

City of Houston, Texas, Ordinance No. 2007-658

AN ORDINANCE AMENDING SECTION 44-5 AND ADDING SECTION 44-29 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO THE EXEMPTION OF CERTAIN HISTORIC SITES FROM AD VALOREM TAXATION; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; CONTAINING A SAVINGS CLAUSE; AND DECLARING AN EMERGENCY.

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WHEREAS, Article VIII, Section 1-f of the Texas Constitution permitted the Legislature of the State of Texas to provide for the preservation of historical resources by authorizing political subdivisions to grant exemptions or other relief from ad valorem taxes on appropriate property; and

WHEREAS, in response to such Constitutional authorization, the Legislature enacted Section 11.24 of the Tax Code allowing the governing body of a taxing unit to exempt part or all of the assessed value of a historic structure or a structure designated as a historically significant site in need of tax relief to encourage its preservation, together with the land necessary for access to and use of the structure; and

WHEREAS, the City Council finds that tax relief is needed to encourage the preservation of historic structures within the City; and

WHEREAS, the City Council of the City of Houston has adopted an ordinance providing for the designation of historic sites by the City Council; and

WHEREAS, pursuant to Section 11.24 of the Tax Code, the City Council of the City of Houston adopted Section 44-5 of the Code of Ordinances to provide tax relief in the form of an ad valorem tax exemption for certain historic structures; and

WHEREAS, the legislature has provided in Section 351.101 of the Tax Code that municipal hotel occupancy taxes may be used to promote historical restoration and preservation projects; **NOW, THEREFORE**,

* * * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. The findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as a part of this Ordinance.

Section 2. Section 44-5 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"Section 44-5. Tax relief for the restoration or preservation of historical sites

(a) The city council may, by ordinance, grant tax relief in the form of an exemption from ad valorem taxation to any "historic site," which for purposes of this section means a structure that has been designated as a landmark or as a contributing structure or a potentially contributing structure in a historic district pursuant to article VII of chapter 33 of this Code. The historic site must meet the first of the following qualifications, and, in the case of any historic site that is designated as a potentially contributing structure, the second qualification:

(1) At any time following the designation of the historic site by the city council pursuant to article VII of chapter 33 of this Code, the owner must perform restoration or preservation of the historic site to encourage its preservation. The work performed must be at a cost of at least 50 percent of the assessed value of the historic structure or improvements, not including the value of any land associated with the historic site. The required expenditure shall be determined by the director of finance and administration, based upon the assessed value of the historic structure or

improvements not including the value of any land associated with the historic site prior to the work ("the base value"). Only expenditures made for work performed either following or within five years of the designation of the property by the city council pursuant to article VII of chapter 33 of this Code may be applied.

(2) For a potentially contributing structure, the restoration or preservation made or proposed to be made must have the effect of reversing incompatible alterations or deteriorating conditions of the structure, as evidenced by a certificate of appropriateness issued by the Houston Archaeological and Historical Commission.

The denial of any application for a certificate of appropriateness under article VII of chapter 33 of this Code shall be grounds for denial or revocation of any tax exemption authorized by this ordinance.

(b) Each historic site for which a tax exemption is sought must meet the applicable qualifications set out in subsection (a) hereof. The historic site must not be or have been the subject of a certificate of appropriateness, as defined in section 33-201 of this Code, issued pursuant to sections 33-247 or 33-250 of this Code, which shall be grounds for denial or revocation of the exemption. Each owner desiring the tax exemption must make sworn application to the director of finance and administration of the city. The application shall be in a form approved by the director of finance and administration and shall set forth facts sufficient to show that the historic site is eligible for tax relief hereunder.

(c) An exemption granted hereunder by the city council shall exempt the historic structure or improvements not including the value of any land associated with this historic site from ad valorem taxation on the basis of qualifying expenditures made for bona fide restoration or preservation, as determined by the director of finance and administration upon demonstration by the owner. The exemption shall be computed on the following basis:

(1) If the said qualifying expenditures are at least 50 percent but less than 100 percent of the base value, then the exemption for each tax year on the assessed value of the structure shall be equal to the amount of the qualifying expenditures; or

(2) If the said qualifying expenditures are 100 percent or more of the base value of the improvements, then the exemption for each tax year shall be one hundred percent of the assessed value of the historic structure or improvements not including the value of any land associated with this historic site.

In any event, however, the exemption granted to any historic site pursuant to this section shall be subject to a limitation in the form of a maximum dollar amount. The maximum dollar amount shall be the assessed value of the historic structure in the year following demonstration of completion of the restoration or preservation work and demonstration of the qualifying expenditures to the director of finance and administration. The amount of the exemption allowed on a historic structure shall not exceed the aforesaid maximum dollar amount in any tax year for the duration of the exemption period.

The duration of the aforesaid exemption shall be for a period of 15 years if the restoration project receives no financial incentive from the city funded by municipal hotel occupancy taxes, or ten years if the restoration project receives a financial incentive from the city funded by municipal hotel occupancy taxes. The exemption shall begin on January 1 of the year following the date that the director of finance and administration makes the determination that the owner of the historic site has met all of the requirements of this section for an exemption.

The director of finance and administration, in consultation with the planning official, shall establish and promulgate written procedures for the implementation of the exemption provided herein and the review of applications, and the said officials shall jointly make a recommendation to the city council regarding each application that is duly submitted for consideration.

(d) An exemption granted under this section shall be effective as of January 1 of the year following demonstration of completion of the restoration or preservation work and demonstration of the making of the qualifying expenditures to the director of finance and administration. If sufficient restoration work on a designated historic site has not been completed to satisfy either subdivision one or two of subsection (c) above within five years of the passage of a historic site tax exemption ordinance, then said ordinance shall expire. After the expiration of any such ordinance under the terms of this provision, upon a showing of good cause for the delay, the owner of the historic site may apply for a new tax exemption ordinance.

(e) The exemption shall be automatically continued as of January 1 of each year succeeding the year the exemption was first granted for the duration of the ten or 15 year period. The exemption shall be continued in the event of a transfer of an ownership interest or a portion of an ownership interest in the historic structure during such ten or 15 year period. However, the exemption shall be terminated in the event of a second transfer of an ownership interest or a portion of an ownership interest in a historic structure, other than a single-family property containing no more than four residential units, during

such ten or 15 year period. In the case of a condominium or other multi-family residential building, the second transfer of an ownership interest or a portion of an ownership interest in an individual unit shall cause the termination of the exemption pertaining to that particular unit. As used in this section, a "transfer" of an ownership interest or portion of an ownership interest shall not include such transfers as a lease, a mortgage, a transfer by inheritance, a creation of a trust for the benefit of the owner, or other transaction not ordinarily regarded as a "sale" of property.

A person who has an ownership interest in property that has been granted a historic site exemption from ad valorem taxation shall record a copy of the ordinance providing for such exemption in the real property records of the county in which the property is located. Failure on the part of the applicant to deliver a copy of such recorded ordinance, showing the date of recordation in the appropriate real property records, to the director of finance and administration within 90 days of the date of passage of the ordinance providing for a tax exemption shall cause the expiration of the exemption at the end of such 90-day period.

(f) The director of finance and administration shall conduct an annual review of each property granted an exemption hereunder, and, if he finds that any city taxes assessed on the subject property are delinquent, the historic site has deteriorated, has been demolished or destroyed, or has been the subject of a certificate of appropriateness issued pursuant to sections 33-247 or 33-250 of this Code, then the changed condition shall constitute grounds for revocation of the exemption.

(g) Tax receipts and tax certificates issued for any historic site receiving tax relief pursuant to this section shall be clearly marked : "Historic site--Subject to recapture of additional taxes under Code of Ordinances." Each year during which the property is granted tax relief, the director of finance and administration shall note on his records the valuation which would have been made and the taxes that would have been due had the historic site not qualified for tax relief under this section. If the historic site is subsequently damaged, demolished, or destroyed, or if a certificate of appropriateness is issued for the historic site pursuant to sections 33-247 or 33-250 of this Code, then the property shall be subject to a recapture of taxes and subject to penalties and interest calculated under pertinent provisions of the Texas Tax Code. The additional tax shall be equal to the difference between taxes paid or payable hereunder and the amount of the tax payable for the preceding fifteen years had the property not been granted tax relief. Such additional taxes shall be deposited in a segregated account, the use of which shall be established by City Council by a subsequent ordinance. Until paid, there shall be a lien for additional taxes, penalty, and interest on the property granted tax relief under the provisions of this section. An obligation to pay

recaptured taxes is extinguished by operation of force majeure. Force Majeure means: fires, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts, riots, and the acts of superior governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application, bankruptcy or an event that merely makes performance more difficult, expensive or impractical.

(h) A historic site for which an exemption has expired or has been withdrawn, revoked, or terminated may not requalify hereunder except as allowed under subsection (d).

(l) It is the policy of the city to facilitate the issuance of building permits for work to be performed under this section. Consistent with the terms of the Construction Code, the building official shall work with persons who are performing preservation and restoration work to allow alternative methods of construction and alternative materials that are determined to be suitable under the provisions of the Construction Code and shall waive strict conformance with the Construction Code as authorized by Section 3406.1 of the Building Code.

(j) Notwithstanding any other provision of this code, a structure that has been designated as a landmark or as a contributing structure or a potentially contributing structure in a historic district pursuant to article VI of chapter 33 of this Code and that is owned by the State of Texas or a political subdivision thereof is entitled to an exemption equal to 100 percent of the assessed value of the historic structure and the land necessary for access and use of such structure. If an application for an exemption pursuant to this subsection is granted prior to the adoption of the ad valorem tax rate for the tax year in which the application is granted, the exemption shall be effective as of January 1 of that tax year. If such an application is granted after the adoption of the ad valorem tax rate for the tax year in which the application is granted, the exemption shall be effective as of January 1 of the tax year following the date the application was granted. An exemption granted pursuant to this subsection shall remain effective until the property is sold. The director of finance and administration shall conduct an annual review of each property granted an exemption pursuant to this subsection, and if he finds that a historic site has deteriorated or has been demolished or destroyed, then such changed condition shall constitute grounds for revocation of the exemption."

Section 3. That Section 44-29 of the Code of Ordinances, Houston, Texas, is

hereby added to read as follows:

"Section 44-29. Tax relief for significant historic structures

(a) The city council may, by ordinance, grant tax relief in the form of an exemption from ad valorem taxation to any significant historic structure, that:

- (1) Is at least 50 years old;
- (2) If a residence, the structure:
 - A. Was originally built and used for non-residential purposes and
 - B. Now contains more than four residential units;
- (3) Has received a city protected landmark designation under article VII of chapter 33 of this Code; and
- (4) Has been designated as a Recorded Texas Historical Landmark, or is individually listed in the National Register of Historic Places, or has been mentioned as having historic significance in an authoritative survey conducted by a non-profit or government agency.

(b) For purposes of this section, any property that meets the criteria in subsection (a) is a significant historic structure. Each significant historic structure must obtain a 75% approval of the members of the Houston Archeological and Historical Commission present at a regularly scheduled meeting. The Houston Archeological and Historical Commission shall review the applications for tax relief for significant historic structures on an annual basis to determine whether the eligibility standards of subsection (a) are met. Each owner desiring the tax exemption must make sworn application to the director of finance and administration of the city. The application shall be in a form approved by the director of finance and administration and shall set forth facts sufficient to show that the significant historic structure is eligible for tax relief as described in this section.

(c) An exemption granted by city council upon recommendation of the Houston Archeological and Historical Commission shall exempt from ad valorem taxation the significant historic structure, improvements and land associated with this significant historic structure from ad valorem taxation. The exemption shall be computed on the following basis:

100 percent of the appraised value of the structure, improvements

and the land necessary for access to and use of the significant historic structure per year may be exempt from ad valorem taxation. If the significant historic structure is owned by more than one owner, then the total tax reduction shall be pro-rated among the various multiple owners, in proportion to the appraised value of each owner's respective ownership interest in the structure to the total appraised value of all the owners' ownership interests in the structure. Under no circumstances may the exemption for any one structure result in a tax reduction of greater than \$30,000 for any tax year.

City Council from time to time may, by ordinance, exempt properties from the maximum limit established above so long as the properties meet the criteria required for this exemption. The duration of the aforesaid exemption shall be for the duration of compliance with subsection (a) of this section. The exemption shall begin on January 1 of the year following the date that the exemption is granted by city council.

The director of finance and administration, in consultation with the planning official, shall establish and promulgate written procedures for the implementation of the exemption and the annual review of applications, and these officials shall jointly make a recommendation and submit the recommendation of the Houston Archeological and Historical Commission to the city council regarding each application that is duly submitted for consideration.

(d) The exemption shall be automatically continued as of January 1 of each year succeeding the year the exemption was first granted until the criteria in subsection (a) of this section are no longer met. The exemption shall be continued in the event of a transfer of an ownership interest or a portion of an ownership interest in the significant historic structure during such period.

A person who has an ownership interest in property that has been granted a significant historic structure exemption from ad valorem taxation shall record a copy of the ordinance providing for the exemption in the real property records of the county in which the property is located.

(e) The director of finance and administration shall conduct an annual review of each property granted an exemption as a significant historic structure, and, if he finds that:

- (1) Any city taxes assessed on the subject property are delinquent;
- (2) The owner or, in the case of multiple owners, any of the multiple owners is delinquent on city taxes on any other property;

- (3) The significant historic structure has deteriorated, has been relocated, demolished or destroyed; or
- (4) The site no longer meets the requirements of section (a) of this ordinance;

then the changed condition shall constitute grounds for revocation of the exemption.

The director of finance and administration shall give a 90-day notice to the owner of a significant historic structure prior to any revocation of the exemption granted pursuant to this section. The purpose of such notice shall be to allow the owner an opportunity to correct the changed condition.

(f) Tax certificates issued for any significant historic structure receiving tax relief pursuant to this section shall be clearly marked: 'Significant Historic Structure --Subject to recapture of taxes under Code of Ordinances.' Each year during which the property is granted tax relief, the director of finance and administration shall note on his or her records the valuation that would have been made and the taxes that would have been due had the significant historic structure not qualified for tax relief under this section. If the property has a changed condition described under subsection (e) of this section or no longer meets the requirements of subsection (a) of this section, then the property shall be subject to a recapture of taxes and subject to penalties and interest calculated under pertinent provisions of the Texas Tax Code. The additional tax shall be equal to the amount of the tax payable for the preceding fifteen years had the property not been granted tax relief. Such additional taxes shall be deposited in a segregated account, the use of which shall be established by City Council by a subsequent ordinance. Until paid, there shall be a lien for additional taxes, penalty, and interest on the property granted tax relief under the provisions of this section. An obligation to pay recaptured taxes is extinguished by operation of force majeure. Force Majeure means: fires, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts, riots, and the acts of superior governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application, bankruptcy or an event that merely makes performance more difficult, expensive or impractical.

(g) This exemption is not available to any qualifying significant historic structure that has been acquired or improved in whole or in part by a city funded economic development grant or loan, tax increment reinvestment zone financing or funding, tax abatement agreement, or acquired or improved as the subrecipient of a federally funded economic development grant or loan agreement.

(h) The owner of a historic site that receives an exemption under section 44-5 of this code may apply for and receive an exemption as a significant historic structure if it meets the requirements under this section."

Section 4. The City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter thereof have been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 5. If any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 6. This Ordinance shall apply to City of Houston taxes levied for 2007 and thereafter. The provisions of Section 44-5 of the Code of Ordinances, Houston, Texas, as it read after the effective date of City of Houston Ordinance No. 2002-838 and prior to the effective date of this Ordinance, shall be saved from repeal for the limited purpose of their continued application to tax exemptions granted under City of Houston Ordinance

Number 2002-838. All tax exemptions granted by ordinance under City of Houston Ordinance Number 2002-838 shall continue in the amount and for the term established in each ordinance. Any owner of a designated historic site that has applied to the City of Houston for a historic site tax exemption prior to the effective date of this Ordinance and has not received approval of the exemption from City Council shall be deemed to have applied for a historic site tax exemption under the provisions of this Ordinance.

Section 7. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on that date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 6th day of June, 2007.

APPROVED this 6th day of June, 2007.



Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is JUN 12 2007.

City Secretary

Prepared by Legal Dept. 

Sumlea Kapori Mahendru
Assistant City Attorney

Requested by the Mayor

CAPTION PUBLISHED IN DAILY COURT

REVIEW

DATE:

JUN 12 2007

AYE	NO	
✓		MAYOR WHITE
••••	••••	COUNCIL MEMBERS
✓		LAWRENCE
✓		JOHNSON
✓		CLUTTERBUCK
✓		EDWARDS
	✓	WISEMAN
✓		KHAN
✓		HOLM
✓		GARCIA
✓		ALVARADO
✓		BROWN
✓		LOVELL
	ABSENT	GREEN
✓		BERRY
CAPTION	ADOPTED	