

From: Jonathan Smith <smithj@villageofclarkston.org>
Sent: Thursday, October 3, 2024 1:15 PM
To: Susan <smbisio@gmail.com>
Cc: sylvanlawtr@gmail.com
Subject: RE: Two FOIA Requests

Hello Susan,

Relative to your FOIA request dated Saturday, September 14th (1st attachment), please find the attached documents (2nd attachment) which were provided to me by Nancy Moon prior to her leaving the country on vacation. No other related documents are available from HDC Chairperson Rob Hauxwell or other officials of the City. Prior to responding, I was hoping to verify with Nancy that no other documents were located, but she has not yet returned to the U.S.

Relative to your FOIA request dated Monday, September 16th (3rd attachment), until Nancy returns, I have no documents to share with you.

It is my understanding that Nancy will be returning in the next week, at which point I will ask her for the additional documents you are seeking (if available) and forward them to you.

Thank you for your understanding in this matter.

Jonathan Smith

City Manager, City of the Village of Clarkston
375 Depot Road, Clarkston MI 48346
Email: smithj@villageofclarkston.org
Office: (248) 625-1559
Cell: (248) 909-3380



September 16, 2024

The Honorable Sue Wylie, Mayor
City of the Village of Clarkston
375 Depot Street
Clarkston, Michigan 48346

Dear Mayor Wylie, Council Members, and City Manager Smith:

For almost 50 years, the City of Clarkston has been a leader in Michigan's historic preservation efforts. This letter is written to ensure there is public awareness of this at a point in time when the community is considering altering its long-standing preservation tradition. It comes from the Michigan Historic Preservation Network, the non-profit organization that for 45 years has helped communities work with their historic properties. Our relationship with Clarkston goes back many years.

Clarkston joined other Michigan communities in celebrating the American Bicentennial in 1976. In addition to written local histories, museum exhibits, and public events, Clarkston took the important step to gather the research required to have the city recognized on the State Register of Historic Sites. A mere four years later, the city took the next crucial step to protect its historic properties through listing on the National Register of Historic Places. At a time when common practice was to designate Michigan's finest individual landmarks, Clarkston's effort was noteworthy for listing a historic district of over 150 commercial and residential properties. Finally, recognizing that National Register designation only provided protection from Federally-assisted work – a protection spectacularly-used to thwart the widening of Main Street/M-15 – the city chose to further protect its district with a local ordinance established under Michigan Public Act 169 of 1970, the "Local Historic Districts Act." Clarkston's ordinance was among the first to be aligned with amendments made to Public Act 169 reflecting national preservation practice. Today, it joins 80 other Michigan communities that have seen the wisdom of doing the same.

Clarkston is ideally positioned to employ the benefits of all the work it has done. Its historic district remains stunningly intact, and the inventory of its historic assets is being kept up-to-date by the proposed recognition of district properties constructed through the mid-20th century. Its National Register designation offers continued protection against Federally-assisted investment in a county facing the pressures of unparalleled economic potential. Its local preservation ordinance provides oversight of growth and change, ensures work is done in keeping with the U.S. Secretary of the Interior's *Standards for Rehabilitation*, and protects the investments of those who maintain their historic buildings. These ingredients provide district property owners access to Michigan's 25% tax credit for work completed on residential and commercial properties, and, on the latter, access to an additional 20% Federal tax credit. Participation in the Certified Local Government Program through the State Historic Preservation Office may offer grants, training and education, and priority support. Through the Oakland County Main Street Program, there is the possibility of further enhancing the financial vitality of the city's downtown.

Make no mistake. Clarkston, as a unique historic place, would not have been sustained without the work of the past 50 years. Unfortunately, there are changes currently proposed to its local preservation ordinance that, if approved, will begin the slow but inevitable erosion of Clarkston's visual distinction and the loss of recognition, benefits, and safeguards. MHPN advises against making such changes and transforming Clarkston into one more community indistinguishable from others.

Sincerely,

A handwritten signature in cursive script that reads "Janet L. Kreger".

JANET L. KREGER
A Founder and Past President

cc Clarkston Historic District Commission

313 E. César E. Chávez Avenue
Lansing, Michigan 48906
Phone 517-371-8080 / Email info@mhpn.org

Fwd: FOIA Request

From: [REDACTED]
To: [REDACTED]
Date: Monday, September 16, 2024 at 11:59 AM EDT

Good Morning Nancy,

I just wanted to be sure that you saw the FOIA request that came in on Saturday evening.

Thank you,

Rob Hauxwell

Begin forwarded message:

From: Susan Bisio <smbisio@gmail.com>
Date: September 14, 2024 at 10:49:40 PM EDT
To: robert.hauxwell@gmail.com, clerk@villageofclarkston.org
Subject: FOIA Request

Dear FOIA Coordinator:

The August 13, 2024, Historic District Commission (HDC) draft minutes contained the following quote, purportedly from an email exchange between Nancy Moon, Historic District Study Committee chairperson, and the State Historic Preservation Office (SHPO):

Changing the appeals process in Clarkston's historic district ordinance would not be with consequence. Preservation programs such as Michigan's State preservation tax credit and the Certified Local Government program require that a community have a historic ordinance in place that complies with Public Act 169 of 1970, as amended. If Clarkston's historic district ordinance no longer complies with state law (PA 169), locally designated properties would no longer be eligible for these programs.

1. Please provide me with a copy of the entire email exchange
2. Please provide me with a copy of all communications between any HDC commissioner and SHPO regarding the proposed HDC charter amendment that will be considered by Clarkston voters at the November 5 election
3. Please provide me with a copy of all communications between Nancy Moon and SHPO regarding the proposed HDC charter amendment that will be considered by Clarkston voters at the November 5 election.

The request for "communications" includes communications in any form and includes emails sent by Nancy Moon or HDC commissioners using personal email accounts.

If my request is unclear, please let me know and I will restate the request.

I prefer that all records be sent electronically to this email address.

Your kind attention to this matter is appreciated.

Sincerely,

Susan Bisio
P.O. Box 1303
Clarkston, MI 48347

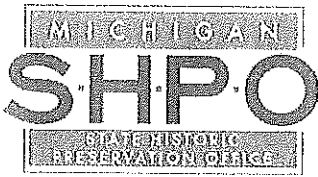
RE: Promotional Material to Stop the Petition

From: [REDACTED]
To: [REDACTED]
Date: Friday, September 6, 2024 at 02:29 PM EDT

Hi Nancy,

To clarify, if an individual resource outside of the district wanted to qualify for tax credits the building would need to first be added the National Register. The information needed in an NR form is similar to Architectural Properties Form, but it is a different process (and form) that would go through the SHPO and then NPS. Then that property owner could pursue state tax credits. Katie feel free to add if I'm missing something!

Have a good weekend!



Haley Schriber
CLG & Community Preservation Coordinator
State Historic Preservation Office
300 N. Washington Square
Lansing, MI 48913
Direct: 517.855.8586
michigan.gov/shpo

Get the latest news with the [SHPO](#) and [MEDC Community Development](#) newsletters!

From: [REDACTED]
Date: Friday, September 6, 2024 11:20 AM
[REDACTED]
Subject: Re: Promotional Material to Stop the Petition

CAUTION: This is an External email. Please send suspicious emails to abuse@michigan.gov

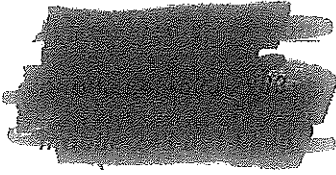
Thank you Katie. This is great news.


If an individual residence outside the historic district completed the Michigan SHPO Architectural Properties Form and sent it to your office, could this individual residence (assuming it meet the necessary requirements) become listed as a single residence and then have access to the tax credit?

Thank you again.

Nancy

Nancy Moon



On Friday, September 6, 2024 at 10:45:20 AM EDT, Kolokithas, Kathrine (LEO)  wrote:

Hi Nancy,



I was able to connect with our tax credit architects and folks in your district would still be able to access the state tax credits because of the status as a National Register district so that statement is not entirely true.

The main consequence from our office then is the loss of access to the CLG program.

Katie Kolokithas
Survey Coordinator

State Historic Preservation Office



From: 
Sent: Friday, September 6, 2024 10:22 AM
To: 
Subject: Promotional Material to Stop the Petition

CAUTION: This is an External email. Please send suspicious emails to abuse@michigan.gov

Katie & Haley:

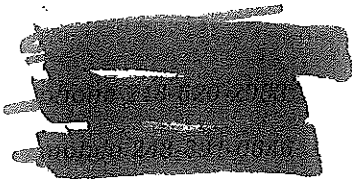
I received the following text in an email from Amy Arnold. Can we use this information in a campaign to try and get residents of the village to vote NO on the ballot to change the HDC. Can we say the information came from SHPO? Can we use Amy's name?

Changing the appeals process in Clarkston's historic district ordinance would not be without consequence. Preservation programs such as Michigan's state preservation tax credit and the Certified Local Government (CLG) program require that a community have a historic district ordinance in place that complies with Public 169 of 1970, as amended. If Clarkston's historic district ordinance no longer complies with state law (PA 169), locally designated properties would no longer be eligible for these programs.

Thank you. Have a great weekend.

Nancy

Nancy Moon



RE: Promotional Material to Stop the Petition

From: [REDACTED]

To: [REDACTED]

Date: Friday, September 6, 2024 at 10:45 AM EDT

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Survey Coordinator
State Historic Preservation Office

From: [REDACTED]

Sent: Friday, September 6, 2024 10:22 AM

To: [REDACTED]

Subject: Promotional Material to Stop the Petition

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Katie & Haley:

I received the following text in an email from Amy Arnold. Can we use this information in a campaign to try and get residents of the village to vote NO on the ballot to change the HDC. Can we stay the information came from SHPO? Can we use Amy's name?

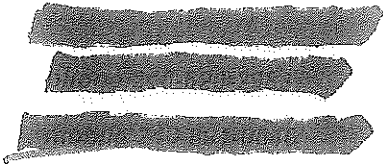
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amended. If Clarkston's historic district ordinance no longer complies with state law (PA 169), locally designated properties would no longer be eligible for these programs.

Thank you. Have a great weekend.

Nancy

Nancy Moon



LOCAL PROPOSAL PETITION
CITY CHARTER AMENDMENT

We, the undersigned qualified and registered electors, residents in the City of the Village of Clarkston, in the county of Oakland, state of Michigan, respectively petition for amendment to the City of the Village of Clarkston Charter to add Chapter XVI to the Charter, as follows:

CHAPTER XVI
HISTORIC DISTRICT AND HISTORIC DISTRICT COMMISSION

Section 16.1 Policy

(a) The electors of the City of the Village of Clarkston adopted this Charter amendment adding Chapter XVI to the Charter to apply reasonable requirements to the Historic District Commission and to address previous abuses and improper and illegal actions of the Commission, its Members, and Agents of the Commission.

(b) It is the public policy of the City of the Village of Clarkston that the Commission, in all its actions, must act according to law and this Charter, act reasonably and courteously, and refrain from taking onerous or unreasonable enforcement actions. To carry out that public policy, the electors of the City of the Village of Clarkston adopted this Charter amendment adding Chapter XVI to the Charter to do, among other things, the following:

(1) Institute reasonable policies and procedures for the Commission that are publicly available,

(2) Require the Commission to record its meetings and make those recordings publicly available,

(3) Require the Commission to keep minutes that clearly state the substance of Commission proceedings and decisions and make proposed and approved minutes publicly available as required by the Open Meetings Act,

(4) Require the Commission, its Members, and Agents of the Commission to preserve all records of Commission activities, including, but not limited to, applications to the Commission and the notes of Members made regarding Commission business,

(5) Encourage attendance at Commission meetings of all persons interested in the Commission's work and prohibit the Commission from barring or discouraging attendance at Commission meetings,

(6) Prohibit the Commission from deliberating or deciding matters other than at a public meeting held in accordance with the Open Meeting Act,

(7) Require the Commission to communicate with property owners and occupants to reasonably resolve disputes and to mediate disputes before taking enforcement or other adverse action,

(8) More clearly define the Commission's authority and prohibit the Commission from attempting to regulate or interfere with work that is outside its authority,

(9) Prevent repetition of past abuses by the Commission, its Members, and Agents of the Commission,

(10) Prevent the Commission from imposing or attempting to collect onerous or unreasonable fines,

(11) Prevent the Commission from issuing orders or decisions that impose unreasonable financial burdens on property owners,

(12) Prevent unauthorized entry onto private property by the Commission and Agents of the Commission,

(13) Prevent the Commission from threatening unreasonable sanctions,

(14) Prevent the Commission, its Members, and Agents of the Commission from treating persons discourteously,

(15) Provide for a complaint procedure for persons aggrieved by actions of the Commission, its Members, and Agents of the Commission,

(16) Provide for the removal of Commission Members for misconduct in office,

(17) Regulate and limit the Commission's expenditure of taxpayer funds,

(18) Prevent the Commission from initiating or defending litigation or otherwise expending taxpayer funds on litigation without the express approval of the City Council, and,

(19) In all matters relating to the Commission, to require the Commission to act reasonably and courteously and to attempt to resolve matters informally.

(c) The provisions of Chapter XVI must be interpreted and applied to carry out the intent set out in subsections 16.1(a) and (b).

Section 16.2 Definitions

(a) Except as otherwise specifically provided or indicated by the context of Chapter XVI, these definitions apply to Chapter XVI.

(b) The defined terms in section 1a of the Local Historic Districts Act, MCL 399.201a, apply to this Chapter XVI. Chapter XVI refers to those defined terms by capitalizing them.

(c) As used in this Chapter XVI:

(1) "Act" means the Local Historic Districts Act, MCL 399.201 to MCL 399.215.

(2) "Agent of the Commission" means a person acting on behalf of the Commission, including, but not limited to, Officers of the City; Employees of the City; Members of the Commission; persons acting under contract (express or implied) with the City, the Commission, or one or more Members of the Commission; and any other person acting or purporting to act on behalf of the Commission, a Member of the Commission, or (in relation to the business of the Commission) the City.

(3) "Charter" means the charter of the City of the Village of Clarkston.

(4) "City" means the City of the Village of Clarkston.

(5) "City Council" means the City Council of the City of the Village of Clarkston.

(6) "Commission" means the City of the Village of Clarkston Historic District Commission appointed under section 4 of the Act, MCL 399.204.

(7) "Historic District" means the historic district established by the City of the Village of Clarkston under the Act and under the Historic District Ordinance.

(8) "Historic District Ordinance" means the City of the Village of Clarkston Local Historic District Ordinance, Chapter 152 of the City of the Village of Clarkston Code of Ordinances.

(9) "Member" means a member of the Commission.

(10) "Open Meetings Act" means 1976 PA 267, MCL 15.261 to MCL 15.275.

Section 16.3 Authority for Chapter XVI

This Chapter XVI is adopted under the City's authority to prescribe powers and duties of the Commission under section 13 of the Act, MCL 399.213, and the City's general authority under the Michigan Constitution of 1963, article 7, section 22, and under the Home Rule City Act, chapter 117 of the Michigan Compiled Laws. It is the intention of this Chapter XVI to more clearly specify the powers, authority, procedures, and limitations of the Commission to more effectively carry out the historic preservation purpose of the Act. The City declares that enactment of this Chapter XVI is necessary and appropriate to carry out the historic preservation purpose of the Act and the policy in section 16.1 by encouraging proper adherence to the provisions of the Act, limiting the Commission's actions to those that are within its legal authority, prohibiting abusive Commission enforcement actions, encouraging informal resolution of disputes with the Commission, requiring Commission Members to meet the qualification requirements of the Act, removing Commission Members for misconduct in office, providing substantive and budgetary oversight of the Commission by the City Council, and respecting the rights of owners and residents of the Historic District.

Section 16.4 Appointment of Commission Members

(a) The Historic District Ordinance provides for appointment of Commission Members. Chapter XVI supplements the Historic District Ordinance.

(b) The Commission consists of five members.

(c) The City must publicize a vacancy on the Commission by means reasonably calculated to give notice to all persons eligible for appointment at least 35 days before the appointment is scheduled to be made.

(d) As required by section 4 of the Act, MCL 399.204, at least three of the Commission Members "shall have a clearly demonstrated interest in or knowledge of historic preservation." In satisfying this requirement, an applicant must provide written evidence of clear demonstration of interest in or knowledge of historic preservation. Generalized interest or experience in work on the applicant's own property does not satisfy this requirement. If no applicants meet this requirement, the City must continue to seek qualified applicants. Notwithstanding the requirement in section 4 of the Act, MCL 399.204, that a vacancy be filled within 60 days, the City must not appoint a Member who does not meet this qualification.

Section 16.5 Commission Policies and Procedures

(a) Within 30 days of the effective date of the amendment that added this Chapter XVI to the Charter, the Commission must submit proposed written policies and procedures to the City Council. The City Council must approve, disapprove, revise, amend, or remand the proposed policies and procedures to the Commission for revision. If the City Council disapproves or remands the proposed policies and procedures, the Commission must submit revised policies and procedures to the City Council. The Commission must continue to submit proposed policies and procedures until the City Council adopts the policies and procedures in their final form.

(b) The Commission must not act on pending matters until the City Council adopts policies and procedures for the Commission.

(c) The Commission may propose amendments to its policies and procedures. The amendments must be submitted to and adopted by the City Council in the same manner as the original policies and procedures under section 16.5(a).

(d) The Commission's policies and procedures must be--

(1) posted in an easily accessible location on the City's web site, and

(2) made available in paper form to any person who requests a copy.

Section 16.8 Commission Meetings

(a) Meetings. All Commission meetings must be noticed and held in compliance with the Open Meetings Act. This includes meetings held outside the City office.

(1) If a quorum of the Commission meets outside the City office to conduct a site visit, inspect property, or conduct other Commission business, that meeting must be noticed and held in compliance with the Open Meetings Act. The Commission must not evade this requirement by a "round robin" site visit, inspection, or action on other Commission business; by conducting successive subquorum site visits, inspections, or other activities requiring Commission action; or by taking administrative action instead of formal Commission action at a meeting held in compliance with the Open Meetings Act.

(2) The Commission must not evade the requirements of the Open Meetings Act by holding meetings by phone, text message, email, or other nonpublic means. The Commission must not evade this requirement by a "round robin" exchange.

(3) The Commission must not deliberate or make a decision, formal or informal, outside of a meeting held in compliance with the Open Meetings Act. The Commission's practice of issuing a "Memorandum of Approval" or "Memorandum of Administrative Approval" on approval of some Members without a Commission meeting is a violation of the Open Meetings Act and is prohibited. If there are exigent circumstances requiring action regarding Work that needs to be done promptly and the Commission's regular meeting schedule cannot accommodate those circumstances, the Commission must hold a special meeting to promptly address the matter.

(4) All persons are entitled to attend Commission meetings as provided in the Open Meetings Act, including site visits, inspections, and other meetings. All persons are entitled to make public comments at Commission meetings as provided in the Open Meetings Act. The Commission, its Members, and Agents of the Commission must not do anything to discourage attendance at its meetings by any persons, including attendance by the City Manager, other City officials, and interested persons.

(b) Recording Meetings. The Commission must make audio recordings of its meetings. The Commission must post each recording or a link to the recording on the City's web site on the next business day after the meeting. As used here, "business day" means Monday through Friday, except for recognized state and national holidays, regardless of whether the City office is open.

(c) Minutes.

(1) The Commission must comply with the requirements of the Open Meetings Act for draft minutes, final minutes, and corrections to minutes of its meetings. This obligation includes the time limitations in the Open Meetings Act for preparing and making available draft and final minutes.

(2) Minutes of Commission meetings must record who spoke at the meeting, the substance of each speaker's statements, decisions the Commission makes, and the reasons for Commission decisions.

Section 16.7 Commission Records

(a) "Commission Records" include Certificates of Appropriateness; Notices to Proceed; Denials; minutes of Commission meetings; draft minutes of Commission meetings; notices of Commission meetings; applications to the Commission; written communications from and to the Commission, its Members, and Agents of the Commission regarding Commission business (including, but not limited to letters, notices, text messages, emails, and social media postings); Commission reports and proposals to the City Council; records of Commission action; papers filed by any person in an action involving the Commission in the State Historic Preservation Review Board or in the Michigan or federal courts; personal notes of Members regarding Commission matters; and all other records regarding Commission business. The City finds that the personal notes of Members regarding Commission matters are taken in the performance of the Members' official function of deliberating on and deciding Commission matters.

(b) The City Clerk is the custodian of Commission records. The Commission, its Members, and Agents of the Commission must promptly transmit Commission records to the City Clerk. The City Clerk must keep Commission Records in the City office. The City Clerk must make Commission Records pertaining to specific properties publicly available by property address.

(c) Notwithstanding any record retention or destruction schedule the City or the Commission may follow, the City and the Commission must not destroy Commission Records.

(d) Commission Records are public records within the meaning of the Freedom of Information Act, MCL 15.231 to MCL 15.246.

Section 16.8 Commission Authority

(a) Actions Prohibited When Commission Has No Authority to Regulate.

(1) When this Chapter XVI states the Commission has no authority to regulate something, that means:

(A) the Commission must not require a person to obtain a permit to do Work on a Resource,

(B) a person is not required to apply for a permit to do Work on a Resource, and

(C) the Commission may not take any regulatory or enforcement action regarding the matter.

(2) The Commission has no authority to require a property owner, occupant, or responsible person to justify the owner's, occupant's, or responsible person's determination that their activities are outside the Commission's authority.

(3) The Commission may raise with the City Council a question about an owner's, occupant's, or responsible person's determination that their activities are outside the Commission's authority. The City Council may determine whether the activity is within the Commission's authority. Pending the City Council's determination, the Commission has no authority to regulate the matter.

(b) No Authority Over Ordinary Maintenance. Section 1a(p) of the Act, MCL 399.201a(p), defines Ordinary Maintenance. Ordinary Maintenance is not Work under the Act. The Commission has no authority to regulate Ordinary Maintenance.

(c) Limitation of Authority Over Repairs. Restoring a decayed or damaged Resource to a good or sound condition by any process that does not change the external appearance of the Resource is not Work under the Act. The Commission has no authority to regulate such repairs.

(d) Limitation of Authority Over Exterior of Resources. The Commission's authority is limited to Work affecting the exterior appearance of a Resource in the Historic District and interior arrangements that will cause visible change to the exterior appearance of a Resource. The City declares that the "exterior appearance" within the scope of the Commission's authority is the exterior view of the Resource that can be seen by a person of ordinary height from the public road or public sidewalk adjacent to the Resource without the use of visual aids to enhance the view. The Commission has no authority to regulate any other exterior appearance.

(e) Limitation of Authority Over Open Spaces. The City finds that the land in the Historic District is almost completely built up with no significant remaining Open Space existing, except for Depot Park. Other than Depot Park, there is no Open Space in the Historic District that is significant in the history, architecture, archaeology, engineering, or culture of this state or a community within this state, or of the United States. The City finds that, other than Depot Park, there is no Open Space in the Historic District that constitutes a Resource that the Commission may regulate. The Commission has no authority to regulate Open Space in the Historic District other than Depot Park.

(f) Limitation of Authority Over Plants, Trees, Landscaping, and Fences. The historic nature of the City stems from its status in the nineteenth century and from the structures that existed then. The City finds that the current configurations of plants, trees, landscaping, and fences in the Historic District is not significant in the history, architecture, archaeology, engineering, or culture of this state or a community within this state, or of the United States. The City finds that there are no plants, trees, landscaping, or fences in the Historic District that constitute a Resource that the Commission may regulate. The Commission has no authority to regulate plants, trees, landscaping, or fences in the Historic District or to require the planting, erecting, maintenance, removal, or other action involving plants, trees, landscaping, or fences.

(g) Limitation of Authority Over Painting. Painting constitutes Ordinary Maintenance. The Commission has no authority to regulate painting in the Historic District.

(h) No Authority to Issue a Memorandum of Administrative Approval. The Commission must not issue a Memorandum of Administrative Approval or similar administrative action in lieu of granting or denying a Certificate of Appropriateness or Notice to Proceed.

Section 16.9 Commission Conduct, Orders, and Enforcement

(a) Standards and Guidelines. Section 5(3) of the Act, MCL 399.205(3), defines the standards and guidelines the Commission must follow. The Commission is limited to using the standards and guidelines in that subsection and must not apply other standards and guidelines, such as standards and guidelines that apply to activities other than rehabilitating historic buildings.

(b) Entry Onto Private Property. Commission Members and Agents of the Commission conducting Commission business (including, but not limited to, actively investigating Work and monitoring compliance) may not enter private property without the express permission of the owner or occupant for each particular entry. Permission to enter on one occasion does not imply permission to enter on any other occasion.

(c) Limits on Enforcement Action.

(1) Before taking any enforcement action, the Commission must notify the owner or occupant of property in writing of the

contemplated enforcement action and the legal basis for that action. The notice must:

(A) Inform the owner, occupant, or other responsible person of the specific remedial action the Commission requires to prevent the Commission from taking further enforcement action.

(B) specify a reasonable time for the remedial action to be started, which in no case may be less than 35 days, and

(C) specify a time in which the remedial action must be completed to prevent the Commission from taking further enforcement action, which in no case may be less than 35 days and must afford sufficient time to complete the remedial action given the nature of the action proposed.

(2) If the Commission and the owner, occupant, or other responsible person cannot agree on the nature of the remedial action or the time within which the remedial action must be started or completed, they must engage in a good faith negotiation to resolve the disagreement.

(3) If good faith negotiation does not resolve the disagreement, the Commission and the owner, occupant, or other responsible person must engage in mediation. The parties must agree to the mediator or, in the absence of agreement, a party may request the American Arbitration Association to appoint a mediator. The mediation must be conducted under the American Arbitration Association Mediation Procedures or other procedures to which the parties agree. The costs of mediation must be paid by the City and charged to the Commission's general appropriation.

(4) During the notice period, the negotiation period, the mediation period, and the performance of remedial action, the Commission may not seek issuance of a civil infraction citation, order restoration or modification, or take any other enforcement action regarding the matter.

(d) Delegation of Authority. Section 5(10) of the Act, MCL 399.205(10), allows the Commission to delegate issuance of Certificates of Appropriateness for specified minor classes of Work. The Commission may delegate issuance of Certificates of Appropriateness under that subsection under the following conditions:

(1) The "delegated authority" under section 5(10) is limited to the Commission chair, the Commission secretary, and the City Manager.

(2) As a precondition to any delegation under section 5(10), the City Council must approve specific written standards for the delegation. The Commission must submit proposed specific written standards consistent with section 5(10) to the City Council. The City Council may approve, disapprove, revise, amend, or remand the proposed standards to the Commission for revision. If the City Council disapproves or remands the proposed standards, the Commission must submit revised standards to the City Council. The Commission must continue to submit proposed standards until the City Council adopts the standards in their final form.

(3) The Commission may propose revised standards. The revised standards must be submitted to and approved by the City Council in the same manner as the original standards under section 19.9(d)(2).

(4) The Commission must comply with all provisions of section 5(10), including, but not limited to, quarterly review of Certificates of Appropriateness issued under section 5(10), to determine whether the delegated responsibilities should be continued.

(5) The Commission or its delegated authority may not substitute a "Memorandum of Approval" or "Memorandum of Administrative Approval" for a Certificate of Appropriateness.

(e) Civil Infractions.

(1) As a precondition to seeking to impose a civil infraction fine, the Commission must propose to the City Council and obtain the City Council's approval of a schedule of fines for civil infractions that may be issued under section 15(1) of the Act, MCL 399.215(1), specifying in detail each potential violation and the maximum fine that may be imposed for the violation. The City Council must adopt, modify, reject, or return the proposed schedule of fines to the Commission with instructions for further action. When the City Council adopts a schedule of fines, it must specify the date the schedule is effective.

(2) If the Commission determines that a civil infraction citation should be issued, as a precondition to issuing the citation, the Commission must propose issuance of the citation to the City Council and obtain the City Council's approval by a vote of at least five City Council members.

(3) If the City Council approves issuing a civil infraction citation, only the City Manager is authorized to issue the citation. The City Manager must comply with the requirements of MCL 600.8707, including obtaining written approval of the City Attorney if required under MCL 600.8707(2).

(4) A civil infraction citation issued under this section must specify the maximum fine that may be imposed as specified in the schedule of fines adopted under subsection 16.9(e)(1).

(f) Demolition By Neglect.

(1) The Commission's authority to make an order to repair conditions contributing to Demolition By Neglect under subsection 5(11)(a) of the Act, MCL 399.205(11)(a), is discretionary. After the Commission makes a finding that a Historic Resource is threatened with Demolition By Neglect under subsection 5(11) of the Act, MCL 399.205(11), and the Commission wishes to proceed with an order to repair, the Commission must present a proposed order to repair to the City Council for review. The City Council may approve the proposed order, approve it with revisions, reject issuance of the proposed order, remand the matter to the Commission with instructions for further proceedings, or take any other appropriate action. The Commission may issue an order to repair only if the City Council approves a specific order by a vote of at least five City Council members.

(2) The Commission's authority to seek a circuit court order to enter property and make repairs under subsection 5(11)(b) of the Act, MCL 399.205(11)(b), is discretionary. After the Commission makes a finding that a Historic Resource is threatened with Demolition By Neglect under subsection 5(11) of the Act, MCL 399.205(11), and the Commission wishes to proceed with seeking a circuit court order to enter and repair, the Commission must present a proposed plan for entry and repair and a proposed order that it wishes to request the circuit court to enter to the City Council for review. The City Council may approve the proposed plan and order, approve them with revisions, reject them, remand the matter to the Commission with instructions for further proceedings, or take any other appropriate action. The Commission may seek a circuit court order to enter and repair only if the City Council approves a specific proposed plan and order by a vote of at least five City Council members.

(g) Restoration or Modification. The Commission's authority to require restoration or modification under section 205(12) of the Act, MCL 399.205(12), is discretionary.

(1) Commission's Initial Action to Require Restoration or Modification.

(A) As a precondition to requiring restoration or modification under section 205(12) of the Act, MCL 399.205(12), the Commission must request that the City Council authorize the Commission to require restoration or modification. The Commission's request to the City Council must include:

(i) a detailed specification of the restoration or modification the Commission seeks.

(ii) the time period in which the Commission seeks the restoration or modification to be started and completed.

(iii) an estimate of the cost of the restoration or modification the Commission seeks, and

(iv) the basis for the Commission's claim that the Work involved requires a Certificate of Appropriateness.

(B) The Commission may require restoration or modification only with the express approval of the City Council by a vote of at least five City Council members.

(2) Commission's Action to Seek Restoration or Modification in Circuit Court.

(A) As a precondition to seeking a circuit court order requiring restoration or modification under section 205(12) of the Act, MCL 399.205(12), the Commission must request that the City Council authorize the Commission to seek such an order. The Commission's request to the City Council must include the items in section 16.9(g)(1)(A) and a detailed statement of any Commission efforts to obtain compliance and the reasons why compliance was not achieved.

(B) The Commission may seek a circuit court order to require restoration or modification only with the express approval of the City Council by a vote of at least five City Council members.

(h) Stop work orders. The Act does not authorize stop work orders. The Commission, its Members, and Agents of the Commission are not authorized to issue a stop work order, to post a stop work order, or to request that someone else issue or post a stop work order.

(i) Consultation with City Attorney and City Contractors. The Commission has no general authority to cause the City to incur professional or other fees. Without the express approval of the City Council for a particular matter, the Commission, its Members, and Agents of the Commission must not consult with the City Attorney, the City's planning firm, the City's contracted building department, the City's engineering firm, the City's assessment contractor, or any

other officer or contractor that would charge the City for the consultation. Any approval by the City Council for this purpose must specify the maximum fee to be incurred. The fees must be charged to the Commission's general appropriation.

(j) Recording with the Register of Deeds. The Commission is not authorized to record any document with the Register of Deeds.

(k) Commission Brochure. The Commission must immediately cease using and distributing the brochure titled "Clarkston's Historic District. What Does That Mean For Me?" and must cause the brochure to be removed from the City's web site. Any new brochure must be consistent with the provisions of Chapter XVI and must be approved by the City Council.

Section 16.10 Commission Expenditures

(a) The following terms apply to this section 16.10:

(1) "Commission Proceedings" includes anticipated proceedings, potential proceedings, and actual proceedings before the State Historic Preservation Review Board, the Michigan courts at all levels, the federal courts at all levels, or any other tribunal, but does not include mediation under section 16.9(c)(3).

(2) "Costs of Commission Proceedings" includes costs of legal advice, legal services, expert or consultant advice, expert services, expert testimony, filing fees, fees for service of process or other papers; costs or fees awarded by a court or the State Historic Preservation Review Board, and any other litigation expenses regarding Commission Proceedings.

(b) No part of the general budget appropriation for the Commission may be spent on Costs of Commission Proceedings. The City Council must expressly approve by a vote of at least five City Council members an additional and specific dollar amount appropriation to the Commission to pay Costs of Commission Proceedings before any such expenditures are obligated or made. Commission action incurring such costs without prior City Council approval is void and the City shall have no obligation to pay such costs.

Section 16.11 Complaint Procedures; Removal of Commission Members

(a) Removal of Members for Misconduct in Office.

(1) A Commission Member who violates a provision of this Chapter XVI is guilty of misconduct in office and is subject to removal from office under section 4.21 of the Charter. After the Clerk gives notice of removal proceedings to the Member under section 4.21(b) of the Charter, the Member is suspended from exercising authority as a Member of the Commission pending the decision of the City Council under section 4.21 of the Charter.

(2) Section 16.11(a)(1) does not preclude removal from office or other disciplinary action against a Member under other provisions of law.

(b) Complaint Procedure.

(1) A person aggrieved by the conduct of a Member may file a written complaint with the City Clerk. The complaint must set out the facts supporting the complainant's claim.

(2) The City Clerk must promptly send a copy of the complaint to the City Council members and the Member named in the complaint.

(3) The Member may file a response to the complaint with the City Clerk within seven calendar days of the City Clerk's transmission to the Member. The City Clerk must promptly send a copy of the Member's response to the City Council members.

(4) The City Council must schedule a hearing on the complaint within 14 days after the Member files a timely response or, if the Member does not file a timely response, within 14 days after the time for filing a response expires. The City Council must conduct the hearing under its usual procedures for public hearings.

(5) At the conclusion of the hearing or within a reasonable time after the hearing, which must not exceed seven days, the City Council may take any appropriate action on the complaint, including, but not limited to, the following:

(A) initiating proceedings to remove the Member from office for misconduct in office,

(B) suspending the Member from office for a specific period of time,

(C) disqualifying the Member from participating in a specific Commission matter, or

(D) directing the Member or Commission to take specific action or refrain from taking specific action.

Section 16.12 Precedence of This Chapter and City Charter

(a) This Chapter XVI supersedes and repeals provisions of the Historic District Ordinance that conflict with or are inconsistent with this Chapter.

(b) This Chapter XVI supersedes provisions of this Charter outside this Chapter XVI that conflict with or are inconsistent with this Chapter.

Section 16.13 Severability

It is intended that the provisions of this Chapter XVI be severable. If any provision, section, or portion of this Chapter XVI is declared invalid by a court of competent jurisdiction, that shall not affect the validity of this Chapter XVI as a whole or of any remaining provision, section, or portion.

Form of proposed ballot language:

Should the city charter be amended by adding a new chapter XVI to apply requirements to the Historic District Commission, more clearly specify the commission's authority and procedures, and provide controls for commission expenditures and enforcement actions?

Yes No