Sponsor(s): Councilors Sharp, Accetturo, and Seidensticker

ORDINANCE D-2064-11
AS AMENDED

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF CARMEL, INDIANA, AMENDING CHAPTER 2, ARTICLE 5, ADDING SECTION 2-188, AUTHORIZING COMPREHENSIVE HISTORIC PRESERVATION AND ESTABLISHING A HISTORIC PRESERVATION COMMISSION

WHEREAS, the City of Carmel, Indiana (the "City"), is a municipal corporation and political subdivision of the State of Indiana and is authorized and empowered to adopt this ordinance and to carry out its provisions;

WHEREAS, the City of Carmel is one of the fastest growing cities in Indiana, a dynamic City with award winning schools, thriving businesses, and family oriented neighborhoods, committed to preserving its heritage and vitality through controlled expansion and prudent planning, and building a successful Partnership for Tomorrow;

WHEREAS, it is the intent of this ordinance to provide a means to promote the cultural, economic, and general welfare of the public through the preservation and protection of structures and areas of historic and cultural interest within the City of Carmel; and

WHEREAS, it is the intent of the Common Council of the City of Carmel ("Carmel City Council") by this ordinance to implement a comprehensive program of historic preservation by the appointment of a Historic Preservation Commission and by the establishment of a Historic Preservation District or Districts in accordance with the provisions set forth below.

NOW, THEREFORE, IT IS AGREED AND ORDAINED by the Common Council of the City of Carmel, Indiana, adopts, pursuant to Indiana Code §§ 36-7-11-1, *et seq.*, as follows:

Section 1: The foregoing Recitals are incorporated herein by this reference.

Section 2: Chapter 2, Article 5, Section § 2-188 of the Carmel City Code should be and the same is hereby adopted as follows:

"Section 2-188 – Historic Preservation for the City of Carmel

Section A: Purpose and Definitions

1) **Purpose:** The purpose of Historic Preservation and protection is to promote the educational, cultural and general welfare of the citizens of the City of Carmel and to ensure the harmonious and orderly growth and development of the City; to maintain established residential neighborhoods to ensure their distinctiveness; to enhance property values and attract new residents; to ensure the viability of the downtown area and to enhance tourism within the City of Carmel. It is deemed essential by the City that qualities relating to its history and harmonious outward

appearance of its structures be preserved. This purpose is advanced through the restoration and preservation of historic areas and buildings, the construction of compatible new buildings where appropriate, and the maintenance and assurance of compatibility in regards to style, form, proportion, texture, and material between historic buildings and those of contemporary design. It is the intention of the City through this ordinance to preserve and protect historic and architecturally worthy buildings, structures, sites, monuments, streetscapes, and neighborhoods which impart a distinct aesthetic quality to the City and serve as visible reminders of its historic heritage.

2) **Definitions:** The following terms shall have the following meaning unless a contrary meaning is required by the context or is specifically prescribed. Words in the present tense include the future tense. The singular number includes the plural, and the plural, the singular. The word "shall" is always mandatory. The word "person" includes a firm, a partnership, a limited liability company, or a corporation, as well as an individual. Terms not defined in this section shall have the meanings customarily assigned to them.

3) **Alteration:** A material or color change in the external architectural features of any building, structure, or site within a historic district.

4) **Classifications:**
   a. **Outstanding:** "O" classification means that the property has sufficient historic or architectural significance that is listed, or is eligible for individual listing, in the National Register of Historic Places. Outstanding resources can be of local, state, or national importance.
   b. **Notable:** "N" classification means that the property does not merit the outstanding rating, but it is still above average in its importance. A notable structure may be eligible for the National Register.
   c. **Contributing:** "C" classification means the property is at least 40 years old, but does not meet the criteria for an "O" or "N" classification. Such resources are important to the density or continuity of the area's historic fabric. Contributing structures can be listed in the National Register only as part of a historic district.
   d. **Non-Contributing:** Property classified as "NC" is not included in an inventory unless it is located within the boundaries of a historic district. Such properties may be less than 50 years old, or they may be older structures that have been altered in such a way that they have lost their historic character, or they may be otherwise incompatible with their historic surroundings. These properties are not eligible for listing in the National Register.

5) **Demolition:** The complete or substantial removal of any building, structure, or site located in a historic district.

6) **Historic District:** A single building, structure, object, or site or a concentration of buildings, structures, objects, spaces, or sites, the boundaries of which are described or delineated on a map approved in an ordinance adopted by the City under Section D of this Ordinance.

7) **Interested Party:** One of the following:
   (a) The Mayor.
   (b) The Carmel City Council.
   (c) The Plan Commission.
   (d) A neighborhood association, whether incorporated or unincorporated, a majority of whose members are residents of a historic district designated by the ordinance adopted under this Section.
   (e) An owner or occupant of property located in a historic district established by an ordinance adopted under this Ordinance.
   (f) Historic Landmarks Foundation of Indiana, Inc. ("Indiana Landmarks"), or any of its successors.
   (g) Carmel Clay Historical Society, or any of its successors.
   (h) The State Historic Preservation Officer designated under I.C. § 14-21-1-19.

8) **Preservation Guidelines:** Criteria, locally developed, which identify local design concerns in an effort to assist property owners in maintaining the character of the designated district or buildings during the process of rehabilitation or new construction.

9) **Primary Area:** The principal area of historic and / or architectural significance within a historic district as delineated on the map establishing the boundaries of the historic district.

10) **Routine Maintenance:** Work for which no certificate of appropriateness is required.

11) **Secondary Area:** An area in a historic district delineated on the map establishing the boundaries of the historic district that is adjacent to a primary area and which has a visual relationship to the primary area and could affect the preservation of the primary area. The purpose of designating a secondary area is to assure its compatibility and harmony with an adjacent, primary area.

12) **Streetscape:** Appearance from a public way, the distinguishing characteristics of which are created by the width of the street and sidewalks, their paving materials and color, the design of the street furniture (e. g., street lights, trash receptacles, benches, etc.) and use of plant materials such as trees and shrubs, and the setback, mass, and proportion of those buildings which enclose the street.

13) **Visual Compatibility:** Those elements of design that meet the guidelines set out in Section H of this Ordinance.

Section B. Historic Preservation Commission Establishment and Organization

1) **Creation:** There is hereby established the "Carmel Historic Preservation Commission", the Historic Preservation Commission of the City of Carmel, Indiana (hereinafter referred to as the "Commission").

2) **Composition:** The Commission shall consist of seven (7) voting members. The voting members shall be appointed by the Mayor, subject to the approval of the Carmel City Council, and shall be residents of the City who are interested in the preservation and development of historic areas. The members of the Commission shall be individuals in the disciplines of architecture, history, architectural history, preservation planning, those who have completed successful renovations of national register buildings while maintaining their designation, or other disciplines related to historic preservation, who are residents of the City. Nonvoting, advisory member(s) may be appointed to the Commission. Commission members shall serve without compensation, except for reasonable expenses incurred in the performance of their duties.

3) **Term:** Voting members shall serve for a term of three (3) years; however, the initial term of three (3) members shall be for one (1) year; the initial term for two (2) members will be two (2) years; and, the initial term for two (2) members will be three (3) years in order for the initial terms to be staggered. The term for nonvoting, advisory members shall be for three (3) years. Upon notice to the Commission Administrator of a vacancy on the Commission, the Administrator shall notify, in writing, the Mayor, the Clerk-Treasurer, and the President of the Carmel City Council, of such vacancy. Any such vacancy shall be filled within ninety (90) days of such written notice. When a vacancy occurs, the replacement shall serve for the duration of the term. The initial appointments to the Commission shall be made within ninety (90) days of the adoption of this Ordinance. At the conclusion of any term, the Commission member will continue to serve until that member is either re-appointed or until the appointment and approval of a replacement.

4) **Removal:** The members of the Commission serve at the pleasure of the Mayor and the Carmel City Council. Either the Mayor or the Carmel City Council may remove, or revoke the approval of, any member of the Commission for any cause.
   a. By the Mayor: The Mayor may remove a member of the Commission by notifying the member, in writing, of the removal. The Mayor shall also provide such notification of removal to the President of the Carmel City Council, and the Clerk-Treasurer.
   b. By the Council: The Carmel City Council may revoke approval of the appointment of a Commission member by a resolution, passed by a

majority of the Carmel City Council at a public meeting, revoking such approval. The President of the Carmel City Council shall notify the Commission member at least seven (7) days prior to the meeting at which the Carmel City Council will vote on such resolution.

c. Upon the removal or revocation of approval of any Commission member, that Commission member's position shall be considered vacant.

5) **Commission Administrator:** An administrator shall be designated by the Commission, subject to the approval of the Carmel City Council. The administrator shall provide staff assistance to the Commission, act as the Commission's secretary, and issue Certificates of Appropriateness as directed by the Commission. The administrator does not need to be a resident of the City, but must have extensive experience in matters pertaining to national register and national historic landmarks issues, historic properties and districts, or have served on a preservation commission in the past. The Commission administrator may be an employee of Historic Landmarks Foundation of Indiana Inc., through its Community Assistance Program ("CAP").

6) **Officers:** The Commission shall elect from its membership a Chair, Vice-Chair, and Treasurer who shall serve for one (1) year and who may be re-elected.

7) **Rules:** The Commission shall adopt rules consistent with the purpose of this Ordinance for the transaction of its business. The rules must include the time and place of regular meetings and a procedure for the calling of special meetings (48 hour notice).

8) **Meetings:** Commission meetings must be open to the public in accordance with Indiana's Open Door Law and a public record shall be kept of the Commission's resolutions, proceedings, and actions. The Commission shall hold regular meetings, at least monthly, except when it has no business pending. Special meetings may be called in a manner determined by the Commission and its rules.

Section C. Powers and Duties of the Commission

1) **Focus:** The Commission shall be concerned with those elements of development, redevelopment, rehabilitation, and preservation that affect visual quality in a historic district, which include but are not limited to viewsheds, landscapes, and streetscapes of historic importance. The Commission may not consider details of design, interior arrangements, or building features, if those details, arrangements, or features are not subject to public view, and may not make any requirement except for the purpose of preventing development, alteration, or demolition in the historic district obviously incongruous with the historic district.

2) **Surveys:** The Commission shall conduct surveys and establish historic districts in accordance with the provisions of Section D of this Ordinance. The

Commission may conduct additional surveys, and draw and submit additional maps for approval by the Carmel City Council, as it considers appropriate.

3) **Guidelines:** The Commission may adopt preservation guidelines and/or standards for architectural review. If adopted, preservation guidelines and standards shall be published and made readily accessible to the general public.

4) **Funds:** The Commission has the authority to receive funds in order to promote its stated purpose.

5) **Public Interest:** The Commission shall promote public interest in historic preservation by initiating and carrying on a public information and community education program.

6) **Powers:** The Commission, through this Ordinance, may:
   a. Acquire by purchase, gift, grant, bequest, devise, or lease any real or personal property, including easements, that is appropriate for carrying out the purposes of the Commission;
   b. Hold title to real and personal property; and
   c. Sell, lease, rent, or otherwise dispose of real and personal property at a public or private sale on the terms and conditions that the Commission determines in the City's best interests.

7) **Property:** The Commission shall establish procedures it shall follow in acquiring and disposing of property.

Section D. Historic Districts, Conservation Districts and Guidelines

1) **Historic Districts:** All recommendations for the establishment of a historic district shall be in the form of a written report and must be based on the criteria outlined in this Section. A recommendation for establishing a historic district may be initiated from either of the following two (2) sources:
   a. Based on its survey, the Commission may draw and submit historic district maps for City Council approval; or
   b. Owners of property in fee simple, wishing to establish a historic district which includes their property, may petition the Commission to consider drawing and submitting a map or maps of said property to the City Council for its approval. The Commission may establish in its rules criteria to be met before it considers a petition.

2) **Conservation Districts**:
   a. The Commission may recommend, and the City Council may provide, that the establishment of a historic district shall occur in two (2) phases. The first phase, which continues for a period of three (3) years from the date

the ordinance is adopted, shall be a Certificate of Appropriateness required for the following activities:

i. The demolition of any building;
ii. the moving of any building; or
iii. any new construction of a principal building or accessory building or structure subject to view from a public way.

b. At the expiration of the initial three (3) year period, the first phase of a conservation district continues and the second phase does not become effective if a majority of the property owners in the district object to the Commission, in writing, to the requirement that Certificates of Appropriateness be issued for the following activities:

i. A conspicuous change in the exterior appearance of historic buildings by additions, construction, alteration, or maintenance involving exterior color changes;
ii. A change in walls and fences or construction of walls and fences, if along public ways;
iii. A conspicuous change in the exterior appearance of non-historic buildings subject to view from a public way by additions reconstruction, alteration, or maintenance involving exterior color change.

c. The objections of a majority of the property owners must be received by the Commission not earlier than one hundred eighty (180) days, or later than sixty (60) days before the third anniversary of the adoption of the ordinance.

3) **Historic District Maps**: In order to establish a historic district, the Commission shall first prepare a map describing the district in accordance with the following:

a. The map shall be based on a survey conducted by the Commission which identifies historic buildings, structures, and sites located within the City;
b. A district may be limited to the boundaries of a property containing a single building, structure, or site;
c. The map may divide the district into primary and secondary areas as follows:

i. Primary Area: The principal area of historic and architectural significance; and
ii. Secondary Area: An area adjacent to a primary area which has a visual relationship to the primary area and could affect the preservation of the primary area. The purpose of designating a secondary area is to assure its compatibility and harmony with an adjacent primary area.

4) **Classification and Designation:** The Commission shall classify and designate on the map all buildings, structures and sites within each historic district described on the map. Buildings, structures, and sites shall be classified as historic or non-historic. Historic buildings, structures, and sites shall possess

identified historic or architectural merit of a degree warranting their preservation. The Commission shall further classify and designate all buildings and structures within a proposed historic district as follows:

a. Outstanding;
b. Notable; or
c. Contributing.

5) **Non-classified sites:** Non-historic buildings, structures, and sites are those not classified on the map as historic. In lieu of other classifications, the Commission may devise its own system of further classification of historic buildings, structures, and sites.

6) **Proposed Standards:** Along with the proposed historic district map, the Commission shall adopt proposed design and architectural standards for the areas and sites within the proposed historic district map.

7) **Council Approval:** Before a historic district is established and the building classifications take effect, the map setting forth the district's boundaries, proposed standards, and building classifications shall be submitted to and approved in an ordinance by the Carmel City Council.

8) **Notice:** The Commission shall provide notice to the general public of the public meeting where the presentation of a proposed historic district map to the Carmel City Council (the "Presentation Meeting") will take place.

   a. A legal notice of the Presentation Meeting shall be prepared by the Commission and advertised in a daily newspaper of general circulation in Hamilton County, not less than twenty-five (25) days prior to the meeting, not including the date of the meeting itself. For purposes of this section, a daily newspaper of general circulation in the county would include the Indianapolis Star. The Commission shall provide a copy of an affidavit from the publisher attesting to the publication of the Notice to the President of the Carmel City Council prior to the Presentation Meeting.
   b. The Commission shall also serve notice of the Presentation Meeting to owners of property within, adjoining and abutting the proposed historic district, including property across a public right-of-way. Such notification shall be by certified mail with return receipts requested, to the address listed on tax rolls for the owner(s) of the property. Notification must be sent not less than twenty-five (25) days prior to the Presentation Meeting, and must include the location, date, time, and place for the Presentation Meeting, and include a description of purpose of the presentation. The Commission shall be responsible for obtaining a certified list of the names and current addresses of property owners within, adjoining and abutting the proposed historic district from the records on file in the office of the Hamilton County Auditor in Noblesville, Indiana. Whenever any adjoining or abutting property lies across the county line, then the

Commission shall be responsible for obtaining a certified list of the names and current addresses of such adjoining and abutting property owners from the records on file in the office of the Boone County Auditor or Marion County Auditor, as the case may be.

c. The Commission shall also serve notice to the general public of the Presentation Meeting by placing signs within and along the perimeter of the proposed historic district. At least four (4) signs shall be placed for every square mile of area contained within the proposed historic district. The signs shall be placed in locations at the discretion of the Commission Administrator, but such locations should be chosen to maximize the opportunities for viewing by the general public. The signs shall be placed no less than twenty-five (25) days prior to the Presentation Meeting and removed no more than three (3) days after such meeting.

9) **Recording:** The map establishing boundaries of a historic district shall be recorded in the Office of the Hamilton County Recorder.

Section E. Interim Protection

1) **Designation:** When submitting a map to the Carmel City Council under Section D of this Ordinance, the Commission may declare one (1) or more buildings or structures that are classified and designated as historic on the map to be under interim protection.

2) **Written Notice:** Not more than two (2) working days after declaring a building, structure, or site to be under interim protection under this section, the Commission shall, by personal delivery or first class mail, provide the owner or occupant of the building, structure or site with a written notice of the declaration. The written notice must:
   a. Cite the authority of the Commission to put the building, structure, or site under interim protection under this section;
   b. Explain the effect of putting the building, structure, or site under interim protection; and
   c. Indicate that the interim protection is temporary.

3) **Duration:** A building or structure put under interim protection under subsection (1) remains under interim protection until the map is:
   a. Submitted to; and
   b. Approved in an ordinance by the Carmel City Council.

4) **Limitations:** While a building, structure, or site is under interim protection under this section:
   a. The building, structure, or site shall not be demolished or moved; and,
   b. The exterior appearance of the building, structure, or site shall not be conspicuously changed by:

i. Addition;
ii. Reconstruction; or
iii. Alteration.

5) **Pending Approval of Certificate of Appropriateness:** The Commission may approve a Certificate of Appropriateness at any time during the period of interim protection, provided the proposed change meets the criteria for considering effect of actions on historic buildings in Section F (4) of this Ordinance and any proposed preservation guidelines prepared for the building, structure, or site The Certificate of Appropriateness shall have no effect, and no action may be taken pursuant thereto, unless the map including the building, structure or site is approved by the City Council.

Section F. Certificates of Appropriateness

1) **Requirement**: A Certificate of Appropriateness ("COA") must be issued by the Commission before a permit is issued for, or work has begun on any of the following:

a. Within all areas of a historic district:
   i. The demolition of any building or structure;
   ii. The moving of any building or structure; or
   iii. The conspicuous change in the exterior appearance of any historic building or any part of or appurtenance to such a building, including walls, fences, light fixtures, steps, paving, and signs by additions, reconstruction, alteration, or maintenance involving exterior color change if cited by individual ordinance; or,
   iv. Any new construction of a principal building or accessory building or structure subject to view from a public way.

b. Within a primary area of a Historic District:
   i. A change in walls and fences or the construction of walls and fences along public ways; or
   ii. A conspicuous change in the exterior appearance of non-historic buildings subject to view from a public way by additions, reconstruction, alteration and/or maintenance involving exterior color change.

c. Within a Conservation District:
   i. The moving of any building;
   ii. The demolition of any building; or
   iii. The new construction of a principal building or accessory building or structure subject to view from a public way.

2) **Application for Certificates of Appropriateness**: An application for a COA shall be made in the office of the Commission or its designee on forms provided by that office. All applications shall be subject to the rules and requirements established by the Commission. Rules may include, but are not limited to, filing deadlines and application requirements such as sketches, drawings, photographs, descriptions, or other information which the Commission requires to make a decision.

3) **Approval or Denial of Certificates of Appropriateness**: The Commission may approve or deny COAs for any actions covered by this title. If an application for a COA is approved by the Commission, or is not acted on by the Commission within thirty (30) days after it is filed, a COA shall be issued. The Commission may grant an extension of the thirty-day limit if the applicant agrees to it. The Commission shall report its findings and the reasons for its decision in written form, and supply the applicant with a copy of its report, and of the right to appeal within seven (7) days of the adoption of the report. A copy of the COA shall be submitted with the application for a building or demolition permit. No building or demolition permit shall be issued unless a copy of the COA is provided by the applicant with the application.

4) **Criteria**: The Commission, in considering the appropriateness of any reconstruction, alteration, maintenance, or moving of a historic building, structure, site or any part of or appurtenance to such building or structure, including walls, fences, light fixtures, steps, paving, and signs shall require that such work be done in a manner that will preserve the historical and architectural character of the building, structure, or appurtenance. In considering historic and architectural character, the Commission shall consider, among other things, the following:
    a. Purposes of this title;
    b. Historical and architectural value and significance of the building, structure, site or appurtenance;
    c. Compatibility and significance of additions, alterations, details, materials, or other non-original elements which may be of a different style and construction date than the original;
    d. The texture, material, color, style, and detailing of the building, structure, site or appurtenance;
    e. The continued preservation and protection of original or otherwise significant structure, material, and ornamentation;
    f. The relationship of buildings, structures, appurtenances, or architectural features similar to one within the same historic district including for primary areas, visual compatibility as defined in Section H(2); and
    g. The position of the building or structure in relation to the street, public right-of-way and to other buildings and structures.

5) **Procedure for Demolition upon Denial of a Certificate of Appropriateness**:

a. The purpose of this section is to preserve historic buildings that are important to the education, culture, traditions, and economic values of the City and to afford the City, historical organizations, property owners, and other interested persons the opportunity to acquire or to arrange for the preservation of these buildings;

b. If the Commission denies the issuance of a Certificate of Appropriateness for the demolition of a building, structure, or site, a demolition permit may be issued by other agencies and a building, structure, or site may be demolished, but only after the property owner has demonstrated to the Commission that the historic building, structure, or site is incapable of earning any economic return on its value, as appraised by a licensed real estate appraiser.

c. Notice of the proposed demolition must be given for a period fixed by the Commission, based on the Commission's classification on the approved map, but not less than sixty (60) days nor more than one (1) year. Notice must be posted on the premises of the building or structure proposed for demolition in a location clearly visible from the street. In addition, notice must be published in a newspaper of general local circulation at least three (3) times before demolition, with the first publication not more than fifteen (15) days after the application for a permit to demolish is filed, and the final publication at least fifteen (15) days before the date of the permit.

d. The Commission may approve a Certificate of Appropriateness at any time during the notice period under subsection Section F(3). If the Certificate of Appropriateness is approved, a demolition permit shall be issued without further delay and demolition may proceed.

Section G. Staff Approvals

1) **Authority:** The Commission may authorize the staff of the Commission, on behalf of the Commission, to grant or deny an application for a COA.

2) **Rules:** The Commission shall specify by rule the types of applications for COA that the staff of the Commission is authorized to grant or deny. The staff may not be authorized to grant or deny an application for a COA for the following:
   a. The demolition of a building, structure, or site;
   b. The moving of a building or structure;
   c. The construction of an addition to a building or structure; or
   d. The construction of a new building or structure.

Section H. Visual Compatibility

1) **New construction, contemporary design, and non-historic buildings**: Such buildings shall preserve and encourage the integrity of historic buildings, structures, sites, monuments, streetscapes, and neighborhoods and ensure their compatibility with any new work. The construction of a new building or structure, and the moving, reconstruction, alteration, color change, major maintenance, or repair conspicuously affecting the external appearance of any non-historic building, structure, or appurtenance within the primary area shall be generally of a design, form, proportion, mass, configuration, building material, texture, color, and location on a lot compatible with other buildings in the historic district and with places to which it is visually related.

2) **Criteria for considering visual compatibility within historic primary areas**: Within the primary area of a historic district, new buildings, structures, as well as buildings, structures, and appurtenances that are moved, reconstructed, materially altered, repaired, or changed in color, shall be visually compatible with buildings and places to which they are visually related generally in terms of the following visual compatibility factors:

    a. Height: The height of proposed buildings must be visually compatible with adjacent buildings;
    b. Proportion of building's front facade: The relationship of the width of a building to the height of the front elevation must be visually compatible with buildings, squares, and places to which it is visually related;
    c. Proportion of openings within the facility: The relationship of the width of the windows to the height of windows in a building must be visually compatible with buildings, squares, and places to which it is visually related;
    d. Relationship of solids to voids in front facades: The relationship of solids to voids in the front facade of a building must be visually compatible with buildings, squares, and places to which it is visually related;
    e. Rhythm of spacing of buildings on streets: the relationship of a building to the open space between it and adjoining buildings must be visually compatible with buildings, squares, and places to which it is visually related;
    f. Rhythm of entrances and porch projections: The relationship of entrances and porch projections of a building to sidewalks must be visually compatible with buildings, squares, and places to which it is visually related;
    g. Relationship of materials, texture, and color: The relationship of the materials, texture, and color of the facade of a building must be visually compatible with buildings, squares, and places to which it is visually related;

h. Roof shapes: The roof shape of a building must be visually compatible with buildings, squares, and places to which it is visually related;
i. Wall of continuity: Appurtenances of a building or site, such as walls, wrought iron fences, evergreen landscape masses, and building facades, must form cohesive walls of enclosure along the street if necessary to ensure visual compatibility for the buildings and places to which it is visually related;
j. Scale of the building: The size of a building, and the building mass of a building in relation to open spaces, windows, door openings, porches, and balconies must be visually compatible with the buildings and places to which it is visually related;
k. Directional expression of front elevation: A building must be visually compatible with buildings, squares, and places to which it is visually related in its directional character, including vertical character, horizontal character, or non-directional character.

Section I. Preservation of Historical and Architectural Character Upon Alteration or Relocation Mandated

1) **Preservation:** A historic building or structure or any part of or appurtenance to such a building or structure, including stone walls, fences, light fixtures, steps, paving, and signs may be moved, reconstructed, altered, or maintained only in a manner that will preserve the historical and architectural character of the building, structure, or appurtenance.
2) **Relocation:** A historic building may be relocated to another site only if it is shown that preservation on its current site is inconsistent with subsection (1).

Section J. Maintenance

1) **Application of Requirements:** Historic buildings, structures, and sites shall be maintained to meet the applicable requirements established under I.C. §§ 36-7-11-1, *et seq.*, for buildings generally so as to prevent the loss of historic material and the deterioration of important character defining details and features.
2) **Ordinary repairs and maintenance:** Nothing in this section shall be construed so as to prevent the ordinary repairs and maintenance of any building, structure, or site, provided that such repairs or maintenance do not result in a conspicuous change in the design, form, proportion, mass, configuration, building material, texture, color, location, or external visual appearance of any structure, or part thereof.

Section K. Relationship with Zoning Districts

Zoning districts lying within the boundaries of the historic district are subject to regulations for both the zoning district and the historic district. If there is a conflict

between the requirements of the zoning district and the requirements of the historic district, the more restrictive requirements shall apply.

Section L. Paint Colors

In an ordinance approving the establishment of a historic district, the Carmel City Council may exclude changes in paint colors from the activities requiring the issuance of a Certificate of Appropriateness under Section F of this Ordinance before a permit may be issued or work begun.

Section M. Interested Parties

1) **Right to Enforce:** An interested party has a private right of action to enforce and prevent violation of provisions of this ordinance or an ordinance adopted by the City under this ordinance, and with respect to any building, structure, or site within a historic district, and has the right to restrain, enjoin, or enforce by restraining order or injunction, temporarily or permanently, any person from violating a provision of this ordinance or an ordinance adopted under this ordinance.
2) **Irreparable Harm:** The interested party does not have to allege or prove irreparable harm or injury to any person or property to obtain relief under this section.
3) **Bond:** The interested party bringing an action under this section does not have to post a bond unless the court, after a hearing, determines that a bond should be required in the interest of justice.
4) **Good Faith:** The interested party that brings an action under this section is not liable to any person for damages resulting from bringing or prosecuting the action unless the action was brought without good faith or without a reasonable belief that a provision of this ordinance, or an ordinance adopted by a unit under this ordinance, had been, or was about to be violated.
5) **Attorney Fees:** An interested party who obtains a favorable judgment in an action under this section may recover reasonable attorney fees and court costs from the person against whom judgment was rendered.
6) **Venue:** An action arising under this section must be brought in the Hamilton County Circuit or Superior Court and no change of venue from the county shall be allowed in the action.
7) **Available Remedies:** The remedy provided in this section is in addition to other remedies that may be available at law or in equity.

Section N. Enforcement, Penalties, and Judicial Review

1) **Penalty:** Any person, whether as principal, agent, owner, lessee, tenant, contractor, builder, architect, engineer, or otherwise, who violates any provision of this Ordinance shall be subject to a fine as follows for each offense:

a. Not less than ten dollars ($10.00) nor more than Two Thousand Five Hundred dollars ($2,500.00) for demolition;
b. Not more than Seven Thousand Five Hundred dollars ($7,500.00) for a second or subsequent violation.
c. Not less than Ten Dollars ($10.00) nor more than Three Hundred Dollars ($300.00) for all other offenses.

2) **Separate Offense:** Each day of the existence of any violation of this ordinance shall be a separate offense.
3) **Nuisance:** The erection, construction, enlargement, alteration, repair, demolition, color change, moving, or maintenance of any building, structure, or appurtenance which is begun, continued, or maintained contrary to any provisions of this ordinance is hereby declared to be a nuisance and in violation of this ordinance and unlawful.
4) **Injunctive Relief:** The City may institute a suit for injunction in the Hamilton County Circuit or Superior Courts to restrain any person or government unit from violating any provision of this ordinance and to cause such violation to be prevented, abated, or removed. Such action may also be instituted by any property owner who is adversely affected by the violation of any provision of this chapter. Further, the Commission is authorized to seek an injunction against the City to prevent the issuance of any building permits or Certificates of Occupancy to any individual, builder, or principle of a corporation found to have committed a second or subsequent violation of this Ordinance.
5) **Cumulative Remedies:** The remedies provided for in this section shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.
6) **Appeal:** Any person or party aggrieved by a final decision or action taken by the Commission shall be entitled to an initial appeal to the Carmel City Council. Such appeal shall be initiated within fourteen (14) days of the final decision of the Commission by the aggrieved party or person. Such appeal will suspend the Commission's otherwise final decision until the appeal is heard by the Carmel City Council. The request for appeal shall be submitted, in writing, to the Clerk-Treasurer and the President of the Carmel City Council. The Carmel City Council shall, within forty-five (45) days of the written request for review, at a public meeting, allow the aggrieved person or party and the Commission to be heard as to the propriety of the Commission's decision. The Carmel City Council may modify, affirm, or reverse the Commission's decision by a resolution supported by a majority vote. If the Carmel City Council is unable to pass such a resolution, the original decision of the Commission shall become the final decision. After such an appeal, the decision of the Commission or the resolution of the Carmel City Council, as the case may be, shall be the final decision of the Commission, subject to judicial review under I.C. § 36-7-11-4(h), as if such decision was a final decision by a board of zoning appeals in accordance with I.C. § 36-7-4-1016.

Section O. Severability

If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected."

Section 3. All other current provisions of City Code Chapter 2, Article 5, shall remain in full force and effect and are not affected by this Ordinance.

Section 4. All prior ordinances or parts thereof inconsistent with any provision of this Ordinance are hereby repealed, to the extent of such inconsistency only, as of the effective date of this Ordinance. However, the repeal or amendment by this Ordinance of any other ordinance does not affect any rights or liabilities accrued, penalties incurred or proceedings begun prior to the effective date of this Ordinance. Those rights, liabilities and proceedings are continued and penalties shall be imposed and enforced under such repealed or amended ordinance as if this Ordinance had not been adopted.

Section 5. If any portion of this Ordinance is for any reason declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance so long as enforcement of same can be given the same effect.

Section 6. This Ordinance shall be in full force and effect from and after its passage and signing by the Mayor and such publication as is required by law.

PASSED by the Common Council of the City of Carmel, Indiana, this 19th day of December, 2011, by a vote of 6 ayes and 1 nays.

COMMON COUNCIL FOR THE CITY OF CARMEL

Presiding Officer

Joseph C. Griffiths

W. Eric Seidensticker, President Pro Tempore

Kevin Rider

John V. Accetturo

Richard L. Sharp

OPPOSED
Ronald E. Carter

Luci Snyder

ATTEST:

Diana L. Cordray, IAMC, Clerk-Treasurer

Presented by me to the Mayor of the City of Carmel, Indiana this 20th day of December, 2011, at 2:59 P.M.

Diana L. Cordray, IAMC, Clerk-Treasurer

Approved by me, Mayor of the City of Carmel, Indiana, this 28 day of December 2011, at 9:25 AM.

James Brainard, Mayor

ATTEST:

Diana L. Cordray, IAMC, Clerk-Treasurer

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