or general contractor

One (1) licensed registered professional engineer, architect, or registered building inspector

One (1) licensed master electrician, or registered electrical inspector

One (1) licensed master plumber, or registered plumbing inspector

One (1) licensed mechanical contractor, or registered mechanical inspector

Two (2) citizens at-large

All members must have background in construction and a working knowledge of the codes being enforced.

(Ord. No. 1512, § 1, 7-23-01)

Sec. 5-3. Appeals.

If the enforcing agency refuses to grant an application for permit, or if the enforcing agency makes any other decision related to enforcement of the housing code or construction codes, an interested person, or the person's agent, may appeal in writing to the construction board of appeals.

The board of appeals shall hear the appeal and render and file its decision with a statement of reasons for the decision with the enforcing agency not more than thirty (30) days after submission of the appeal. Failure by the board to hear an appeal and file a decision within the time limit is a denial of the appeal for the purposes of authorizing the institution of an appeal to the Michigan Construction Code Commission. A copy of the decision and statement of the reasons for the decision shall be delivered or mailed, before filing, to the party making the appeal.

(Ord. No. 1512, § 1, 7-23-01)

Sec. 5-4. Procedures.

The construction board of appeals shall establish procedures for processing appeals and requests for variances. Applicants for permits should be made aware of their recourse and the steps to be taken to have their appeals or requests for variances heard.

(Ord. No. 1512, § 1, 7-23-01)

ARTICLE II.

MICHIGAN BUILDING CODE

Sec. 5-5. Adoption of Michigan Building Code by reference.

The Michigan Building Code, including appendices and references, promulgated under Public Act 230 of 1972, as amended, a complete copy of which is made available to the public at the office of the city clerk, is hereby adopted as the City Building Code by reference and made part of this chapter as if fully set out herein. (Ord. No. 1512, § 2, 7-23-01)

Sec. 5-6. Prosecution previous to effective date.

Any prosecution arising from a violation of any ordinance or section of an ordinance repealed or amended in this article, which prosecution may be pending on July 31, 2001, or any prosecution which may be started within one year after July 31, 2001, in consequence of any violation of any ordinance or section of an ordinance repealed or amended in this chapter which violation was committed previous to July 31, 2001, shall be tried and determined exactly as if such ordinance or section of an ordinance had not been repealed or amended. (Ord. No. 1512, § 2, 7-23-01)

ARTICLE III.

MICHIGAN MECHANICAL CODE

Sec. 5-7. Adoption of Michigan Mechanical Code by reference.

The Michigan Mechanical Code, including appendices and references, promulgated under Public Act 230 of 1972, as amended, a complete copy of which is made available to the public at the office of the city clerk, is hereby adopted as the City Mechanical Code by reference and made part of this chapter as if fully set out herein. (Ord. No. 1512, § 3, 7-23-01)

Sec. 5-8. Prosecution previous to effective date.

Any prosecution arising from a violation of any ordinance or section of an ordinance repealed or amended in this article, which prosecution may be pending on July 31, 2001, or any prosecution which may be started within one year after July 31, 2001, in consequence of any violation of any ordinance or section of an ordinance repealed or amended in this chapter which violation was committed previous to July 31, 2001, shall be tried and determined exactly as if such ordinance or section of an ordinance had not been repealed or amended. (Ord. No. 1512, § 3, 7-23-01)

ARTICLE IV.

MICHIGAN ELECTRICAL CODE

Sec. 5-9. Adoption of Michigan Electrical Code by reference.

The Michigan Electrical Code, including appendices and references, promulgated under Public Act 230 of 1972, as amended, a complete copy of which is made available to the public at the office of the city clerk, is hereby adopted as the City Electrical Code by reference and made part of this chapter as if fully set out herein. (Ord. No. 1512, § 4, 7-23-01)

ARTICLE V.

SOIL EROSION AND SEDIMENTATION CONTROL

Sec. 5-10. Municipal enforcing agency.

The Planning & Community Development Department shall be the municipal enforcing agency responsible for the administration and enforcement of Part 91, Soil Erosion and Sedimentation Control (SESC), of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended or as may be amended in the future, (Part 91), within the City of Midland. The Administrative Rules promulgated under the authority of Part 91 are hereby incorporated by reference as well as any future rules as may be amended.

(Ord. No. 1512, § 5, 7-23-01; Ord. No. 1584, §1, 9-13-04)

Sec. 5-11. SESC Permits and submission of plans.

Before undertaking an earth change within the city involving one (1) or more acres of land or within five (500) feet of any lake or stream, a SESC permit shall be obtained. A SESC application and plan containing information specified in Rule 1703 of Part 91 shall be submitted to the city building department prior to receiving a SESC permit.

If a violation of Part 91 is observed in a situation where no SESC permit was required because the earth change was less than one (1) acre or farther than five hundred (500) feet from a stream or lake the SESC administrator has authority to require and issue a SESC permit.

(Ord. No. 1512, § 5, 7-23-01; Ord. No. 1584, §1, 9-13-04)

Sec. 5-12. Submission of plans.

The submitted plans along with the prescribed permit application shall be reviewed for conformance to Part 91 and the rules promulgated under Part 91. If the application and the plans are in conformance with Part 91 and the rules, a permit shall be issued upon payment of fees as detailed by Section 21-50 of this code. If an earth change activity covered under Part 91 and this ordinance is commenced without proper permit the fees shall be doubled.

(Ord. No. 1512, § 5, 7-23-01; Ord. No. 1584, §1, 9-13-04)

Sec. 5-13. Site Inspection.

The SESC Administrator designated by the Chief Inspector, shall have access at all reasonable times to any site upon which an “earth change” is in progress for purposes of determining whether the conditions called for in the permit are being complied with.

(Ord. No. 1512, § 5, 7-23-01; Ord. No. 1584, §1, 9-13-04)

Sec. 5-14. Enforcement.

Violations of Part 91 or a violation of a permit of an approved soil erosion and sedimentation control plan, the SESC administrator shall contact the “on site” responsible person, contractor or land owner in person or by telephone and inform them of the violations, and give them one (1) or two (2) days to comply, depending on violation, or SESC Administrator may issue a Civil Infraction, cease and desist, and or/ stop work order using procedure as provided in chapter 34 of this code and Part 91 to the land owner, contractor or on-site responsible person. A cease and desist order is a directive to discontinue or cease doing something that has resulted in a violation such as stopping earth work that resulted in a discharge of sediment or stopping earth work until a permit has been obtained. A stop work order directs all work on the site to be halted until violations are corrected. Once violations are corrected the SESC administrator will lift the cease and desist or stop work order.

The SESC administrator may also seek remedies in the courts pursuant to section 9121 and Part 91 of the Natural Resources and Environmental Protection Act. (Act 451 of 1994 as may be amended. (Ord. No. 1512, § 5, 7-23-01; Ord. No. 1584, §1, 9-13-04)

Sec. 5-15. Appeal.

The procedure as provided in Section 5-27 Sec 204 of this Code shall be applicable to this article to consider appeals arising from any determination of the SESC administrator. (Ord. No. 1512, § 5, 7-23-01; Ord. No. 1584, §1, 9-13-04)

ARTICLE VI.

MICHIGAN PLUMBING CODE

Sec. 5-17. Adoption of Michigan Plumbing Code by reference.

The Michigan Plumbing Code, including appendices and references, promulgated under Public Act 230 of 1972, as amended, a complete copy of which is made available to the public at the office of the city clerk, is hereby adopted as the City Plumbing Code by reference and made part of this chapter as if fully set out herein. (Ord. No. 1512, § 6, 7-23-01)

ARTICLE VII.

WEST MAIN STREET HISTORIC DISTRICT

Sec. 5-18. Statement of purpose.

The purpose of this article is to:

- (1) Safeguard the heritage of the city by preserving an area in the city that reflects elements of its history, architecture, archaeology, engineering or culture.

- (2) Stabilize and improve property values in such areas and the surrounding areas.
- (3) Foster civic beauty.
- (4) Strengthen the local economy.
- (5) Promote the use of historic districts for the education, pleasure, and welfare of the citizens of the city.

(Ord. No. 1512, § 7, 7-23-01)

Sec. 5-19. Definitions.

For the purposes of this article, the following terms, phrases and words shall have the meanings given in this section.

Alteration means work that changes the detail of a resource but does not change its basic size or shape.

Applicant means a person who owns property in the West Main Street Historic District.

Bureau means the Bureau of History of the Michigan Department of State.

Certificate of appropriateness means the written approval of a permit application for work that is appropriate and that does not adversely affect a resource.

Commission means a historic commission created pursuant to section 5-22.

Demolition means the razing or destruction, whether entirely or in part, of a resource and includes, but is not limited to, demolition by neglect.

Demolition by neglect means neglect in maintaining, repairing, or securing a resource that results in deterioration of an exterior feature of the resource or the loss of structural integrity of the resource.

Denial means the written rejection of a permit application for work that is inappropriate and that adversely affects a resource.

Exterior features means those features as described in the West Main Street Historic District Guidelines and Standards for Review.

Historic district means the West Main Street Historic District.

Historic district commission (HDC) means the City of Midland West Main Street Historic District Commission.

Historic preservation means the identification, evaluation, establishment, and protection of resources significant in history, architecture, archaeology, engineering, or culture.

Historic resource means a privately owned building, structure, site, object, feature, or open space that is significant in the history, architecture, archaeology, engineering, or culture of the City of Midland, Midland County, State of Michigan or of the United States.

Minor classes of work means that work as described in the West Main Street Historic District Guidelines and Standards for Review.

Notice to proceed means the written permission to issue a permit for work that is inappropriate and that adversely affects a resource, pursuant to a finding under section 5-25.

Open space means undeveloped land, a naturally landscaped area, or a formal or man-made landscaped area that provides a connective link or a buffer between other sources.

Ordinary maintenance means keeping a resource unimpaired and in good condition through ongoing minor intervention, undertaken from time to time, in its exterior condition. Ordinary maintenance does not change the external appearance of the resource except through the elimination of the usual and expected effects of weathering. Ordinary maintenance does not constitute work for purposes of this chapter.

Repair means to restore a decayed or damaged resource to a good or sound condition by any process. A repair that changes the external appearance of a resource constitutes work for purposes of this chapter.

Resource means privately owned historic or nonhistoric buildings, structures, objects, features, or open spaces located within the historic district. Publicly owned buildings, structures, open spaces, sidewalks and rights-of-way are not considered resources for the purposes of this chapter.

Work means construction, addition, alteration, repair, moving, excavation, or demolition.
(Ord. No. 1512, § 7, 7-23-01)

Sec. 5-20. West Main Street Historic District boundaries.

The following described area is hereby established as the West Main Street Historic District:

Lots 3, 4, 5 and 6 of Block 15, all of Block 16, excluding the right-of-way of the Pere Marquette Rail-Trail, all of Block 17, excluding the right-of-way of the Pere Marquette Rail-Trail, and including an area described as: Beginning at a point 57.5 feet southwest of the south corner of Lot 1 of Block 17; thence northeast 57.5 feet; thence northwest 166.58 feet along the southwesterly side of Lots 1, 2 and 3 of Block 17; thence southeasterly to the point of beginning, and all of Blocks 18, 80 and 81, and Lots 1, 2, 7 and 8, and the northeast 70 feet of Lots 3 and 4, Block 82, all a part of the Midland original plat.

After the effective date of this article, the city shall file a copy of this article, including a legal description of the West Main Street Historic District, with the Midland County Register of Deeds Office and shall cause each property located in the district to have recorded on its title a statement that the property is part of the West Main Street Historic District and is subject to rules and regulations adopted by the City of Midland.
(Ord. No. 1512, § 7, 7-23-01)

Sec. 5-21. Regulation of resources.

There shall be no construction, addition, alteration, repair, moving, excavation, or demolition of a resource within the West Main Street Historic District unless such action complies with the requirements set forth in this article.

The regulatory authority of the West Main Street Historic Commission (HDC) as created in section 5-22, extends only to the exterior features of a structure and does not apply to interior alterations so long as such alterations do not affect the exterior.

Nothing in this article shall be construed to prevent ordinary maintenance or repair of a resource within the West Main Street Historic District, or to prevent work on any resource under a permit issued by the chief building inspector or other duly delegated authority before this article was enacted.

Compliance with this article shall not relieve the applicant from complying with all applicable provisions of this article and any other ordinance, rule or statute.

(Ord. No. 1512, § 7, 7-23-01)

Sec. 5-22. Historic district commission.

(a) To execute the purpose of this article, there is hereby created a commission to be called the City of Midland West Main Street Historic District Commission (HDC).

(b) The HDC shall consist of seven (7) members who shall be residents of the city. Moving from the city shall cause the member's seat to become vacant. Each member shall be appointed by the city council for a three-year term of office; provided, however, that of the members first appointed, two (2) shall be appointed for a one-year term, two (2) shall be appointed for a two-year term, and three (3) shall be appointed for a three-year term. All first members shall be appointed within six (6) months after the effective date of this article. Thereafter, members shall be appointed before October 1 of the year of appointment and shall serve for a three-year term or until a successor is appointed. Vacancies shall be filled within sixty (60) calendar days and shall be for the remainder of the unexpired term.

(c) At least two (2) members of the HDC shall be appointed from a list of citizens submitted by one (1) or more duly organized local historic preservation organizations. The HDC shall include one (1) member, if available, who is a graduate of an accredited school of architecture who has two (2) years of architectural experience or who is an architect duly registered in this state. In the event that a person having the desired architect qualifications is not available to serve as a member of the HDC, the city council may appoint a person possessing those qualifications who is not a city resident to serve as a member of the HDC in an ex officio capacity. The term of this appointment shall be three (3) years or until such time that a successor is appointed or a qualified architect who is a city resident is appointed to the HDC.

(d) A majority of the members of the HDC shall have a clearly demonstrated interest in or knowledge of historic preservation. If proposed members meet the requirements for appointment, it is desirable that a majority of the West Main Street Historic District members consist of residents and/or property owners in the district.

(e) A member absent from four (4) consecutive regular meetings, or twenty-five (25) percent of such

meetings in any fiscal year of the city, shall automatically be removed from HDC membership unless such absences are excused by the HDC and the reason therefore entered into the proceedings of the HDC.

(f) The HDC shall elect from its membership a chairman and a vice chairman whose terms of office shall be determined by the HDC. The chairman shall preside over the HDC and shall have the right to vote. The vice chairman shall, in the case of the absence or disability of the chairman, perform the duties of the chairman.

(g) The chief building official or his/her designated representative shall be an ex officio member without the right to vote and shall serve as secretary to the HDC. The secretary shall keep a record of all resolutions, proceedings, and actions of the HDC, and shall provide minutes of the meetings to the city council.

(h) The members of the HDC shall serve without compensation.

(i) Pursuant to notice and after having been given an opportunity to be heard, a member of the HDC may be removed for cause by the city council.

(Ord. No. 1512, § 7, 7-23-01)

Sec. 5-23. Meetings of the historic district commission.

(a) In addition to other meetings as required by this article, regular meetings of the HDC shall be held quarterly, with additional meetings scheduled as needed. Attendance of at least four (4) members of the HDC at a meeting shall constitute a quorum for the transaction of HDC business. All meetings of the HDC shall be open to the public, and any person or duly constituted representative shall be entitled to appear and be heard on any matter before a decision is made.

(b) The affirmative vote of four (4) members of the HDC shall constitute approval of plans before it for review or for adoption of any resolution, motion, or other action.

(c) Public notice of the time, date, and place of HDC meetings shall be given in the manner required by Act No. 267 of the Public Acts of 1967, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws. The notice shall be posted in accord with the City of Midland notification procedures and shall be mailed by first class mail to each property owner in the historic district. A meeting agenda shall be a part of the notice and shall include a listing of each permit application to be reviewed or considered by the HDC.

(d) The HDC shall prepare an annual report of activities and shall submit special reports as requested by the city council.

(Ord. No. 1512, § 7, 7-23-01)

Sec. 5-24. Duties and powers of the historic district commission.

(a) The HDC shall submit to the city council for approval guidelines and standards for review of all plans for the construction, addition, alteration, repair, moving, excavation, or demolition of resources in the historic district which shall be named the West Main Street Historic District Guidelines and Standards for Review and which shall specify the minor classes of work for which certificates of appropriateness may be issued by the building official. Certificates of appropriateness and notices to proceed shall not be required for work in the historic district until such time that the guidelines and standards for review have been approved by

city council. Thereafter, all amendments and additions to the guidelines and standards for review must be approved by city council prior to implementation.

(b) Except for minor classes of work for which certificates of appropriateness may be issued by the building official, the HDC shall review all applications for the construction, addition, alteration, repair, moving, excavation, or demolition of resources in the historic district and approve each application before a certificate of appropriateness for such work can be granted. In reviewing the application, the HDC shall follow the U.S. Secretary of the Interior's standards for rehabilitation and guidelines for rehabilitating historic buildings, as set forth in 36 CFR Part 67, or their equivalent, as approved or established by the Michigan Bureau of History of the Department of State, and shall also consider the following:

- (1) The historical or architectural value and significance of the resource and its relationship to the historic value of the surrounding area;
- (2) The relationship of the exterior architectural features of such resource to the remainder of the resource and to the surrounding area;
- (3) The general compatibility of the exterior design, arrangement, texture, and materials proposed to be used;
- (4) Other factors, such as aesthetic value, that the commission finds relevant.

(c) The HDC and the building official shall review and act only upon exterior features of a resource and shall not review and act upon any interior work unless the interior work will cause visible change to the exterior of the resource. The HDC and the building official shall not disapprove an application due to considerations not prescribed in subsection 5-24(b).

(d) In case of an application for work affecting an exterior feature of a resource or for the alteration, moving, or demolition of a resource that the HDC deems so valuable to the city that the loss thereof will adversely affect the public purpose of the city, the HDC shall endeavor to work out with the owner an economically feasible plan for preservation of the historic resource.

(e) If all efforts by the HDC to preserve a resource fail, and it is determined by the city council that public ownership is most suitable and it is considered to be in the public interest, the city council may acquire the resource using public funds, public or private gifts, grants, or proceeds from the issuance of revenue bonds. (Ord. No. 1512, § 7, 7-23-01)

Sec. 5-25. Procedure for review of work.

(a) Nothing in this article shall be construed to prevent ordinary maintenance of a resource within the West Main Street Historic District or to prevent work on any resource under a permit issued by the building department, or another duly delegated authority, before this article was enacted.

(b) Prior to work on a property located within the West Main Street Historic District, an applicant shall contact the city building department to determine the procedure necessary for receiving approval for such work.

(c) Work that does not require a certificate of appropriateness, a building permit or a notice to proceed is not subject to the requirements of this article.

(d) Work that requires a certificate of appropriateness, a building permit or a notice to proceed is subject to the requirements of this article, as follows:

- (1) *Certificate of appropriateness.* If the building official determines that a building permit is not required but that a certificate of appropriateness is necessary, an application for a certificate of appropriateness shall be filed with the building official. Applications for certificates of appropriateness for work not considered minor shall be forwarded to the HDC by the building official. A certificate of appropriateness for minor classes of work may be issued by the building official as provided in the guidelines and standards for review.

If the building official denies an application, a written record of the reasons for denial shall be forwarded to the applicant. The building official may suggest that changes be made to the application. The building official shall notify the applicant that the application may be resubmitted for review when the suggested changes have been made and that the applicant has the right to appeal to the city building board of appeals, the state historic preservation review board and to the Midland County Circuit Court. If the application is denied because the work is not appropriate, the applicant shall be so informed and shall be notified of the right to appeal to the building board of appeals for a notice to proceed.

- (2) *Building permit and certificate of appropriateness.* If the building official determines that, in addition to an application for a certificate of appropriateness pursuant to subsection 5-25(d)(1), a building permit is required, applications for a building permit and a certificate of appropriateness shall be filed with the building official. The building official may issue a certificate as described in subsection 5-25(d)(1) or transmit the application to the HDC for review and approval. If the building official issues a certificate of appropriateness, the certificate shall be attached to the building permit. A building permit shall not be issued by the building official until a certificate of appropriateness is issued.

- (e) (1) Within fifteen (15) working days of receipt of an application for a certificate of appropriateness for work not considered minor, the building official shall forward the application to the HDC. The HDC shall meet within ten (10) working days after receipt of the application and shall review the application according to the duties and powers specified herein. If the HDC determines that the application is incomplete, or that additional information is required before the application may be approved or disapproved, the HDC shall contact the applicant to request the necessary information. Thereafter, the HDC shall meet within ten (10) working days from the date of receipt of the additional information.

- (2) Failure of the HDC to approve or disapprove a complete application within thirty (30) days from the date the application is submitted to the building official or fifteen (15) days after additional information is received by the HDC, whichever is later, unless otherwise mutually agreed upon by the applicant and HDC, shall be deemed to constitute approval, and the building official shall proceed to process the application without regard to a

certificate of appropriateness issued by the HDC.

- (3) If the application is approved, the HDC shall issue a certificate of appropriateness and transmit it to the building official. The building official shall attach the certificate of appropriateness to the building permit.
- (4) After the certificate of appropriateness has been issued and, if required, a building permit granted, the building official shall inspect the work permitted in accord with the certificate of appropriateness and shall take such action as necessary to ensure compliance with the approved plan.

(f) (1) If the application is not approved by the HDC, a written record of the reasons for denial shall be forwarded to the applicant and the building official. The HDC may suggest that changes be made to the application. The HDC shall notify the applicant that the application may be resubmitted for HDC review when the suggested changes have been made. A denial of an application for a certificate of appropriateness by the HDC shall be binding upon the building department.

(2) The denial of an application shall include a notice to the applicant of the right of appeal to the city building board of appeals, the state historic preservation review board and to the Midland County Circuit Court. If the application is denied by the HDC because the work is not appropriate, the applicant shall be so informed and shall be notified of the right to appeal to the building board of appeals for a notice to proceed.

(g) A fee shall not be levied for an application for a certificate of appropriateness; however, the applicable building permit fee shall be levied.

(h) Repairs, alterations and additions necessary for the preservation, restoration, rehabilitation or continued use of a building or structure may be made without conformance to all the requirements of the current Michigan Construction Code as adopted by ordinance by city council when authorized by the building official, provided:

- (1) The building or structure has been designated by official action of the city council as having special historical or architectural significance.
- (2) Any unsafe conditions as described in said construction code are corrected.
- (3) The restored building or structure will be no more hazardous based on life safety, fire safety, and sanitation than the existing building.

(Ord. No. 1512, § 7, 7-23-01)

Sec. 5-26. Appeals.

(a) *Notice to proceed.* If an applicant has been denied a certificate of appropriateness for work not deemed appropriate, the applicant may appeal to the building board of appeals for a notice to proceed. Work within the historic district shall be permitted through the issuance of a notice to proceed if any of the following

conditions prevail and if the proposed work can be demonstrated to the satisfaction of a majority of the building board of appeals members that the proposed work is necessary to substantially improve or correct any of the following conditions:

- (1) The resource constitutes a hazard to the safety of the public or to the structure's occupants.
- (2) The resource is a deterrent to a major improvement program that will be of substantial benefit to the community and the applicant proposing the work has obtained all necessary planning and zoning approvals, financing, and environmental clearances.
- (3) Retaining the resource will cause undue financial hardship to the owner when a governmental action, an act of God, or other events beyond the owner's control created the hardship, and all feasible alternatives to eliminate the financial hardship, which may include offering the resource for sale at its fair market value or moving the resource to a vacant site within the historic district have been attempted and exhausted by the owner.
- (4) Retaining the resource is not in the interest of the majority of the community.

Notwithstanding the aforementioned, a building permit may still be required.

(a)[b] *Appeal from a decision by the building official or HDC.* An applicant aggrieved by a decision of the building official or the HDC may file an appeal with the building board of appeals, as created under section 5-1 of the City of Midland Code of Ordinances, or the state historic preservation review board of the Michigan Historical Commission within the Department of State. The HDC shall forward a copy of the West Main Street Historic District Guidelines and Standards for Review approved by city council to the building board of appeals. The West Main Street Historic District Guidelines and Standards for Review shall be utilized by the building board of appeals in appeal decisions.

(b)[c] *Appeal from a decision by the building board of appeals.* An applicant who has appealed to the building board of appeals and is aggrieved by the decision of that board may file an appeal with the state historic preservation review board. The appeal shall be filed within sixty (60) days after the decision is furnished to the applicant by the building board of appeals.

(c)[d] *Appeal from a decision by the state historic preservation review board.* A permit applicant aggrieved by the decision of the state historic preservation review board may appeal the decision to the Midland County Circuit Court. Said applicant may only appeal to the circuit court after appealing to the state historic preservation review board.

(d)[e] *Appeal by non-applicant.* Any citizen or duly organized historic preservation organization in the city that is not an applicant that is aggrieved by a decision of the HDC may appeal the decision to the Midland County Circuit Court.

(Ord. No. 1512, § 7, 7-23-01)

Sec. 5-27. Demolition by neglect.

- (a) *Commencement of proceedings.* The building official shall examine or cause to be examined

every historic resource reported as threatened with demolition by neglect.

(b) *Notice and order.* The building official shall issue a notice and order directed to the owner of record of the historic resource stating the defects thereof. This notice may require the owner of the historic resource to commence the required alterations, repairs or improvements, and all such work shall be completed within such period of time as the building official shall determine to be reasonable to accomplish the work, which said period shall be stated in the notice.

(c) *Service of notice and order.* Service of the notice and order shall be made upon the owner either personally or by:

- (1) Mailing a copy of such notice and order by certified mail, postage prepaid, return receipt requested, to each owner of the property as indicated by the records of the city assessor; or
- (2) If no address so appears or is known to the building official, a copy of the notice and order shall be mailed to the owner of record at the address of the resource and a copy of the notice shall also be posted in a conspicuous place on the resource.

The failure of any such owner of record to receive such notice shall not affect the validity of any proceedings taken under this section. Service by certified mail in the manner herein provided shall be effective on the date of mailing. Proof of service of the notice and order shall be by affidavit sworn to by the person effecting service; declaring time, date and manner in which the service was made. The affidavit, together with any receipt card returned in acknowledgment of receipt by certified mail, shall be affixed to the copy of the notice and order retained by the building official.

(d) *Condemnation procedure.* If at the expiration of any time limit in the notice provided for in paragraph (b) of this section, the owner of record has not complied with the requirements thereof, the building official may recommend abatement in accordance with the following provisions:

- (1) *Notice of public hearing.* Notwithstanding any other provisions of this article, when an exterior feature of a historic resource is found to have deteriorated or the structural integrity of a resource has been lost as a result of neglect in maintenance or repair, the building official, having ascertained that the time limit provided in the notice has expired and that the required work has not been completed, shall issue a notice to each owner of record in whose name the property appears on the last local tax assessment records to appear at a hearing before a hearings officer and show cause why the alterations, repairs or maintenance should not be made. Notice shall be given to the parties in the same manner as provided in paragraph (c) of this section to appear at the hearing on the date, time and place specified in the notice which shall not be less than ten (10) days after the mailing of the notice.
- (2) *Hearings officer appointed.* The city council shall appoint a hearings officer to serve at its pleasure and to conduct a public hearing in order for the owner to show cause why the notice and order should not be complied with. The building official shall file a notice of the demolition by neglect with the hearings officer.
- (3) *Procedures.* The following procedures shall govern the conduct of the public hearing by the

hearings officer:

- a. *Record.* A record of the entire proceeding shall be made by tape recording or by other means of permanent recording determined appropriate by the examiner. A transcript of the proceedings shall be made available to all parties upon request and upon payment of a fee prescribed thereof. The fee may be established by the hearings officer but shall not be greater than the cost involved.
- b. *Certification.* In any proceedings under this section, a hearings officer has the power to administer oaths and affirmation, and to certify official acts.
- c. *Reasonable dispatch.* A hearings officer shall proceed with reasonable dispatch to conclude any matter before him or her. Due regard shall be shown for the convenience and necessity of a party and his or her representative.
- d. *Rules.* Hearings need not be conducted according to the technical rules relating to evidence.
- e. *Oral evidence.* Oral evidence shall be taken only on oath or affirmation.
- f. *Hearsay evidence.* Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state.
- g. *Admissibility of evidence.* Any relevant evidence shall be admitted if it is the type of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction of this state.
- h. *Exclusion of evidence.* Irrelevant and unduly repetitious evidence shall be excluded.
- i. *Rights of the parties.* Each party shall have the following rights, among others:
 1. To call and examine witnesses on any matter relevant to the issues of the hearing;
 2. To introduce documentary and physical evidence;
 3. To cross-examine opposing witnesses on any matter relevant to the issue of the hearing;
 4. To impeach any witness regardless of which party first called him or her to testify;
 5. To refute the evidence against him or her; and

6. To represent himself or herself or to be represented by anyone of his or her choice who is lawfully permitted to do so.
 - j. *Inspection of premises.* The hearings officer may inspect any resource involved in the hearings proceedings.
 - k. *Judicial notice.* In reaching a decision, judicial notice may be taken, either before or after submission of the case for decision, of any fact of which judicial notice may be taken by the courts of this state or of official records of the board or departments and ordinances of the city or rules and regulations of the board. Parties present at the hearing shall be informed of the matters so noticed, and these matters shall be noted in the record.
- (4) *Hearings officer's findings and order.* The hearings officer shall issue an order with written findings of fact based upon competent evidence and testimony determining whether the historic resource in question has suffered demolition by neglect within the meaning of this section. If the hearings officer determines that the historic resource has suffered demolition by neglect, he or she shall establish a reasonable time by which the requirements of the order shall commence and shall be completed. The notice of the findings of fact and order shall be served upon the owner of record in the manner provided in paragraph (c) of this section.
- (5) *Failure of the owner of record to appear or refusal to comply with order of hearings officer.* The following shall apply in the event that there is a failure to appear or refusal to comply with the order of the hearings officer:
- a. If the owner of record fails to appear or neglects or refuses to comply with the order, the hearings officer shall file a report of his or her findings and a copy of his or her order with the city council and request that the necessary alterations, repairs or improvements be made. A copy of the findings of fact and order of the hearings officer shall be served on the owner of record in the manner prescribed in paragraph (c) of this section.
 - b. The city council shall fix a date for a hearing and for reviewing the findings of fact and order of the hearings officer and shall give notice to the owner of record in the manner prescribed in paragraph (c) of this section of the time and place of the hearing. At the hearing, the owner of record and/or his or her representative shall be given the opportunity to show cause why the building should not be altered, repaired or improved. After the close of the hearing, the city council shall either approve, disapprove or modify the order of the hearings officer.
 - c. Upon a finding by the city council that a historic resource is threatened by demolition by neglect, the city council may do the following:
 1. Require the owner of the historic resource to repair all conditions contributing to demolition by neglect;
 2. If the owner does not make the repairs within a reasonable time, the city council,

upon obtaining an order from the Midland County Circuit Court, may direct its agents to enter the property and make repairs as are necessary to prevent demolition by neglect.

- d. The costs of the work shall be a lien against the real property and shall be reported to the city assessor who shall assess the cost against the property on which the resource is located. The owner in whose name the property appears upon the last local tax assessment record shall be notified of the amount of such cost by first class mail at the address shown on the records. If he or she fails to pay the same within thirty (30) days after mailing by the assessor of the notice of the amount thereof, the assessor shall add the same to the next tax roll of the city and it shall be collected in the same manner and in all respects as provided by law for the collection of taxes by the city.
 - e. An owner of record aggrieved by any final decision or order of the city council under subparagraph (5)b. above may appeal the decision or order to the circuit court by filing a petition for an order of superintending control with that court within twenty-one (21) days from the date of the city council's decision.
- (6) *Waiver provision.* The owner of record of any historic resource may at any time admit in writing that such resource has suffered demolition by neglect within the meaning of this section, waive notice, hearing, findings of fact, order and service of the order under this article and court review of such order, and consent that said resource may be altered, repaired or improved, and the cost thereof charged against the property, in which event the hearings officer may have said resource altered, repaired or improved and the cost charged against said property in accordance with the provisions of this article.

(Ord. No. 1512, § 7, 7-23-01)

Sec. 5-28. Failure to obtain a permit.

When work has been performed on a historic resource without a permit and the HDC finds that the work does not qualify for a certificate of appropriateness, the HDC shall notify the city council of its findings. The city council may require an owner to restore the resource to the condition the resource was in before the inappropriate work was conducted or to modify the work so that it qualifies for a certificate of appropriateness.

If the owner does not comply with the restoration or modification requirement within a reasonable time, the city council may seek an order from the Midland County Circuit Court to require the owner to restore the resource to its former condition or to modify the work so that it qualifies for a certificate of appropriateness.

If the owner does not or cannot comply with the order of the court, and if the order of the court so provides, the city council or its agents may enter the property and conduct work necessary to restore the resource to its former condition or modify the work so that it qualifies for a certificate of appropriateness in accordance with the order of the court. The cost of the work shall be charged to the owner and may be levied by the city as a special assessment against the property.

(Ord. No. 1512, § 7, 7-23-01)

Sec. 5-29. Acceptance of gifts and grants.

The city may accept public or private gifts and state and federal grants for historic restoration purposes; provided, however, that such gifts and grants are not prohibited by the Charter of the city and are not used for the purpose of paying any fees or expenses arising out of any litigation. The city treasurer shall be custodian of funds received by the city for historic restoration purposes.
(Ord. No. 1512, § 7, 7-23-01)

Sec. 5-30. Penalties.

A person, individual, partnership, firm, corporation, organization, institution, or agency of government that violates this ordinance is responsible for a civil violation and may be fined not more than five thousand dollars (\$5,000.00) and may be ordered by the court to pay the costs to restore or replicate a resource unlawfully constructed, added to, altered, repaired, moved, excavated, or demolished.
(Ord. No. 1512, § 7, 7-23-01)

Sec. 5-31. Severability.

In the event any portion, section or subsection of this article shall be held invalid, that portion, section or subsection shall be eliminated from this article. Such invalidation shall not be construed to affect the validity of any part or portion of this article or of the Code of Ordinances of the city.
(Ord. No. 1512, § 7, 7-23-01)

ARTICLE VIII.

FEES

Sec. 5-32. Fees.

Fees for Building, Plumbing, Mechanical, Electrical and Construction Board of Appeals applications shall be as described in Chapter 21 of Midland City Code of Ordinances.
(Ord. No. 1512, § 8, 7-23-01)

ARTICLE IX.

FLOODPLAIN MANAGEMENT

Sec. 5-33. Purpose. The purpose of this article is to participate in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP) by complying with the program's applicable statutory and regulatory requirements for the purposes of significantly reducing flood hazards to persons, reducing property damage, reducing public expenditures, and providing for the availability of flood insurance and federal funds or loans within the corporate limits of the city of Midland.

Sec. 5-34. Declaration of Intent. The City of Midland shall, in the enforcement and administration of this ordinance, perform the following actions:

- a. Obtain, review, and reasonably utilize flood elevation data available from federal, state, or other sources pending receipt of data from FEMA to identify the flood hazard area and areas with potential flooding.
- b. Ensure that all permits necessary for development in floodplain areas have been issued, including a floodplain permit, approval, or letter of no authority from the Michigan Department of Environmental Quality under the floodplain regulatory provisions of Part 31, "Water Resources Protection," of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.
- c. Review all permit applications to determine whether the proposed building sites will be reasonably safe from flooding. Where it is determined that a proposed building will be located in a flood hazard area or special flood hazard area, the construction code act enforcing agent shall implement the applicable codes according to their terms.
- d. Review all proposed subdivisions to determine whether such proposals are reasonably safe from flooding and to ensure compliance with all applicable floodplain management regulations.
- e. Assist in the delineation of flood hazard areas; provide information concerning uses and occupancy of the floodplain or flood-related erosion areas; maintain flood proofing and lowest floor construction records; and cooperate with other officials, agencies, and persons for floodplain management.
- f. Advise FEMA of any changes in community boundaries, including appropriate maps.
- g. Maintain records of new structures and substantially improved structures concerning any certificates of flood proofing, lowest flood elevation, basements, flood proofing and elevations to which structures have been flood proofed.
- h. Review, on an ongoing basis, all amended and revised FHBSs and Flood Insurance Rates Maps (FIRMs) and related supporting data and revisions thereof and revisions of 44 CFR, Part 60, Criteria for Land Management for Use, and to make such revisions in its floodplain management regulations as may be necessary to continue to participate in the program.

Sec. 5-35. Definitions. The NFIP requires that floodplain management regulations must be present and enforced in participating communities and utilize the following definitions which also apply for the purposes of this article:

Flood or Flooding means:

- a. A general and temporary condition of partial or complete inundation of normally dry land areas from 1) The overflow of inland or tidal waters, 2) the unusual and rapid accumulation or runoff of surface waters from any source, or 3) mudflows; and
- b. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical

levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding, as defined in paragraph (a) (1) of this definition.

Flood Hazard Boundary Map (FHBM) means an official map of a community, issued by FEMA, where the boundaries of the flood, mudslide (i.e., mudflow) related erosion areas having special hazards have been designed as Zone A, M, and/or E. (This is to be included only if FEMA has issued a FHBM for the community.)

Floodplain means any land area susceptible to being inundated by water from any source (See definition of flooding).

Floodplain Management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

Floodplain Management Regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance), and other applications of police power that provide standards for the purpose of flood damage prevention and reduction.

Structure means a walled and roofed building that is principally above ground, gas or liquid storage facility, as well as a mobile home or manufactured unit.

Sec. 5-36. Agency Designated. Pursuant to the provisions of the state construction code (The Stille-Derossett-Hale Single State Construction Code Act, Act No. 230 of the Public Acts of 1972, along with its authorization of the state construction code composed of the Michigan Residential Code and the Michigan Building Code), and in accordance with Section 8b(6) of Act 230, the Public Acts of 1972, as amended, the Building Official of the City of Midland is hereby designated as the enforcing agency to discharge the responsibility of the City of Midland under Act 230, of the Public Acts of 1972, as amended, State of Michigan. The City of Midland assumes responsibility for the administration and enforcement of said Act throughout its corporate limits.

Sec. 5-37. Code Appendix Enforced. Pursuant to the provisions of the state construction code, in accordance with Section 8b(6) of Act 230, of the Public Acts of 1972, as amended, Appendix G of the Michigan Building Code shall be enforced by the enforcing agency within the City of Midland.

Sec. 5-38. Designation of Regulated Flood Prone Hazard Areas. The Federal Emergency Management Agency (FEMA) Flood Insurance Study (FIS) Entitled County of Midland and dated May 4, 2009 and the Flood Insurance Rate Map(s) (FIRMS) panel number(s) of 26111C; 0162E, 0164E, 166E, 0168E, 0169E, 0188E, 0252E, 0256E, 0257E, 0276E, 0278E, 0279E and 0283E and dated May 4, 2009 are adopted by reference for the purposes of administration of the Michigan Construction Code, and declared to be a part of Section 1612.3 of the Michigan Building Code, and to provide the content of the "Flood Hazards" section of Table R301.2(1) of the Michigan Residential Code.

(Ord. No. 1677, § 9, 04-13-09)