REVISITING THE HISTORIC PRESERVATION ORDINANCE:

WHAT WORKS, WHAT DOESN'T, AND IS THERE AN OPTIMAL SOLUTION?

by

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(Under the Direction of James K. Reap)

ABSTRACT

The inclusion of historic preservation into city and county codes, or ordinances, was due in part to the passage of the National Historic Preservation Act of 1966 (NHPA). This thesis is an examination of how different communities have interpreted preservation at the local level via the inclusion of a historic preservation ordinance into municipal and/or county code. Because all preservation begins at the local level, an attempt has been made to identify the optimal parts, or inclusions, in a municipal or county historic preservation ordinance. A brief legal basis for the use of preservation ordinances is included, as is an examination of existing preservation codes, and ordinance data gathered by the National Alliance of Preservation Commissions. The optimal ordinance inclusions are provided in the final chapter.

INDEX WORDS: Historic preservation ordinance, Preservation ordinance, Thesis, Graduate school, Student, Master of Historic Preservation, The University of Georgia

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DEDICATION

The author wishes to dedicate her thesis to her parents, Marlece and Howard Duncan.

The author and her father, Howard Duncan
Seattle, Washington (1966)

The author and her mother, Marlece Hébert Duncan
Camano Island, Washington (1966)

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CHAPTER 1

INTRODUCTION

There exist an infinite variety of derogatory opinions about modern planning.[1]

Although speaking to the effects of Western Europe's mid-to-late-19th century version of urban renewal (e.g., the removal of Vienna's city wall in order to create the Ringstrasse) Camillo Sitte's words ring as true today as they did in 1889. The methodologies used by a government to mandate how their community will create and regulate its built environment always have had its share of critics. The current state of debate and criticism in the State of Georgia was recently summarized by Dan Reuter, President of the Georgia Planning Association:

> Almost 50 years ago Georgia adopted a Planning and Zoning Enabling Act which remained until the 1983 Constitution. But only in the past 10 years has Georgia made substantial progress towards real community planning… Through new regulations, design standards and various public-private partnerships, communities across the state…are being renewed with urban densities, street level retail and walkable streets. Many developers are now reinvesting in historic urban centers…Now is the time to forge partnerships with natural allies in government, non-profits and community groups to look at good models for new development,
> rural protection and greenspace acquisition…[2]

The interwoven nature of historic preservation and planning was not apparent to me before I began my graduate preservation studies at the University of Georgia. As someone who has been interested in 'old stuff' from a young age, who has watched *This*

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[1] Sitte, Camillo. 1889. *The Birth of Modern City Planning (Der Säadtebau nach seinen kÜnstlerischen Grundsätzen).* Vienna. Translation by George R. Collins and Christiane Crasemann Collins, Mineola, New York: Dover Publications, Inc., 2006: 223.

[2] Reuter, Dan. 2006. The State of Planning in Georgia 2006, *Georgia Planner*, December 2006: 2.

Old House since its inception, and who has been a member of the National Trust for Historic Preservation since the early 1990s, I thought I understood historic preservation. Living in Fairfax County, Virginia for four years and watching the constant pull between preservation groups, property rights groups, and local governments gave me a glimpse of the marriage between planning and preservation; however, it was not until fall 2005 that I realized preservation ordinances were a subset of city zoning.

The seed for this thesis was planted during Dr. Maryanne Akers' graduate City Planning course at the University of Georgia. During a lecture about ordinances, Dr. Akers made the comment that it is common for local governments to adopt an ordinance already in use by another city or county government. The ordinance may not be thoroughly analyzed before adoption, and, as a result, a local or county government will have codes on their books that are inappropriate for their community. While some cities (such as Charleston, South Carolina) added historic protections to their zoning ordinances decades before the passage of the National Historic Preservation Act in 1966, the majority of U.S. cities and counties did not incorporate historic preservation until more recently when a site or building was threatened or lost (e.g., Seattle in 1971 after rescue of the Pike Place Market).

Preservation groups and governments of all sizes have retained all manner of historic fabric in the United States; however, public education about preservation has not kept pace. As a result, there is a disconnect in the public mind as to how preservation functions at the national, state, and local levels. Lawmakers are not immune to insufficient preservation education, and combined with the practice of adopting codes already in use by other communities, they may inadvertently create preservation

ordinances that are vague, inappropriate or that cannot stand up to judicial scrutiny. The city of Lakewood, Washington provides an excellent example of an inappropriate adoption.

Lakewood, Washington is a community of 58,211 residents as of the 2000 U.S. Federal Census. Located 35 miles south of Seattle at the base of Puget Sound, it is a small city which has had a long association with three nearby military bases: Fort Lewis, Fort Steilacoom and McChord Air Force Base. One of the most prominent historic properties in Lakewood is Thornewood, a 31,000 square foot Tudor-style mansion completed in 1912 at a cost of $1 million.

In order to move its preservation efforts forward, Lakewood became a Certified Local Government and its city council adopted the preservation codes of the City of Seattle in 2000. Seattle's codes are discussed in more detail in Chapter 3. For the purposes of this

discussion, however, it should be noted that Seattle's codes are very detailed, and among other provisions they allow for the creation of seven historic district commissions, one for each historic district within the city.

Shortly after adoption, a Certificate of Appropriateness application (COA) came before Lakewood's Historic District Commission (HDC). It was during the process of reviewing this COA application that the HDC realized they could not properly review it because of incompatibilities between the preservation code and other city ordinances. The City Council was notified, the COA resolved, and according to a State of Washington preservation official, the Lakewood City Council is, as of this writing, still in

the process of unadopting the portions of Seattle's preservation code that do not pertain to their community.

Methodology

Even a cursory look through the Municode website[3] reveals that there are as many ways to incorporate historic preservation into city or county ordinances as there are cities and counties. Some communities create distinct preservation sections, while others integrate the text into existing land development, property management, demolition or zoning code[4]. The intent of this thesis is not to create a model ordinance. Rather, the intent is to illustrate a thought process that may be used to create individual ordinance elements.

A three-tiered process was used investigate the integration of historic preservation into local ordinances:

1. The National Alliance of Preservation Commissions[5] conducted a state ordinance telephone survey in 2002, and approached the author with the possibility of performing an updated survey on their behalf. In return, the NAPC would allow the results to be included in this thesis.[6] Knowledgeable professionals representing a cross section of the country – state CLG Coordinators,[7]

[3] "Online Library," http://www.Municode.com.

[4] The words "code" and "ordinance" will be used interchangeably in the text.

[5] "The NAPC is the only organization devoted solely to representing the nation's preservation design review commissions. NAPC provides technical support and manages an information network to help local commissions accomplish their preservation objectives. The Alliance also serves as an advocate at federal, state and local levels of government to promote policies and programs that support preservation commission efforts." (Excerpt from the NAPC website, http://www.uga.edu/sed/pso/programs/napc/napc.htm.) The NAPC is based at the University of Georgia, Athens, Georgia.

[6] All survey documents and results are in the possession of the NAPC.

[7] The Certified Local Government, or CLG, program was created by the National Park Service in 1966 and amended in 1980. Through this program, local governments go through a formal certification process and when completed, they are expected to take a lead role in the identification, evaluation, registration, and preservation of the historic buildings, sites, structures and objects under their jurisdiction. A CLG community is also expected to promote the integration of local preservation into local community planning and decision-making. CLG programs are partnerships between local communities, their respective state

independent preservation consultants, state and local preservation professionals – were contacted in order to learn how preservation ordinances 'work' or 'don't work' in their respective cities or states. The survey contact list was provided by Drane Wilkinson, NAPC Program Coordinator, and the goal was to obtain information from individuals who could provide insight into their state or locality. The interviews were conducted at NAPC's office between January and March 2007

2. Ordinances from cities and counties throughout the United States were randomly selected and reviewed. Some cities, such as Phoenix and Seattle, were selected on the basis of their national reputations. Other locales, such as Pittsburgh, Denver, and Loudoun County, Virginia, were selected on the basis of the author's personal experience with those communities. Ordinances for communities whose names arose during the telephone survey, such as Liberty, Missouri, were also reviewed.

3. The ordinance information provided by the National Park Service; the National Trust; the National Conference of State Legislatures; the National Alliance of Preservation Commissions, CLG offices, State Historic Preservation Offices (SHPOs)[8] and the California Preservation Press were reviewed.

4. Finally, publications and articles pertaining to city planning, rural planning, historic viewsheds, and cultural landscapes were reviewed for appropriate content.

Why now?

Because of the innumerable differences between cities and counties within the United States, an optimal ordinance may not be possible but there may very well be an optimal thought process that can be used to create one. But is it necessary to discuss an optimal thought process now? Sanitation codes, the portion of city codes that regulate issues such as garbage collection and sewerage, are necessary to a clean, well-run

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preservation offices, and the National Park Service, the national agency responsible for administering the National Historic Preservation Program. Additional information can be found on the National Park Service CLG Program website, http://www.cr.nps.gov/hps/clg/clg_p.htm.

CLG Coordinators are the individuals at state level who assist and train local governments. Every U.S. state has one CLG Coordinator.

[8] State Historic Preservation Offices, or SHPOs, were created by the National Historic Preservation Act of 1966. Every state has a SHPO and they are responsible for assisting citizens, institutions, local governments and state/federal agencies with the identification, evaluation, and protection of the historic structures, buildings, sites and objects within their state. SHPOs are also responsible for carrying out state and federal preservation programs.

community; however, sanitation is viewed as a necessity while preservation is often seen as a luxury. In their article "The Rise of the Megapolitans,"[9] Lang and Nelson state that the 100 million additional residents expected in the United States by the year 2040 will have to live somewhere, and the likely locations are within "super regions" (see page 7). One of the points made by Lang and Nelson is that these "super regions" will add pressure to the local, county, and state zoning ordinances already in place if ordinance reviews are not undertaken by the affected regions. If preservation codes are weak, inappropriate or non-existent in these "super regions," historic fabric may be at risk because of housing and infrastructure developments. If we believe the year 2040 scenario predicted by Lang and Nelson will come to pass, and if we believe Dan Reuter's words on page 1 – "Now is the time to forge partnerships with natural allies in government, non-profits and community groups to look at good models for new development, rural protection and greenspace acquisition..." – then 2007 is a very good time to discuss the thought process behind the creation of preservation ordinances.

[9] Lang, Robert E. and Arthur C. Nelson, FAICP. 2007. The Rise of the Megapolitans, *Planning*, January 2007: 8-12.

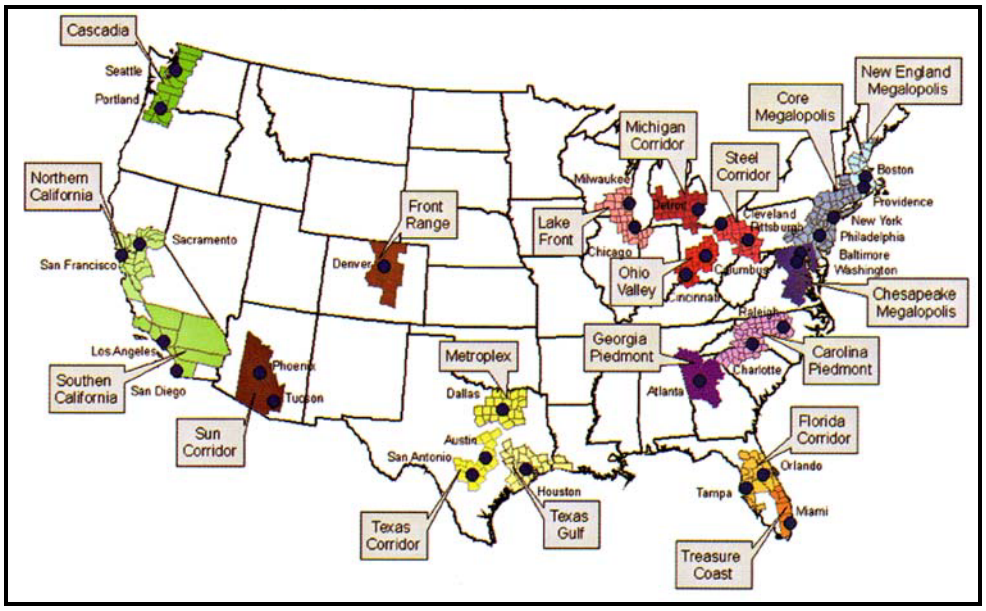

Figure 1: "Megapolitan America - September 2006" by the University of Pennsylvania. *Used by permission of Robert E. Lang and Arthur C. Nelson, FAICP of the Metropolitan Institute, Alexandria, Virginia campus of Virginia Technical & Agricultural University.*

CHAPTER 2

LEGAL FRAMEWORK

> If historical elements are not correctly integrated into daily life…the past will become both a cultural stumbling block and burdensome to the public.[1]

Grassroots preservation has taken place in the United States since Ann Pamela Cunningham sailed past a dilapidated Mount Vernon, mobilized a network of women, and founded the Mount Vernon Ladies' Association in 1854. Preservation took a back seat during Civil War, Reconstruction and late 19th century economic depressions, but it returned to the radar screen in 1910 with the establishment of the Society for the Preservation of New England Antiquities (SPNEA), now known as Preservation New England, Inc. Some governments overcame their respective stumbling blocks and passed preservation ordinances long before the U.S. Supreme Court validated historic landmark designation *(Penn Central)*[2] or the use of zoning (*Euclid)*[3]. The ordinances passed by Charleston (1931) and New Orleans (1925 and 1936) are more famous, but Hawaii passed an anti-billboard ordinance in 1927, long before statehood. Additionally, the City and County of Honolulu passed its first sign regulation ordinance in 1957.

In the wake of urban renewal, The National Historic Preservation Act (NHPA) was passed in 1966 and defined the need for historic preservation in the U.S.,

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[1] Cohen, Nahoum. 2001. *Urban Planning Conservation and Preservation*. New York: McGraw Hill: 11-13.

[2] *Penn Central Transportation Company v. City of New York*, 438 U.S. 104 (1978).

[3] *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926).

> …although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.[4]

The Act also defined the term "historic preservation" on a national level,

> The term "historic preservation" includes the protection, rehabilitation, restoration, and reconstruction of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, or culture.[5]

Updated over the past 40 years, the NHPA has established a framework which state governments could follow in the creation of their state historic preservation offices (SHPOs), historic commissions and ordinances. Included in this framework is the following:

> Section 101(c) (1): Any State program approved under this section shall provide a mechanism for the certification by the State Historic Preservation Officer of local governments to carry out the purposes of this Act…Any local government shall be certified to participate under the provisions of this section if the applicable State Historic Preservation Officer, and the Secretary, certifies that the local government-
>
> (A) enforces appropriate State or local legislation for the designation and protection of historic properties;
>
> (B) has established an adequate and qualified historic preservation review commission by State or local legislation;
>
> (C) maintains a system for the survey and inventory of historic properties that furthers the purposes of subsection (b);

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[4] *National Historic Preservation Act of 1966*, Section 100(d), Public Law 89-665. 80 part 1 U.S. Statutes At Large 915-919 (1966).

[5] Ibid, Section 101(b)(3).

> (D) provides for adequate public participation in the local historic preservation program, including the process of recommending properties for nomination to the National Register; and
>
> (E) satisfactorily performs the responsibilities delegated to it under this Act.
>
> Where there is no approved State program, a local government may be certified by the Secretary if he determines that such local government meets the requirements of subparagraphs (A) through (E); and in any such case the Secretary may make grants-in-aid to the local government for purposes of this section.[6]

The "mechanism" referred to in point (1) is a process by which individual properties are certified as historic. The "legislation" referred to in point (1)(A) is each state's homerule of historic preservation – enabling legislation – and conforming local ordinances. Because the NHPA does not dictate content, the 'appropriate' enabling legislation for some states may be very short (e.g., Virginia), while other states (e.g., Georgia) are more detailed and prescriptive. And still other states (e.g., Washington) could not pass enabling legislation due to constructs within their state constitutions. In creating their preservation codes, states have been aided by federal law (NHPA) and U.S. Supreme Court decisions (*Euclid*, *Penn Central*). Local governments in Dillon's Rule states (e.g., Virginia, Washington, Wisconsin) may encounter different burdens because they possess only the powers that are specifically given to them by state law. Historically, courts have assumed that states, counties, and municipalities know the needs of their communities better than the judiciary, and as such, preservation laws severally are not overturned by courts unless they contain blatant inconsistencies or flagrantly prejudicial constructs.

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[6] *National Historic Preservation Act of 1966* (as amended through 1992), Public Law 102-575. Full text online at www.cr.nps.gov/local-law/nhpa1966.htm.

The freedom to define preservation on a state and local level appears to be a double-edged sword. While certain duties were placed upon them (e.g., creating a historic district commission), local governments were given the freedom to interpret historic preservation for their communities and to include it in their ordinances as they saw fit. What has happened over the past forty years, however, is a tendency to treat historic preservation as an afterthought. Historic preservation may not be properly defined by a community, and this can result in ordinances which are too weak, too strong or otherwise inappropriate.

> The existing literature shows that…conservation projects in the United States tend to emphasize the emotional and historical...[because] the United States is searching for identity.[7]

At the present time, the search for a national identity within the built or natural environment is a push-pull struggle between preservation groups, governments, and developers. The group that is 'winning' depends in large part upon the city, state or region in which the group is located. The purpose of local preservation ordinances is <u>not</u> to inhibit change, as is often cited by preservation critics. The bulk of the preservation community would, I believe, agree that the reason for ordinances is to ensure that significant pieces of our regional, ethnic, and cultural histories remain for future generations to learn from and enjoy. In some cities, such as Nantucket, Massachusetts, this insurance includes a requirement that all preservation projects use historic materials, while in Fairfax County, Virginia, a Phase I archaeology dig is required prior to all major construction in areas with a high probability of archaeological material. While these

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[7] Nahoum Cohen, *Urban Planning Conservation and Preservation* (New York: McGraw Hill, 2001), 63.

rules may appear by some to be a burden, construction projects still occur on Nantucket and 98% of the buildable land in Fairfax County, Virginia is occupied.

CHAPTER 3

EXISTING PRESERVATION ORDINANCES: FIVE EXAMPLES

As stated in the Introduction, there are almost as many ways for cities and counties to include historic preservation in their ordinances as there are cities and counties. At one extreme are those which are extraordinary in their detail, clarity, and comprehensive coverage. At the other end are those which are outdated or poorly written, and which leave sites, buildings, and structures vulnerable. In the middle are the majority. The intent of this chapter is to profile selected ordinance sections or chapters and identify what is good, bad or middling about them in relation to the thought process for creating a preservation ordinance. The full texts of the featured ordinance sections or chapters are included in Appendix I.

Figure 2: Phoenix, Maricopa County, AZ

Phoenix, Arizona

Phoenix is located in south-central Arizona, 117 miles northwest of Tucson. As of the 2000 U.S. Federal Census, its population was 1,321,045 across 475 square miles. While the creation and makeup of the city's Historic Preservation Commission can be found under Article 29 of the Phoenix City Ordinance ("The Charter and The General Ordinances of the City"), the city's preservation code is located within Chapter 8 of the Phoenix Zoning Ordinance. Containing fifteen sections (see below), it is remarkable for its detail and clarity. Particularly striking are the Purpose and Effect sections (section one and section ten, respectively) because the text is straightforward and easy to understand. In addition, these sections address questions which often arise during preservation/property rights debates, namely why preservation is needed, and what the effect designation will have upon the property owner.

1. Purpose;
2. Definitions;
3. Historic Preservation Commission;
4. Historic Preservation Officer;
5. Temporary Restraint of Demolition;
6. Procedure to Establish Historic Preservation District;
7. Landmark Designation;
8. Procedure to Remove HP Zoning Designation;
9. Permitted Uses;
10. Effect of HP Zoning Designation;
11. Review Process (Certificate of No Effect and COA);
12. Demolition or Moving of Structures;
13. Economic Hardship;
14. Phoenix Historic Property Register, and
15. Enforcement, Violations and Penalties

Section 1: Purpose. The 'why' in this section is worthy of note: "It is hereby declared as a matter of public policy that the protection, enhancement and preservation of

properties and areas of historical, cultural, archaeological and aesthetic significance are in the interests of the health, prosperity and welfare of the people of the City of Phoenix." This sentence states very clearly that protection is in the best interest of Phoenix residents; it personalizes preservation and includes the city's archaeological resources. At the other end of the spectrum is Cincinnati, Ohio which does not include a purpose within its preservation ordinance (Chapter 1435, "Historic Landmarks and Districts," Municipal Code for the City of Cincinnati, Ohio.) Phoenix's Purpose section also acknowledges earlier losses ("It is further intended to recognize past needless losses of historic properties which had substantial value to the historical and cultural heritage of the citizens of Phoenix, and to take reasonable measures to prevent similar losses in the future.") which is a rare inclusion. Finally, what is attractive about the Purpose section is that it equates preservation with "civic pride" and economic development ("Protect and enhance the City's attraction to visitors and the support and stimulus to the economy thereby provided.")

Section 15: Effect of HP Zoning Designation. The common myth surrounding designation is that property owners will not be able to do as they wish with their property after designation has taken affect. The inclusion of an Effect section in the Phoenix ordinance clearly states what owner actions fall under a preservation designation ("…removal or demolition of structures, or construction, alteration or remodeling of structures, or signs, or any landscaping on such property or development of archaeological sites…").

Design guidelines are adopted by local governments so property owners know what designs, materials, and features are appropriate to their district. For example, the

design guidelines for the Downtown Greeley [Colorado] Historic District include the requirement that, "Adding height to historic buildings will change the character of the building and the streetscape, and other design solutions will be more appropriate. If adding height is the only feasible option, the additional height should be set back from the face of the building."[1] It is not uncommon for property owners to view design guidelines as a negative because they describe what products or styles must be used in order to obtain commission approval on a particular project. More often than not, design guidelines are mentioned in ordinances but the intent is not defined. As with the 'why' in the Purpose section, the 'why' for design guidelines clearly states in this section of Phoenix code that they are "…intended to offer assistance to property owners when building or modifying structures…as well as to establish a set of standards to be used in reviewing proposals for certificates of appropriateness…" The Effect section of the Phoenix preservation ordinance clarifies design guidelines for the public and removes the mystery as to why they exist.

[1] "Design Guidelines for Downtown Greeley," prepared by Allyn Feinberg Planning & Design, Inc. for the City of Greeley, Colorado: 58.

Figure 3: Seattle, King County, WA

Seattle, Washington

With a city of population of 563,374 as of the 2000 U.S. Census, Seattle was the third-largest municipality by population selected for this chapter. Bordered by Puget Sound and Elliott Bay on the west and Lake Washington on the east, this city of 91 square miles (including waterways) was included for three reasons: 1) The breadth of buildings, structures, site, and objects included on the city, state, and national registers; 2) The physical location of each designated building, structure, site, and object is included in a subchapter of the code, and 3) The manner in which the city preservation ordinance treats the individual districts.

As of 1997, Seattle contained five city-designated historic districts and 189 city-designated landmarks. In addition, the city contains 156 properties in the National

Register and nine National Historic Landmark properties. Of the 189 city-designated landmarks, 140 are on both the National and Washington State registers. (By way of comparison, the City of San Francisco contains 11 city-designated historic districts, 42 state-designated historic sites, and 155 sites in the National Register.) The buildings, structures, sites, and objects recognized as historic by the city are listed below and it illustrates how communities can think of preservation on a holistic[2], or all-encompassing, level.

- Residences
- Commercial buildings
- Public buildings (schools, churches, libraries and firehouses)
- Bridges, piers and boats
- Waterways
- Trolley cars and a monorail
- Parks and playing fields
- Statues
- Gardens
- Individual streets
- Street lights
- Historic walls and stairways
- A water tank
- A community bulletin board

The city's preservation code is included under Chapter 25 of the Seattle Municipal Code, "Environmental Protection and Historic Preservation." The basic code ("Landmark Designation") is located at Subchapter 25.12, and there is an additional subchapter (25.32) that lists all of the historic landmarks within the city limits by type, name, physical address (if appropriate) and ordinance number. Subchapter 25.32 is a helpful reference tool for both government and residents because is it easy to find out what is on the register, where the property is located, and what ordinance was used for

[2] *Holistic* is defined by Merriam-Webster as, "Relating to or concerned with wholes or with complete systems rather than with the analysis of, treatment, of or dissection into parts."

designation. The combination of a broad interpretation of 'historic' and a list of designations is rare, and a good example for other municipalities.

The last feature of Seattle's preservation code to be highlighted in this chapter is its treatment of the five historic districts. It is not unusual for historic districts to be listed individually within a municipality's or county's preservation code. What sets Seattle's code apart is that each of the five historic districts – Pioneer Square (1978), Harvard-Belmont (1980), Ballard Avenue (1976), Columbia City (1978) and Pike Place Market (1971) – are treated as distinctly separate ordinance areas.

Each district subchapter includes similar sections for purpose, definitions, criteria, individual HDCs, COA process/review/appeal and enforcement. Where each subchapter differs, however, is in the topography/location/history sections, what features can be changed, and what is expected of property owners. The separation allows each district to better retain its historic character.

Pittsburgh, Pennsylvania and Indianapolis, Indiana

The preservation codes for Pittsburgh and Indianapolis are not as comprehensive as those of Phoenix or Seattle, but they contain some very attractive features, one of which is a list of permitted uses for land and/or buildings or structures within each city's historically-zoned districts.

Pittsburgh and Indianapolis vary greatly in size. According to the 2000 U.S. Census, Pittsburgh's population was 334,563 across 55.5 square miles, while Indianapolis' population was calculated at 781,870 across 373 square miles. Indianapolis is enjoying an increase in population: The estimated July 2005 population for the city was

781,118, or an increase of 0.3% as compared to 2000. Alternatively, Pittsburgh's estimated July 2005 population was 316,718 for a loss of 5.3% as compared to 2000. The one similarity between the two communities is that they are both located in the 'Rust Belt,' the lower Great Lakes manufacturing states which historically derived their post-agricultural economies from heavy industry.

Figure 4: Pittsburgh, Allegheny County, PA

Figure 5: Indianapolis, Marion County, IN

Pittsburgh has identified historic subdistricts throughout the city, and while they are not given names per se, each has a defined boundary. The SP, or "Specially Planned District," was created in order to allow alternative forms of development on large parcels of land. "Applicable regulations and procedures are intended to create efficient, functional and attractive urban areas that incorporate high levels of amenities and that met [sic] public objectives for protection and preservation of the natural environment."[3] An example of one such subdistrict is listed below:

> 909.01.I.3 SP-4 (III), Historic Subdistrict
> The SP-4(III) subdistrict is generally bounded by the Monongahela River, Smithfield Street, and West Carson Street.
> (a) Use Regulations
> Within the SP-4(III) subdistrict, land and structures may be used, and structures may be erected, altered, and enlarged for only the following uses:

[3] Section 909.01.A "Purpose," *Pittsburgh Zoning Ordinance* as listed at http://www.Municode.com.

> (1) Multiple-unit dwellings;
> (2) Restaurants, including those with entertainment;
> (3) Office;
> (4) Institutional, limited to museum, exhibition, and library;
> (5) Hotels;
> (6) Retail sales, including personal service;
> (7) Theaters;
> (8) Child day care center;
> (9) Accessory uses that are clearly incidental to permitted principal uses, and only when located within a structure housing a permitted principal use;
> (10) Signs larger than twenty (20) square feet visible from the river or from across the river shall be neon and positioned so as to maximize reflection in the river; and
> (11) Gaming enterprise.
>
> (b) Maximum Height
> The maximum height of structures hereafter erected or enlarged or used in the SP-4 (III) subdistrict shall not exceed one hundred twenty-five (125) feet (not to exceed ten (10) stories). Height for Residential and Hotel/Motel uses shall not exceed one hundred seventy-five (175) feet and twenty (20) stories. Additional height for Residential and Hotel/Motel uses may be allowed by the Planning Commission provided that the height of such use or uses shall not exceed two hundred seventy-five (275) feet and twenty-five (25) stories and that the building is oriented perpendicularly to the Monongahela and Ohio Rivers.

The SP-4 ordinance also places stipulations upon façade height, signage, floor area ratio, urban open space, and usable open space.

The City of Indianapolis has identified HP-I and HP-S districts. HP-I is the primary area of significance[4], while the HP-S is the abutting (or secondary) district. Functioning much the same as Pittsburgh's "SP" zoning, the Indianapolis HP-I permitted use ordinance language reads as follows:

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[4] HP-1 code also requires that the uses conform to the preservation plan of Marion County, Indianapolis' home county. This same integration could not be located for Pittsburgh at Municode.com; however, numerous planning documents, including downtown design guidelines, could be located on the Pittsburgh Comprehensive Planning webpage. By including preservation in a comprehensive plan, a community is better able to achieve the historic preservation goals it creates for itself.

Sec. 735-502. HP-I Historic Preservation Distrct One - Primary.
Note: The HP-I Historic Preservation District One - Primary is designated to permit the preservation, reconstruction, restoration or development of an historic area or site designated by the comprehensive plan as an historic preservation project area. In order to preserve an historic area, restore structures of historic, architectural or other planning significance, or recreate a neighborhood or site, including the environment and atmosphere of a past day, with appropriate contemporary land uses, the zoning district regulations must differ from those of other zoning districts in such aspects as character of land uses permitted, building setbacks, lot size, off-street parking, street standards, construction materials, architectural controls, etc. Because of the individuality inherent in any specific historic preservation project, architectural and site development standards appropriate for each historic area designated by the comprehensive plan shall be included in the zoning controls.
(a) *Permitted HP-I District uses.* The following uses shall be permitted in the HP-I District. All uses in the HP-I Distrct [sic] shall conform to the regulations of section 735-201 and the HP-I District development standards (subsection (b) hereof).

(1) Historic structure, occupied, unoccupied and/or open to the public; historic use.
(2) Single- or multifamily dwelling; apartment hotel; hotel.
(3) Public and semi-public structures and facilities, including but not limited to, police or fire station, rail station, school, museum, church, civic or community center, auditorium or assembly hall, theatre, bandstand.
(4) Parks, playgrounds, malls, plazas, pedestrian areas, scenic areas, greenways, bridle paths, hiking and bicycle trails, and other open space uses.
(5) Business and professional offices; retail sales and services; other commercial establishments.
(6) Shops of tradesmen and craftsmen; arts or crafts studios, galleries, exhibition halls; outdoor uses, such as sidewalk safes, outdoor performing arts or exhibition areas, sculpture courts, gardens.
(7) Other uses similar and comparable in character to the above specified uses.
(8) Primary or accessory off-street parking lots or structures for historic preservation project occupants, employees and visitors; trolley terminal; stable, blacksmith shop.
(9) Historic preservation project management or information office.
(10) Accessory utility or maintenance structures and facilities.
(11) Temporary structures incidental to preservation, reconstruction, restoration or development.

The permitted uses specified in Pittsburgh and Indianapolis are interesting because, if thoughtfully considered, they may help prevent the structural problems

associated with properties adaptively used for purposes unsuited to their original design or construction. Municipalities are legally allowed to define how they wish their communities to develop through zoning, and a list of permitted uses for buildings and sites within a historic district is an extension of that right.

Denver, Colorado

The City and County of Denver encompasses 153 square miles and is located in north central Colorado. Home to the University of Denver, the University of Colorado at Denver and a vibrant hi-tech community, Denver enjoyed a significant population increase during the 1990s: According to the U.S. Census, Denver's population rose from 467,610 in 1990 to 554,636 in 2000, or +19% over a 10 year period.

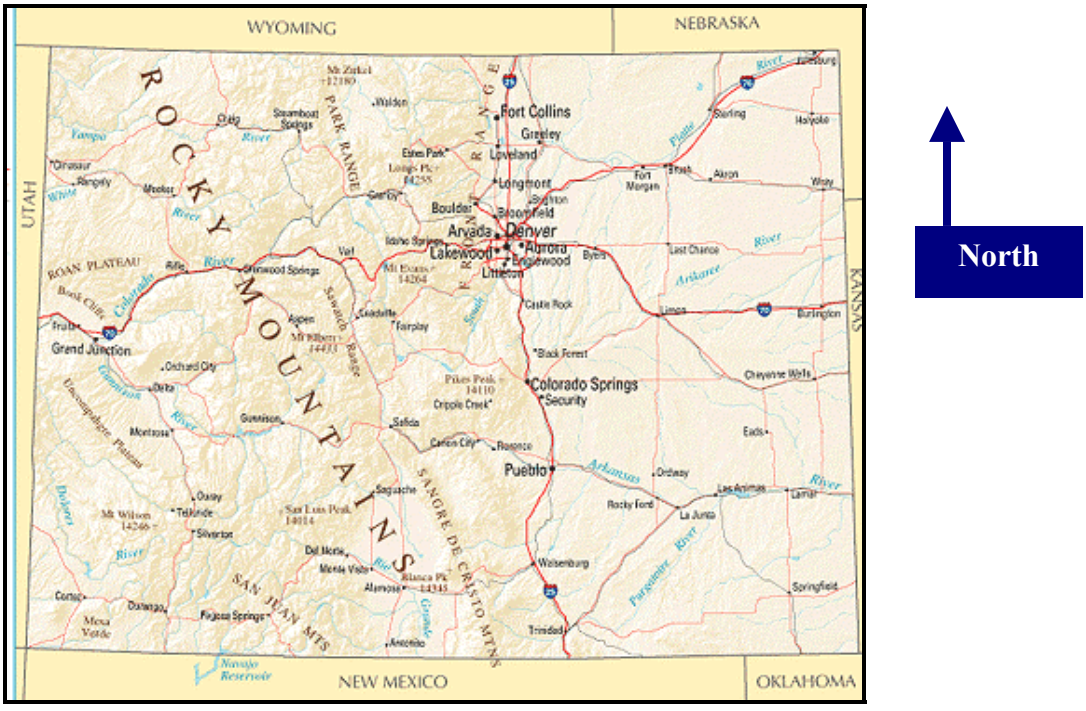

Figure 6: City and County of Denver, CO

For all of the preservation achievements within Denver, it was included in this chapter because the city's code contains omissions that leave properties vulnerable. Denver focuses ordinance attention on only one portion of the city, LoDo or Lower Downtown. LoDo is a former warehouse district revitalized in part by the construction of Coors Field, the home stadium for the Colorado Rockies Major League Baseball franchise. Now also the home to restaurants, nightclubs, shops, and loft residences, LoDo is the only historic district included in city ordinance. The lack of attention to other neighborhoods in light of LoDo's preservation success is a disappointment.

The lack of inclusion is somewhat abated through the use of special zoning districts. Denver has defined several of these districts – the Platte River Valley Zoned District, the B-5, B-7, B-8 and B-8a Districts, the Gateway District and Overlay districts – but the code is unclear as to whether these districts are purely historic. The Platte River Valley and "B" districts contain verbiage recommending the survey, preservation, and reuse of existing historic buildings and structures; however, there is no indication (for example) as to the party responsible for survey completion. Denver's "B" districts also carry special uses, but these uses range from residential housing to parks to adult bookstores. Thin recommendations and lack of definition has created a wide range of permitted uses some of which may not be suitable to all "B" zoned locations.

Summary

As stated in paragraph one, the intent of this chapter was to review selected preservation ordinances in relation to the thought process behind them. Cities appear to focus on what is important to them at a particular moment in time. If Nahoum Cohen is correct, if historic preservation in the U.S. is an emotional search for identity, then the

search may be a community-based pursuit. And if this is true, then the way each community defines historic preservation will ultimately define the nation's historic identity.

CHAPTER 4

SURVEY

As described in the Methodology section of Chapter 1, a telephone survey was undertaken on behalf of the National Alliance of Preservation Commissions (NAPC) of Athens, Georgia. The survey sheet used during each interview is provided in Appendix II. This sheet was used to organize the information provided during the interview, and not intended to act as a script. The interviews were purposely conducted as conversations with ordinances as a launching point in order for the participants to feel free to address whatever was on their minds on that day, whether or not it turned out to be related to state and local ordinances. A strict 30-minute time limit was attempted for each conversation.

State Summaries

The state summaries are presented in the order in which the interviews were conducted.

Alaska

At 571,951 square miles, the State of Alaska is more than twice the size of Texas. Before summarizing preservation in Alaska, it may be helpful to first discuss Alaska's physical size and land divisions because they are germane to its preservation process.

Figure 7: Alaska / Lower 48 Overlay Map

Sixty percent, or 343,171 square miles, of Alaska land is owned by the federal government. By way of comparison, 343,171 square miles is more than the land masses of Florida, Georgia, South Carolina, North Carolina, Tennessee, Alabama and Mississippi combined. Twenty-seven percent of available land, or 154,427 square miles, is owned by the State of Alaska. 154,427 square miles is only slightly smaller than the combined masses of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York and Pennsylvania. Approximately twelve percent, or 68,634 square miles, of Alaska's land is owned by native corporations, which represents an area slightly smaller than the State of Washington. The remaining 1% to 2% of available land (5,720 to 11,439 square miles or Connecticut, Rhode Island, and Massachusetts) is privately owned.

The State of Alaska utilizes boroughs instead of counties, and many of the state's 13 certified local governments are based upon existing boroughs (see map). The state's first CLGs were the Borough of Matanuska-Susitna and the North Slope Borough (both 1987) and the City and Borough of Juneau (1988).

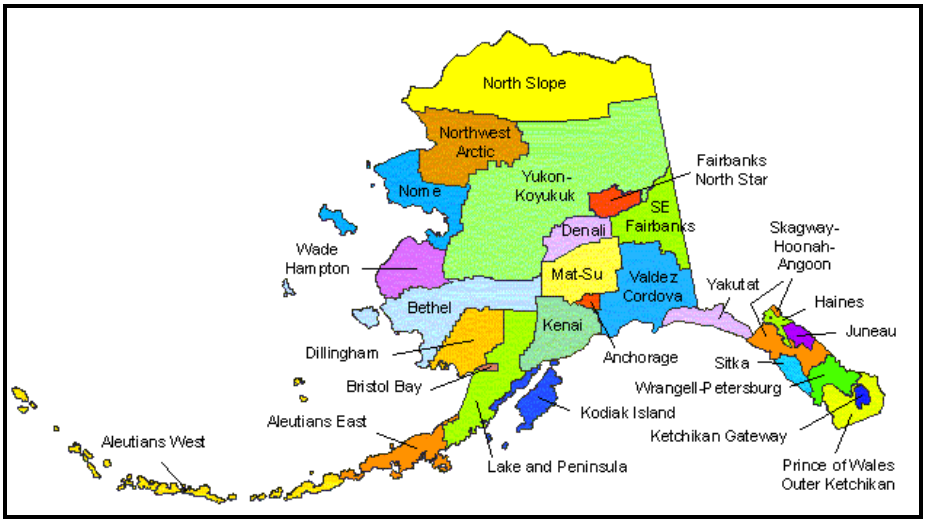

Figure 8: Boroughs within the State of Alaska

Alaska communities that do not wish to obtain CLG status include preservation within their local codes in some capacity. All of the CLGs conform to the state enabling legislation; all non-CLG communities utilize standardized preservation language. The use of design review and local tax benefits varies by community. For example, Juneau has included some design review standards in its ordinance, and the Fairbanks-North Star CLG awards a lower tax level to National Register properties owned by non-profits. The biggest issues facing preservation in Alaska are the large amount of publicly-owned land, and preserving the history of native populations. The preservation of native history is particularly challenging because of how native groups are organized and how they interact with the state.[1]

Alaska has no state income tax, but property taxes are collected by both state and local governments. The benefits of property tax abatement programs are not a focus within the state due in part to its conservative political climate. Adaptive use and tax incentives are a moot point in Alaska at this time.

Two needs were identified by a state Department of Natural Resources (DNR) official interviewed – new arrivals and archaeology. First, a noticeable constituency of new arrivals is changing the (primarily conservative) political dynamic within the state because their wants and expectations are different from those of long-time residents. As a rule, new residents are transient (they make money and leave the state), are not engaged

[1] Alaska contains 13 regional native corporations, 12 of which own land (both surface and subsurface rights). 178 or 179 village corporations exist within the 12 land-owning regional corporations, and these village corporations own the surface rights of their land. Individual village governments exist underneath the village corporations, and the Indian Reorganization Act recognized 156 or 159 of these governing bodies. It is these village governments that conduct governmental business with the State of Alaska. The village governments do not own land. Finally, the Native Claim Settlement Act provides the village corporations with the same general powers as the Tribal Historic Preservation Offices (THPOs) in the Lower 48.

in their communities, and do not vote in favor of additional infrastructure. As a result, Alaska's preservation community is unsure how to educate and involve this group.

The second need is archaeology assistance. The sheer number of sites and potential sites require reliable funding sources. A significant problem for Alaska preservation is that the state's sites are viewed by permanent residents as seasonal attractions for tourists rather than places of interest throughout the year. In addition, state preservation has recognized that there are far more archaeological sites than buildings or structures. Few have been studied and/or recognized as state assets.

When asked what "preservation nirvana" would be for Alaska, the DNR official felt that there should be a strong enforcement of existing historic preservation laws. This is especially true for archaeological assets because they are often not viewed as important as the built environment.

Washington

Washington was the only state included in the survey without enabling legislation (it is not allowed by the state's constitution.) Even without the legislation, preservation within the state works smoothly as a whole because the programs are truly local in nature; communities can create whatever they want. All community programs include design review and local protections. According to the state official who participated in the interview, there are not "a lot of lawsuits" as compared to other states.

Washington contains 39 CLGs and only one of the 39 is not active at the present time (the City of Mukilteo). Incentives such as special tax valuations are popular for non-CLG communities because a mechanism for property tax incentives is included in the state constitution.

One interesting element to preservation in Washington is that some larger CLGs have contractual agreements with nearby small communities. These arrangements are called "interlocals," and they contractually provide an existing staff person from a larger CLG to act as the local staff member for a smaller community. The interlocal arrangement allows HPCs in small communities to have a staff when they would otherwise be unable to do so. One unforeseen result of the interlocal is that it has created a need within the small community HPCs for an understanding of the Rules of Procedure. Some commissions have only a vague idea how to run a proper meeting, and it is the state official's opinion is that this lack of knowledge must be addressed.

The number of designated properties, even though they require owner approval, is significant because of the use of incentives; however, the four largest CLGs (Seattle, Tacoma, King County and the City of Lakewood) do not require owner consent. One of the most troubling trends within Washington is the property rights movement brought from outside of the state, but there is hope on the state level that the issues encountered in Oregon[2] will help keep the movement at bay.

National Park Service (NPS) guidelines are used to administer Washington's CLGs, and the guidelines are supplemented by city/county codes. 85% of CLG communities use the model ordinance language provided by the state office (see Appendix II). Some communities, such as Port Townsend, supplement the model ordinance with local provisions.

Finally, historic overlay zones are becoming more popular within the state because they are seen as less invasive, and as a result they are easier for communities to

[2] Background information on Oregon's Measure 37 is provided in Appendix II.

adopt. The City of Everett, which is located approximately 30 miles north of Seattle, currently contains two historic overlay districts.

Missouri

The best program, according to one Missouri preservation official, is the state's preservation tax credit program. The tax credit program is heavily promoted, and it placed Missouri into the number one position on the list of states utilizing federal preservation tax credits. The use of the program is credited with the successful preservation efforts in downtown St. Louis. Some communities spend tremendous time and effort on education, but credits are still the most effective preservation program in the state.

As is the case across the country, the best CLG programs in Missouri are those with the best community support. The example cited during the interview was Liberty, a historically rural community that is now a bedroom community of Kansas City. The population increase in Liberty began to place a strain on the community's historic resources, but Liberty's mayor is a strong proponent of historic preservation. His support allowed Liberty to become a CLG and retain its historic fabric in spite of development.

Budget is a big concern, as it is for most preservation offices, but this official would like to see an increase in preservation education. Missouri is property rights oriented, and there is a knowledge disconnect as to what preservation "is". The state official's preservation goals for Missouri include: 1) Individuals and communities taking better advantage of available programs (not just the federal tax incentive), 2) Preservation advocates becoming better educated about preservation, including members of historic commissions, and 3) Better training for commission members because they often do not

realize that their commission is an extension of local government. Training may also help the "commission versus historical society" context that develops in some Missouri communities. There is not an easy way to address issue at the present time this because some commissions have a high turnover rate.

Overall, preservation in Missouri is beginning to come into its own but it is not a "given" as it is in other states. It is still a struggle.

Texas

Texas offered the first glimpse into a state that does not allow county zoning (all zoning is controlled at the state level.) The state preservation official who participated in the interview identified the biggest issues facing Texas at the moment as tax credits, transfer development rights (TDRs), and infill housing.

Using Galveston as an example, the need for historic district infill construction is not addressed in its city preservation ordinance. As a result, the commission struggles with the volume of and/or inappropriately designed infill and other related issues, such as teardowns. Ideally, the state preservation office would like to see design guidelines more ordinances incorporated into more local ordinances across the entire state.

The high rate of turnover within some commissions is also a problem in Texas. The lack of staggered terms or short terms creates significant training issues because commissioners leave just as they are beginning to understand their role. When asked for a preference, the official replied that a uniform three or four year commissioner term length is their office's number one choice.

The biggest challenge facing preservation in Texas is the lack of county zoning. TDRs are underused, and rural land in highly-populated portions of the state is developed

at a rapid rate because counties cannot enact their own development restrictions. Infill "McMansions" are very popular in Austin, and are exemplified by teardowns and out-of-scale construction that maximizes lot dimensions. Austin enacted a "McMansion ordinance" in January 2006 in order to find a way to stem the tide, and as of the interview date, it was still in force.

Texas does not have a state income tax so there are no state tax incentives in place. Local property tax incentives are, as a rule, used for schools rather than for local preservation. In order to overcome the lack of state incentives, federal tax programs are heavily promoted within the state.

One preservation positive taking place in Texas is in the landmarking of individual sites. Cities such as San Antonio and Dallas are doing a much better job than in years past, and the practice is working its way down to the county/rural levels. There is now a larger pool of preservation professionals available for consultation and commission participation. Other positives are that preservation non-profits are beginning to partner with each other and leverage their collective experience to move a project forward. Additionally, heritage tourism dollars are slowly changing how preservation is viewed, and Main Street programs are continuing to do well because a large number of Texas CLGs are also Main Street communities.

Funding continues to be an issue in Texas, and surprisingly one of the affected programs is the state's famous courthouse program. Professionals have noticed a trend that designating and restoring a courthouse spawns the designation of a district, and they are hoping that the economic impact of this combination will help save program funding. In a related development, the Texas Department of Transportation determined that they

do not have to fund "enhancements" such as transport museums and depots. Part of the courthouse program funds come from the Texas DOT, so their lack of financial preservation support could prove to be critical in the future.

Ideally, Texas counties will be given zoning power. The state office would also like to see a "silver bullet" commission which can travel throughout Texas and educate communities about how preservation can stimulate investment and protection.

Arkansas

District designation, tax credits and local commissions were the primary concerns of an Arkansas preservation official. There has not been a significant update to Arkansas' enabling legislation since the 1960s, and there is a great need to address preservation's evolution within the state over the past 40 years. Arkansas enabling legislation requires that two-thirds of property owners within a proposed National Register district approve the designation. This requirement has resulted in 18 overlay districts within Arkansas versus two National Register districts because overlays are easier to adopt. Local governments are more accepting of an overlay because they can be a good planning tool.

There has been a strong push within Arkansas for commissioner training since 2002. The state office hosts three or four sessions per year, and the frequency has vastly improved the work of the local commissions. Design review, meeting procedures, and the COA process has also improved. The next training hurdles concern surveys and designation, and Little Rock was used an example.

Little Rock now has a larger population than New Orleans, and this fact is told to the commissioners during training so they better understand the scope of their job. The city contains the majority of historic districts within Arkansas (15). Little Rock utilizes

one city staff person who has had preservation "shoe-horned" into his job, and now has a pro-preservation mayor. Its commission, however, leans toward mid- to late-19th century high style; they have a preservation ethic, but need to receive training on the historic significance of modernism and vernacular architecture.

Arkansas, like Missouri, does not have a state preservation tax credit. The biggest preservation success stories within the state concern the leveraging of the federal tax credit with the creation of low income housing. One example of this leverage is the conversion of a hospital into an assisted living facility for mentally handicapped adults. Ideally, the Arkansas legislature will incorporate a state preservation tax credit into Arkansas code.

Officials would also like to see more collaboration between the public, non-profits, and state and local government. There are a small number of local preservation groups within Arkansas, and their advocacy operation and membership are not leveraged enough by preservation planners or local government. Affordable housing advocates and preservation are natural allies but seldom enter into the same conversation.

The official interviewed felt that Arkansas should employ local preservation planning because the state does not have a comprehensive plan or master plan requirement. There are parts of master plans (e.g., parks) across the state but nothing comprehensive, and a mandate for the use of preservation or master plans could benefit preservation throughout the state. Finally, this official would also like to see a provision for demolition by neglect included into state code because it often exists on the local level, but is not uniformly enforced. State codification may help alleviate this problem.

Preservation funding is a widespread problem and Arkansas is no different. Mr. Mayer would like to see one community take the lead and demand a local preservation planner in order for the need for funding and planning to become instilled in state government.

Colorado

Ordinances "work" and do what they are supposed to do according to the state preservation official who participated in the NAPC survey. That said, there is some deficiency in how they define (or do not define) economic hardship, regular maintenance and demolition by neglect. The state official addressed some interesting points:

- Can you really enforce maintenance to any degree beyond the time a property was designated? Do you keep it the way it was at designation or make it better? (It was good enough to be designated so what else is required?)

- Properties are not documented well enough at the time of designation in order to enforce minimum maintenance. He stated that minimum maintenance on properties within a district may be easier to enforce than for individual designations, but again, what "minimum?" If there is no visual record of a property's condition at the time of designation, what can you enforce?

- Demolition by neglect is the extreme end of required maintenance, but it is still the same issue.

The second segment of our conversation concerned mandatory ordinance review. The need for regular ordinance review is stated by various organizations including the American Planning Association, the National Trust for Historic Preservation and the National Alliance of Preservation Commissions. The state official made an excellent point in the opposite direction: Do you really want a city council or other legislative body to dig into a preservation ordinance that works? Ordinance review is good in theory but dangerous in practice because a community could end up with a preservation ordinance which was better before review took place. Spot review of an element that is

not working is a good use of council time, but an overall review may cause more problems than intended.

An additional element to a regular ordinance review which I had not considered is the National Park Service (NPS) CLG audit that should take place every four years. Little to no funding exists for the audit program at the time of writing, and because CLGs cannot throw away documents between audits they encounter record storage problems. If a city council were to undertake a full preservation ordinance review while it awaits a NPS audit, the documentation storage requirements could become enormous.

One final point raised during the interview had to do with local political climate because it dictates the type of ordinance review that will take place. A city council's ability to undertake demolition review is not as important, in the official's opinion, as the political will of the community. For example, if Denver residents were to make demolition or demolition review a priority, then the city council may feel inclined to review the ordinance and procedures. Until that time, the preservation community should make the best out of whatever positives it can obtain.

Massachusetts

Communities within the Commonwealth of Massachusetts are incorporated into 351 municipalities, and they may create laws as long as they do not conflict with the state constitution. The municipalities began to create local historic districts beginning circa 1955. Demolition delay began to be added to ordinances in the 1980s. The Commonwealth's town hall type of government requires that two-thirds of a city council approve the creation of an historic district. Property owner approval is not required. As in Colorado, the Massachusetts preservation official felt that the preservation ordinances

in his state generally work as they should. He also made a point of mentioning that the local districts have served Massachusetts well even though they vary greatly in size (Nantucket Island at one end versus districts with less than ten properties at the other). The demolition delay has proved to be easier to pass, and we spent about one-third of the interview discussing its use in Massachusetts.

The demolition delay is included in the ordinances for 115 municipalities. It is age based, meaning that properties over 50 or 75 years (depending upon location) are subject to a delay. The number of months for the delay varies by community, anywhere from six months (93+/- communities) to twelve months (20 communities) to eighteen months (1 or 2 communities). The goal of the delay is to allow a community enough time to broker a solution to the possible demolition, and some communities have opted for a 12 or 18 month delay in order to provide them with as much time as possible. Some developers avoid the delay by selecting other properties for development after they are told about the law. The way the law plays out, however, is that any developer with the means to wait out the delay period will be allowed to demolish a property at the end of the period. Local governments can deny demolition permits for landmarks in locally-designated districts, but even so the majority of properties standing at the end of a delay are demolished. The official cited one example in Brookline, Massachusetts in which a demolition delay triggered the creation of an historic district, but this is very rare.

This particular official, during his preservation career, has seen good neighborhoods (including ones with infill or significant changes) that should be protected but were not included in districts because a municipality opted not to create one or could not reach the necessary two-thirds vote. He has also seen commissions “not approving

what should be approved" because their decisions were not based on good design guidelines. He wanted to create a middle ground for communities between no protection and district designation, and this desire turned into the Neighborhood Architecture Conservation District. He has written the draft ordinance, and has been promoting its adoption for approximately two years.

The Conservation District ordinance written for the Commonwealth of Massachusetts is based upon one used by the city of Cambridge, Massachusetts since the early 1980s. In the Commonwealth's version, alterations including vinyl siding and replacement windows undergo a mandatory, but non-binding, review. During the review, the commission can take the "high road" and educate an owner as to why, for example, vinyl siding is inappropriate; however, the owner will still be able to install the vinyl after the review if he or she so desires. When asked how the Conservation District promotion has faired, the official stated that the reception within the preservation community has been mixed – some felt that an Architectural Conservation District was too weak and would lead to too many alterations. As of this writing, some communities have expressed an interest in the District ordinance, but one has yet to be adopted. Both the Cambridge and explanation of the Commonwealth version can be found in Appendix II.

Maryland

As with the representatives from Colorado and Massachusetts, Maryland's preservation official felt that their state has very good ordinances. What is troublesome in Maryland is the lack of enforcement by some localities. The two things this official would like to see changed are the "vague" definition many communities use for economic hardship, as well as the "muddled" language included in some design

guidelines. Some communities leverage a 90 day demolition delay with their economic hardship rule, but this is not entirely effective because, as with Massachusetts, all a developer or property owner often needs to do is wait out the delay.

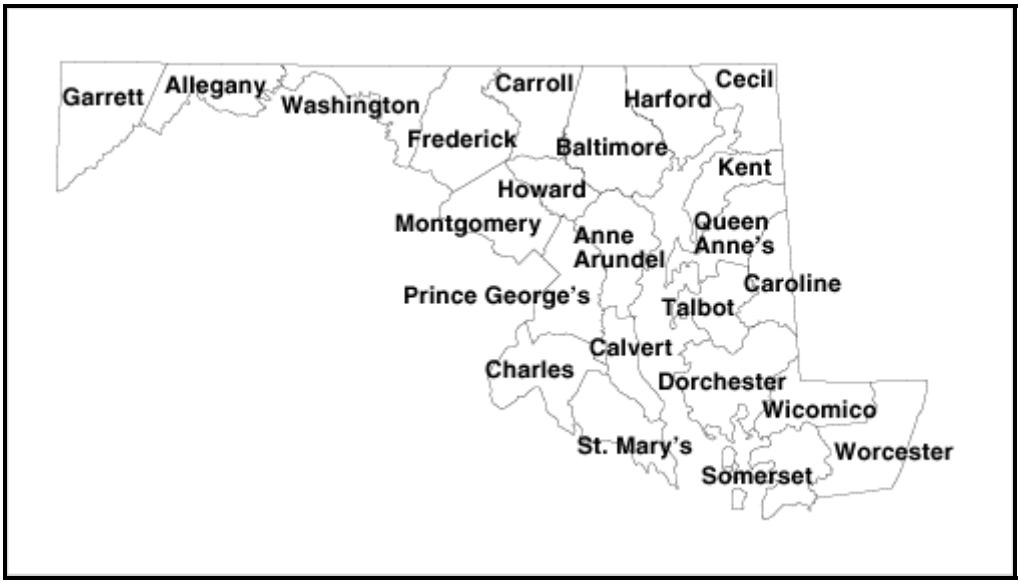

Figure 9: Maryland Counties

The significant population increase in the Washington, D.C. metropolitan area since 1990[3] coupled with the increasingly high cost of housing has added an extra dimension to many government regulations. This is true even for those counties not thought of as belonging to the D.C. metropolitan area because those residents are commuting longer and longer distances in order to locate affordable housing. Three Maryland counties – Calvert, Anne Arundel and Prince George's – utilize subdivision review as part of their zoning. Calvert and Prince George's counties leverage subdivision review in order to provide another layer of protection to their built environments. (A

[3] The Washington, D.C. metropolitan area includes the District of Columbia; Fairfax, Arlington, Loudoun, Fauquier, Prince William, Stafford, and Warren counties in Virginia; and Montgomery, Howard, and portions of Anne Arundel, Frederick, and Prince George's counties in Maryland. According to an article published by The Washington Post in April 2005, the population of the D.C. metropolitan area totaled 5.9 million residents.

copy of the Calvert County subdivision review ordinance is included in Appendix II.) In the case of Anne Arundel, they have an active archaeology program but no preservation commission – all of their preservation comes through the subdivision review process.[4] The state preservation community is concerned that the lack of a commission will cause the loss of historic fabric within Anne Arundel County over the coming years.

Another threat to the state is along the Eastern Shore and the northeastern areas close to Delaware. Many Eastern Shore areas (e.g., St. Mary's County) do not have historic districts and contain only a handful of designated properties. Many of these areas are very rural, and are more property rights oriented than other portions of the state. And many do not have a history of preservation. Although some of these communities are beginning to think about slow growth measures, they also have infrastructure problems and have allowed development in exchange for developers paying for infrastructure updates.

In an ideal world, the Maryland official would like to see more local commissions, especially in the communities throughout the state's Eastern and Northeast shore. Maryland also does not have a history of regional planning, and she would like to see this changed in order for the Eastern Shore communities to grow and preserve in a positive manner.

Montana

While preservation in Montana is improving as time moves forward, it is struggling with the same issues as many other states, namely property rights versus community rights and an influx of new residents bringing new ideas. A smaller portion

[4] A notable exception is the City of Annapolis. Annapolis is Maryland's capitol, the largest city in Anne Arundel County and it has a strong preservation ordinance. Annapolis does not rely on the use of subdivision review.

of states, however, encounter Montana's preservation challenges stemming from nuclear power and mining interests.

Montana contains 15 CLGs and all of them utilize the model ordinance (either all or in part) posted on the state website. Eight of the 15 CLGs utilize some type of design review, and the state is encouraging the other seven to adopt some type of review. All 15 of Montana's CLGs are listed on the following page, along with information about how design review is used in each.

- Anaconda-Deer Lodge. No design review, but an ordinance has been proposed to require a mandatory meeting between a property owner and the Historic Preservation Office. As proposed, this meeting would educate the property owner but the owner is not obligated to follow its recommendation. The town of Anaconda is a National Landmark (Butte-Anaconda National Historic Landmark) currently without design review protection.

- Hardin-Big Horn County. Design review is in their ordinance, but it is not enforced. The lack of enforcement is the result of the design review for one project in the mid-1990s. The design review did not go well, and there was tremendous political fallout from the failure. The county was slated to discuss the removal of design review from their ordinance during the spring of 2007.

- Billings-Laurel-Crow Reservation-Yellowstone. Design review is limited to downtown and incentive projects.

- Bozeman. Conservation overlays are protecting buildings and other historic fabric within the city's 10 historic districts.

- Butte-Silver Bow. Brand new ordinance that includes demolition, demolition by neglect, and voluntary local register/design review.

- Carbon County. Design review in the town of Red Lodge, but it is not enforced. In addition, the county preservation commission is a seven member body containing one member from seven small towns within the county. Each town, and each commissioner, have their own agendas, and this creates an ineffective design review process.

- Deer Lodge. No design review.

- Great Falls/Cascade. No design review. A preservation ordinance was introduced for downtown Great Falls, but it met with great public resistance.

- Havre-Hill. No design review.

- Helena-Lewis and Clark. Design review is limited to some downtown buildings, and this requirement is the result of an urban renewal backlash. Helena is Montana's state capitol.

- Lewistown. No design review.

- Livingston. The oldest design review ordinance in Montana (passed circa 1984) but it only applies to downtown Livingston. Livingston is the gateway to Yellowstone, and its preservation officer has spent a great deal of time explaining design review to property owners.

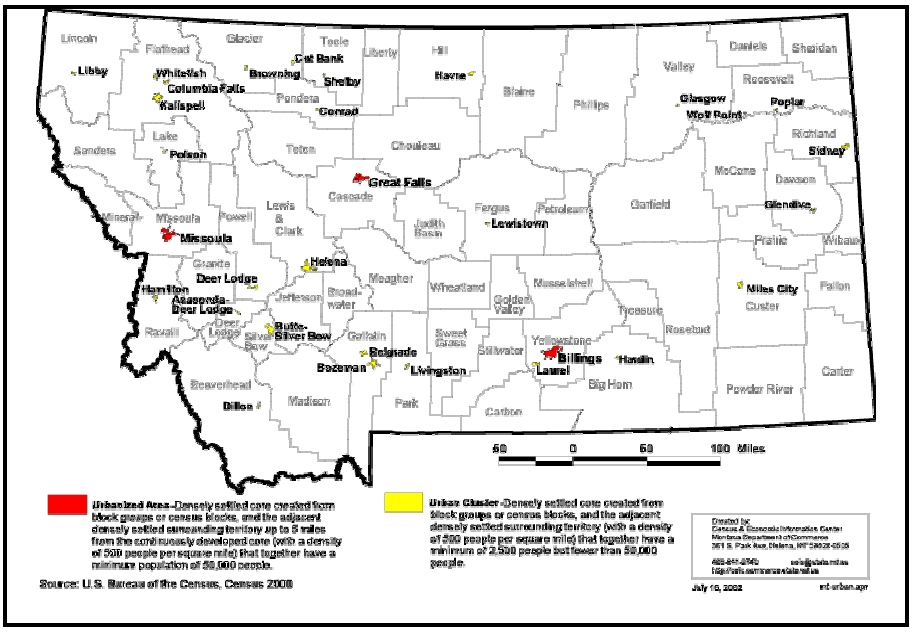

Figure 10: State of Montana Urban Clusters and Urbanized Areas (2000 Census)

- Miles City. No design review.

- Missoula. Limited design review, but consistently improving.

- Virginia City. The most traditional design review process in the state; most updated review requirements.

The positive results of design review in Livingston and Virginia City has been the retention of significant historic fabric. This fabric, in turn, has provided those communities with income from their inclusion in movies and documentaries.

The most-recent preservation ordinance in Montana was passed in Butte in mid-February 2007. The process for passage was a long, virulent battle within the town. The drama within the city began to come to a head in 2001/2002 when the state placed them on CLG probation because at least 300 buildings had been demolished in Butte between 1961 and 2001. Butte had become so pro-demolition that the city allowed demolitions for potential growth instead of approved developments, and it included demolition within a "community enrichment ordinance." To ensure that the city's preservation office could function properly, the state helped facilitate its move from the planning department to the city's health office. It has flourished as a department within Butte's Department of Health because that department manager supports preservation. It is believed at the time of this writing that Butte's preservation office is the only one in the country housed within a health department.

One surprising finding during the interview was Lewistown's revolving loan program for owners of National Register properties. The program was added to the town's preservation ordinances and is in its early stages. Because it is the first one in Montana, the state is hoping that it will become a model for other communities.

A second surprising finding was that the City of Bozeman processes 250 to 350 COA applications each year. The large number of applications is being fueled by rapid population growth. Bozeman's growth, due in part to its status as the home of Montana State University, is running at pace with that of Missoula, the home of the University of

Montana. Historically, Bozeman's sole preservation officer has forwarded only the COA applications attached to "large projects" – those which are highly political or involve large amounts of money. The officer is allowed to pass or deny as many projects as desired, and in a potential conflict of interest, Bozeman's historic district commission would hear the appeals to the preservation officer's decisions.

The lack of design review protection for Anaconda is an example of how Montana has overlooked its National Landmarks because few, if any, have design review protection. According to the state official, this lack of protection must be acknowledged and local design review guidelines updated in order to prevent future loss. The Great Falls Portage National Historic Landmark[5] site was used as an example.

Montana contains large deposits of coals and minerals. Towns such as Anaconda in west central Montana were founded as copper mining communities in the late 1800/early 1900s. Coal deposits can be found throughout Montana, and one of these deposits is directly under Great Falls Portage in north central Montana. The mining community is very influential within the state, and it was able to push a proposal for a coal-fired energy plant. According to the official interviewed there is a large contingent of opponents to this project, including historic preservation and environmental protection. The divide within Montana is such that if you are an individual or politician with an "energy bent" you will downplay any concerns and support the project. There is a similar development in eastern Montana, and historically eastern Montana has suffered from more economic problems than the western portion of the state. Its tenuous economic

[5] It is interesting to note that the first website link returned by Google for Great Falls Portage was for a power company, PPL Montana. Great Falls Portage National Historic Landmark extends south and west of the City of Great Falls, is part of the route taken by Lewis and Clark in 1805, and portions of it are privately owned. See http://www.cr.nps.gov/nr/travel/lewisandclark/gre.htm for more information.

condition meant that there was little opposition to the energy plant. As with any company that controls or has legal access to historically significant land, some of the mining companies operating in Montana are good from a preservation standpoint and some of them are bad. The state hopes to convince the bad ones to consider preservation in their future plans.

The state preservation official would like to see more Montana communities – whether or not they are CLGs – incorporate preservation ordinances, especially if their community contains landmark properties. The example she provided was the Fort Benton National Historic Landmark northeast of the City of Great Falls. Fort Benton was declared a National Historic Landmark in 1961, and is described as the "birthplace of Montana." Even with this distinction, the surrounding community affords it no protection whatsoever. Its threat level is described by the National Park Service as "satisfactory."

Also high on the official's list are more incentives such as revolving funds or property tax incentives. In addition to not providing for incentives, Montana's enabling legislation does not include a provision for preservation funding. The lack of funding and/or abatements restrains preservation minded communities and individual property owners from beginning or continuing project.

Training is also an issue in Montana because some CLGs drift away from the Secretary of the Interior's Standards. CLGs also need to take an active role in public preservation education, and the state official would like a design review program created for both the public and the real estate community. Finally, all CLGs are encouraged to

make their ordinances more available to the public, and she would like to see more of the local ordinances available online.

The other gorilla in the room – individual property rights – will continue to play itself out in Montana over the coming years. Community property rights are better understood and accepted in larger cities; less so in more sparsely populated counties. When asked what it would take to change this view, the state official felt that it would be a gradual education process in order for all Montanans to realize that they are stewards of significant parts of national history. In a perfect world, the official would like to see preservation "inside the circle," meaning that it has a chair at the table during activities that involve community changes, housing developments or environmental concerns. Preservation offices would be run as businesses, and be seen as the equal of other business activities.

Virginia

Virginia is a Dillon's Rule state, and local and county governments are not supposed to adopt an ordinance unless it is specifically allowed under state code. For Virginia preservationists, this means that the Commonwealth's short enabling legislation allows for a lot of interpretation at the legislative level (see Appendix II.) Subsequent additions, such as the requirement that a property be placed up for sale as part of the demolition delay process, have had both a positive and negative affect. Many county attorneys have opted to conservatively interpret the state code, and they do not encourage their communities to add local rules not currently allowed because they will probably lose in state court, if challenged. One community, Williamsburg, is more "experimental" and included demolition by neglect in their local preservation ordinance. Demolition by

neglect is not included in Virginia's state code, and therefore it is likely that the community would lose a lawsuit. When asked if she knew of any instances where communities or preservation groups attempted to add something to the state code, the preservation official interviewed stated that she did not. Current feeling within Virginia's preservation community is that it is better to work with what they have rather than risk losing everything to the property rights contingent.

The biggest preservation success in Virginia has been the state tax credit program. It is easy to "sell" a 25% state tax credit, and there were 400 new applications received by the Virginia SHPO in 2006. In an ideal world training for members of Virginia Architectural Review Boards (ARB) would take place as soon as possible. Good, efficient, and timely training would be better for the boards, applicants, and property owners, and better for Virginia preservation in the long term.

Tennessee

The State of Tennessee contains nine development districts, and each one of the nine is waiting for preservation to become part of their processes. The lack of adequate preservation staffing is an issue throughout the state, and some of the districts are awaiting the result of grant applications in order to fund staff positions.

Zoning regulations to establish rural historic districts for areas from Columbia to Nashville have been established. These rural districts focus on Tennessee's activity within the Civil War, however, so any other benefits obtained by rural communities are an offshoot of the Civil War theme. Rural district zoning focuses on the appearance and outbuildings of historic properties.

Tennessee's enabling legislation contains holes, and its statewide organization does not function as well as it could. As much as the state's preservation community would like to resolve the holes in the legislation, they are worried that opening the door will cause problems and dilute or eliminate current laws. Some examples of legislation holes provided by the official interviewed are Nashville's use of the term "historic conservation" instead of the term "historic preservation." The state enabling legislation does not define "historic conservation districts" only "historic preservation districts." The lack of definition has created an inconsistent use of conservation districts, and the promotion of conservation zoning over preservation zoning.

A second legislative hole is the lack of attention to demolition by neglect. The cities of Jonesboro and Kingsport utilize very good demolition by neglect programs, and both governments work directly with their area non-profits to resolve this problem. Even with these localized efforts, demolition by neglect is not a focus on the state level.

A third problem is within the regional and county section of the state enabling legislation because it does not include criteria for the creation of county preservation commissions. According to the official, the lack of criteria equates with a lack of design review later on.

The final omission is economic hardship. Currently, communities are required to pass a city ordinance or an addition to a commission's bylaws, but no additional direction on economic hardship is provided within the enabling legislation. Many commissions do not have staff to adequately review economic hardship, and this allows economics to creep into committee meetings.

There is tremendous staff turnover in the state office. Tennessee utilizes five or six SHPO staff members, and the SHPO director is a political appointee. All projects must be driven by the deputy SHPO officer.

The most progressive aspect to preservation in the state at this time is the number of volunteers who serve on historic committees. Tennessee's enabling legislation mandates a five year term limit, but some communities have a two year limit while others allow exceptions that remove the turnover requirement entirely. The active volunteerism for preservation commissions runs concurrent with Tennessee being an active property rights state. The official interviewed, however, feels that property rights will be addressed by the state very soon because the National Trust's annual conference is scheduled for Nashville in 2009.

A recent positive step was the completion and distribution of a cost of preservation survey for Tennessee. The report was well received, and has been helpful in getting projects through at the local and state levels.

Preservation nirvana for this official would be to separate the state historic preservation office from the Tennessee Historic Commission, and to provide adequate staff and funding to local preservation offices. In addition, she would like preservation to take a larger role within state curriculum, especially among children at the state elementary schools. She would like it to be a comprehensive addition to as many subjects as possible, not just an addition to the Tennessee government history section. Finally, there is staffing. In general, areas of Eastern Tennessee are so short staffed that smaller communities must leverage the services of another municipal employee to act as committee staff. She stated that this leveraged person ranges from a county recorder, a

building inspector, a zoning department's front desk receptionist, a mayor's secretary, and in one community, its police chief. Nashville has a preservation staff of six, while Memphis has three and Franklin a staff of one. Chattanooga has a staff of two or three.

Arizona

The preservation professional from Arizona also feels that historic preservation ordinances, in general, work as they should, and she disagreed with the academic view that communities regularly adopt ordinances without completely reading or understanding the code. A city council relies on its staff, and staff will not adopt something that they do not understand or cannot implement. If they want to adopt a regulation or series of regulations, they should inform the council of the desire, and tell the council that they need more staff in order to implement the update. A staff should never recommend, and a city council should never adopt, more code than the staff can capably support. Finally, staff to implement an ordinance is often just as critical as the ordinance itself. You can have the best ordinance in the country, but you will not receive the desired outcome if staff is not available to enforce the code.

This professional was of the opinion that elected officials in any community will not find out what is or is not working; it is up to each community to tell their elected officials what they want…what 'is' or 'is not' working. Ordinances are updated all of the time, but the community must time its request. As stated during many other interviews, a community should not pursue an ordinance change unless their government officials are sympathetic to preservation. You have to pick your battles. The key to a good ordinance is the current political environment and community support.

Writing an ordinance, in the professional's opinion, is often not the difficult part – the difficult part comes during the approval process. Writing an ordinance entails a lot of research (e.g., "What is a special interior?") and being able to integrate the additions with existing laws. Triggering mechanisms are a key component for compatibility. An example she provided was from Pitkin County, Colorado near Aspen. The county's pre-existing demolition approval process contains a number of small steps which must be followed in order for the permit review process to function. In order for their ordinance to be updated, those steps had to be recognized so that the inclusions would not disable the review process. How you designate is the heart of an ordinance discussion because the method of designation is what triggers the process used.

During a brief discussion of Phoenix, the official mentioned that historically the city will do what it can to streamline the battles that impede development. Government wants to finalize preservation decisions and move on. Interestingly, Phoenix regularly receives more economic hardship cases than New York City.

One challenge faced in Arizona is the same one faced throughout the United States – individual property rights. In the professional's opinion, cities regularly use overlay zoning in order to provide a measure of protection, and to avoid the appearance of 'taking' property for a historic district. Unlike some preservation professionals, the interviewee felt that a model ordinance is not necessarily the correct starting point for a community. Instead, she recommends a review of the preservation ordinance already in use by a nearby city with similar circumstances.

The final portion of our conservation related to the direction preservation needs to take. Conservation is not a luxury. There is an ethic for sustainability and affordable

housing; for house size versus land price. We briefly discussed the Lang and Nelson "Megalopolitans" article mentioned in Chapter 1. She agrees with the author's premise, and feels that preservation needs to be more flexible. We need to accommodate for growth and housing, so why not let people expand and add space? Why not allow some modern materials? "We cannot afford to lose affordability."

Survey Themes

The themes are presented in random order.

Education

A significant need throughout the country is preservation education, and it manifests itself in three ways: 1) Education of commissioners and government officials, 2) Education of the general public, and 3) Education in our schools. As stated by the Arkansas official, the quality of work performed by historic preservation commissions within their state increased dramatically when the SHPO began a regular program of local commissioner training. And as noted by the representatives from Texas, Missouri and Washington, lack of commissioner education takes the form of not realizing that their commission is quasi-governmental, or that they need to understand the Rules of Procedure in order to provide fair hearings. During a review of randomly selected NAPC training session reviews, I was struck by the number of commissioners who admitted to not being aware of the legalities of preservation, or that it was important to provide fair hearings.

There is a lack of preservation knowledge in this country, and public education becomes a luxury due to tight budgets. How many Mississippians or state visitors realize that the Delta music corridor is both preservation and tourism? How many property

owners in a historic district realize that the act of painting a fence is preservation? We need to get the word out in a more efficient fashion. Maybe this would happen, as the Montana official suggested, if preservation offices were run like businesses. Or maybe, as suggested by the Tennessee official, it would happen if school boards broadly integrate preservation into curriculum.

Staffing and Funding

The need for staffing was best summarized by the Arizona professional with her remark that a preservation ordinance is only as good as the staff that is in place to enforce it. Grafting preservation onto an existing position, especially within a busy office, does not help the individual staff person, the commission, or the community at large. Insufficient staff has a direct correlation to insufficient funds, and funding is an issue in every state.

As stated earlier, one of the biggest surprises stemming from the interviews was how the Texas legislature had planned to cut the funding of its highly successful courthouse designation and restoration program. Funding losses take a toll on the availability of training, public education, property surveys, and assessment programs. If a program as successful and well-known as the Texas courthouse designation program is not safe from budget cuts, then what is?

President George W. Bush's 2008 fiscal year budget included the following appropriations:[6]

- $12 million appropriation for Tribal Historic Preservation Offices
- $35.7 million appropriation for State Historic Preservation Offices ($50 million was requested)

[6] American Planning Association, "Legislative Briefings," APA interactive online newsletter dated February 21 and 28, 2007, http://www.planning.org.

- $10 million appropriation for Preserve America from the Historic Preservation Fund
- $4 million appropriation for HABS/HAERS/HALS
- $10 million appropriation for Save America's Treasures ($30 million was requested as funding has steadily decreased since 2004)

It is often stated by government officials at every level that throwing money at an issue often does not help. But preservation is not photosynthesis and does not simply 'happen.' Funding is required to survey, advocate, catalog, photograph, and process. Funding is required to comply with existing preservation laws. Funding is required to define the national identity. President Bush's 2008 budget indicates that preservation is still seated at the table, but it is receiving an ever-smaller piece of the pie. William F. Buckley, Jr. could have been talking about preservation funding when he said, "Idealism is fine, but as it approaches reality the cost becomes prohibitive."

Incentives and Zoning

The lack of zoning controls over rural development and infill are two problems in Texas, but that state is not alone. The "megapolitans" theory requires development to expand in already stressed parts of the country. The National Conference of State Legislatures (NCSL) maintains a database of the preservation enabling legislation from all 50 states. The database also includes access to archaeological and zoning regulations as they relate to preservation. The data set is from 1999, and a search for the word "infill" does not return any results.

The same search was conducted in Municode.com for Phoenix, Seattle, Indianapolis, Pittsburgh, Denver, Topeka (KS), and Cincinnati; the results were mixed. Phoenix encourages infill multi-family residential housing in central Phoenix, while

Seattle regulates infill as it pertains to natural light in landmark downtown buildings. Indianapolis established infill development districts (both residential and commercial), and Pittsburgh regulates parking at infill housing developments. Denver does not address infill in any city codes, and Cincinnati regulates new infill construction within its "Urban Design Overlay District" (Appendix III). Inappropriate infill buildings and structures will appear where well-defined zoning code is missing or weak.

The use of tax incentives cannot be easily categorized. In Arkansas, the lack of tax incentives is a function of the state legislature, not a constitutional impediment per se. Conversely, Washington's constitution provides for localized zoning and property tax incentives, so this tool is well used within that state. Neither Texas nor Washington has state income tax, so the success of local tax incentives in Washington is due in part to the local tax abatement provision provided by the state constitution. States with income taxes, such as Missouri and Virginia, have been able to exploit the availability of state tax credits and vastly increase the number of restored historic properties. Alaska collects property taxes on both the state and local levels, but is not to the point of wanting to freeze taxes to stimulate preservation. While preservationists would like to think that buildings or structures are always restored for altruistic reasons, the plain truth of the matter is that restoration or adaptive reuse are business transactions.

The Community Restoration and Revitalization Act was originally introduced in 2005, and it was reintroduced in 2007 as H.R. 1043 by Representative Stephanie Tubbs Jones of Ohio. A companion bill was introduced in the Senate by Blanche Lincoln of Arkansas. "H.R. 1043/S.584 would amend the existing Federal Historic Rehabilitation Tax Credit to deepen its utility for community revitalization, expand its application to

smaller 'Main Street' type projects, and result in the development of more housing in historic buildings – particularly affordable housing."[7] The summary of the amendments as provided by the American Planning Association follow.[8] Only time will tell if they are approved in whole or in part, but all could prove to have significant impact on the number of properties preserved in this country.

- Basis Reduction. Eliminating or lessening the rule that lowers tax benefits dollar-for-dollar according to the amount of credit taken when using the Federal Historic Rehabilitation Tax Credit.

- Greater Subsidy in Distressed Areas. Deepening the Federal Historic Rehabilitation Tax Credit in the most difficult to develop and disinvested areas.

- Making the 10% Credit Available for Housing. Opening up the inventory of "older buildings" for housing – the 10% component of the Federal Historic Rehabilitation Tax Credit currently prohibits is use for 'dwellings.' This proposal also includes changing the definition of 'older building' from 'built before 1936' to any property 'fifty years old or older.'

- More Workability for Small Deals. Enriching the Federal Historic Rehabilitation Credit to 40% in projects that are $2 million or less to target those 'Main Street' type developments in which rehab credit costs are currently too prohibitive.

- More Favorable Tax Exempt Rules. Easing the rules governing non-profit deals so that more community-oriented projects move forward.

- Supports for Sale Housing. Eliminating a provision in the current law that requires the paying back of tax credits when properties are sold within five years of the project's completion.

Politics, Enforcement, Ordinance Review and Demolition

The late Harvard University economist and political advisor John Kenneth Galbraith is quoted as saying, "Politics is not the art of the possible. It consists in choosing between the disastrous and the unpalatable." Logically we know that politics

[7] American Planning Association, "Legislative Briefings," APA interactive online newsletter dated February 21 and 28, 2007, http://www.planning.org.

[8] Ibid.

affects many aspects of society in one way or another, and preservation is no different. The amount to which the property rights movement has affected historic preservation in the U.S. is staggering; virtually every interviewee mentioned property rights at some point. While most stated the property rights movement was stronger in rural communities, it is still significant that nearly every official in every state must acknowledge it in one way or another. Not all of the property rights measures voted on in the 2006 general election passed, but this may be beside the point. The fact the subject is on the minds of so many in the preservation field could mean that the movement is having more success than it may realize. Given Galbraith's quote, I am uncertain if this is "disastrous" or "unpalatable".

The frustration at lack of legal enforcement is also an issue for professionals in many states. Lack of enforcement may relate back to the universal bane of preservation, the lack of funding, but it may also hark back to departmental education or preservation's status within government as a whole. Something seen as a lower priority is going to receive less enforcement attention. Demolition by neglect is a good example of weak enforcement. Be it due to low staff, lack of funds or other needs seen by government as more immediately pressing, demolition by neglect is often not enforced, even if it is included in a preservation ordinance at the outset.

All of the preservation officials who discussed ordinance review agreed that it is something which should be done, but that the political climate is not always appropriate for such an undertaking. They do not want to lose the ground they have gained, and are very pragmatic about the need for review. The reality of day-to-day preservation is that

professionals work with what laws and ordinances they have at their disposal, and they will forego review until their community's political climate is pro-preservation.

CHAPTER 5

CONCLUSION

> The city is built by human volition, destroyed by human volition, conserved by human volition.[1]

The National Park Service defines five purposes for a preservation ordinance:[2]

1. Provide a municipal policy for the protection of historic properties;
2. Establish an objective and democratic process for designating historic properties;
3. Protect the integrity of designated historic properties within a design review requirement;
4. Authorize design guidelines for new development within historic districts to ensure that it is not destructive to the area's historic character, and
5. Stabilize declining neighborhoods and protect and enhance property values.

It is important to also note that the NPS defines what a preservation ordinance does <u>not</u> do:[3]

1. Require that historic properties be open for tours;
2. Restrict the sale of the property;
3. Require improvements, changes, or restoration of the property;
4. Require approval of interior changes or alterations;
5. Prevent new construction within historic areas, and
6. Require approval for ordinary repair or maintenance.

The author acknowledges the possibility that any future readers – CLG coordinators, city employees, preservation planners, city attorneys, etc. – may not read all of the background material in chapters 1 through 4. Therefore, I wish to state that the intent of this chapter is not to write a model ordinance, but rather to illustrate 'best

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[1] Anthony M. Tung, *Preserving The World's Great Cities* (New York: Three Rivers Press, 2001), 67.

[2] National Park Service, "Local Laws As Neighborhood Guardians," National Park Service, http://www.cr.nps.gov/hps/workingonthepast/adopting.htm.

[3] Ibid.

practices' or a list of optimal, individual ordinance inclusions. It is not intended to be all-encompassing, and the conclusions are drawn from the research presented in Chapter 2, the survey presented in Chapter 3, and NPS recommendations. Text already in use has been quoted if it was felt that it was a good example of the topic at hand. Generalized text was created by the author and based on ordinance text already in use throughout the country.

Purpose

The National Park Service, when providing guidance to communities as to the typical provisions within a preservation ordinance, includes in its description of "purpose," "The purposes section is important because it provide general direction for the implementation of the law. When an unforeseen situation arises and specific requirements do not exist or do not seem applicable, look to the purpose section for general guidance."[4] The best "purpose" sections will clearly define historic preservation is for a particular community. Ideally, the section will state that the protection of historic fabric is integrated with a community's economic vitality. It should also emphasize civic pride and a desire to protect the best a community has to offer. Below is the purpose text utilized by the City of Phoenix, which I believe is an excellent example of a well-crafted "purpose" statement.

Purpose

A. It is hereby declared as a matter of public policy that the protection, enhancement and preservation of properties and areas of historical, cultural, archaeological and aesthetic significance are in the interests of the health, prosperity and welfare of the people of the City of Phoenix. It is further intended to recognize past needless losses of historic properties which had substantial value to the historical and cultural heritage of the citizens of Phoenix, and to take reasonable measures to prevent similar losses in the

[4] National Park Service, "Local Laws As Neighborhood Guardians," National Park Service, http://www.cr.nps.gov/hps/workingonthepast/package_contents.htm.

future. Therefore, this ordinance is intended to provide for the establishment of Historic Preservation Districts in order to:

1. Effect and accomplish the protection, enhancement and preservation of improvements and landscape features of landmarks, districts and archaeological resources which represent distinctive elements of the City's cultural, educational, social, economic, political, architectural and archaeological history.

2. Safeguard the City's historic, aesthetic and cultural heritage, as embodied and reflected in such districts.

3. Foster civic pride in the accomplishments of the past.

4. Protect and enhance the City's attraction to visitors and the support and stimulus to the economy thereby provided.

5. Promote the use of Historic Preservation Districts and properties for the education, pleasure and welfare of the people of the City of Phoenix.

B. It is further declared that the purposes of this ordinance are:

1. With respect to an historic property and the properties in Historic Preservation Districts:

a. To retain and enhance those properties which contribute to the character of the Historic Preservation District and to encourage their adaptation for current use.

b. To assure that alterations of existing structures are compatible with the character of the Historic Preservation District.

c. To assure new construction and subdivision of lots in an Historic Preservation District are compatible with the character of this Historic Preservation District.

d. To recognize the value of Historic Preservation Districts and the contributions which they make to the cultural, educational and historical values of the City, and to encourage the maintenance and preservation of Historic Preservation Districts for future generations by appropriate changes to historic properties.

e. To retain and enhance historic properties in the City of Phoenix and to encourage their adaptation for current use.

f. To encourage the restoration of historic properties.

2. With respect to archaeological resources:

a. To encourage identification of the location of both pre-historic and historic archaeological resources.

b. To assist with the preservation of these resources, within developments where appropriate, and with recovery of the resources where applicable.

c. To encourage recognition of the fact that archaeological resources found on public land are the property of all citizens, and are not private property. Archaeological resources found on City-owned lands are the property of the City.

C. The adoption of this ordinance is declared to be in the public interest and is for a public purpose.

Another well-crafted “purpose” statement begins the historic preservation ordinance for the City of Seattle:

A. The City's legislative authority finds that the protection, enhancement, perpetuation and use of sites, improvements and objects of historical, cultural, architectural, engineering or geographic significance, located within the City, are required in the interest of the prosperity, civic pride and general welfare of the people; and further finds that the economic, cultural and aesthetic standing of this City cannot be maintained or enhanced by disregarding the heritage of the City and by allowing the unnecessary destruction or defacement of such cultural assets.

B. The purposes of this chapter are: (1) to designate, preserve, protect, enhance and perpetuate those sites, improvements and objects which reflect significant elements of the City's cultural, aesthetic, social, economic, political, architectural, engineering, historic or other heritage, consistent with the established long-term goals and policies of the City; (2) to foster civic pride in the beauty and accomplishments of the past; (3) to stabilize or improve the aesthetic and economic vitality and values of such sites, improvements and objects; (4) to protect and enhance the City's attraction to tourists and visitors; (5) to promote the use of outstanding sites, improvements and objects for the education, stimulation and welfare of the people of the City; and (6) to promote and encourage continued private ownership and use of such sites, improvements and objects now so owned and used, to the extent that the objectives listed above can be attained under such a policy.

Effect

Often the public is under the impression that they will lose control over their property after it is designated. Telling the public what happens after individual or district designation is, therefore, a public service and worthy of inclusion in a preservation ordinance. A well-crafted effect section removes ambiguity and places designation into a context. Codifying the effects of preservation on the property owner is another section which, I believe, Phoenix has worded exceedingly well.

Effect of HP Zoning Designation

A. From and after the adoption by City Council of an application designating property with the Historic Preservation HP suffix, any removal or demolition of structures, or construction, alteration or remodeling of structures, or signs, or any landscaping on such property or development of archaeological sites are subject to the provisions of this ordinance.

B. The owners of HP property shall maintain and preserve buildings, structures and sites at such a level that they are not a safety hazard to the occupants or to the public.

C. The HP Commission shall adopt design guidelines which shall apply to the exterior features of structures in all HP districts. The guidelines are intended to offer assistance

to property owners when building or modifying structures in the district, as well as to establish a set of standards to be used in reviewing proposals for certificates of appropriateness. The guidelines shall be a set of principles that give direction on how the parts and details of a building's scheme or plan should be assembled involving the following categories of work in historic districts or on historic structures:

1. Rehabilitation of historic structures.
2. Additions or alterations to historic structures.
3. New construction on vacant land located in historic districts or adjacent to historic structures.

D. Design guidelines may contain provisions which modify the standards for signs contained in Section 705 of the Zoning Ordinance. Such modifications may not change the safety or permit provisions of that chapter, but may specify size, height, placement, numbers, materials and lighting of signs. Further, these guidelines may specify the location of off-street parking or loading spaces as contained in Section 702 of the Zoning Ordinance. If any of these provisions are to be contained in design guidelines, the guidelines shall be approved according to the procedures contained in Section 807.

E. No building, permanent sign, or other structure within an HP District may be erected, demolished, moved, restored, rehabilitated, reconstructed, altered or changed in exterior appearance until plans for such activities have been submitted to and approved by the Historic Preservation Officer, HP Commission or City Council, and a Certificate of No Effect, a Certificate of Appropriateness, or a Demolition Approval is issued. Failure to comply with a stipulation, guideline or plan made a part of any of these approvals shall constitute a violation of this ordinance. An approved plan shall be binding upon the applicant and their successors and assignees. No building permit shall be issued for any building or structure not in accord with the plan except that temporary facilities shall be permitted in conjunction with construction. No structure or other element specified on the plan shall be eliminated, or altered and provided in another manner, unless an amendment is approved in conjunction with the procedures for original approval.

F. Nothing in this ordinance shall be construed to prevent ordinary maintenance or repair of any structure in the HP District, which does not alter or modify the historic character of the structure. Demolition of a structure without obtaining a demolition approval shall constitute a violation of this ordinance.

Defining ‘Historic’

Historic fabric is more than residences, churches or commercial buildings, and a community should look beyond the obvious in order to locate properties in need of protection. As noted in Chapter 2, the City of Seattle has broadened their definition of historic fabric to include properties as diverse as waterways and a community bulletin board. Communities as varied as Athens (Georgia), Greeley (Colorado), Topeka

(Kansas), and San Francisco have created useful definitions for different types of historic fabric. I believe the items below, or variations thereof, are useful inclusions into a preservation ordinance's "definition" section because they may help a community define what in their community is, or may be, historic.

"Archaeological resources" means any material remains of past human life, activities or habitation which is of historic or pre-historic significance. Such material includes, but is not limited to pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, burial mounds, skeletal remains, personal items and clothing, household or business refuse, printed matter, manufactured items, or any piece of any of the foregoing items.

"Building" is a resource created principally to shelter any form of human activity, such as a residence, an office building or a church.

"Contributing buildings, structures, sites, objects and works of art" means historic properties within the proposed district which have been designated for inclusion on the City's Historic Register. Additional properties with the proposed district may be designated or may remain as contributing nondesignated properties. Nondesignated properties contribute to the historic district by their shared and unique architectural, historical, archaeological or geographic characteristics. Contributing properties, designated or not, are subject to all Historic Preservation Design Review Guidelines applicable to individually designated properties as well as design review guidelines applicable to designated and contributing within the specific historic district.

"Exterior architectural features" means the architectural style, general design, and general arrangement of the exterior of a building or structure, including, but not limited to, the kind or texture of the building material and the type and the style of all windows, doors, signs, and other appurtenant architectural fixtures, features, details, or elements relative to the foregoing.

"Historic asset" is a site, land area, building, structure, object or work of art which may also include appurtenances and environmental setting, which has historical, cultural, aesthetic, architectural or archaeological significance but has not been officially designated as a historic resource, historic landmark or as contributing to a historic district by the __(name of designation body)__.

"Historic district" is a geographically definable area which contains structures, buildings, objects, sites, archaeology or works of art, or a combination thereof, which exhibit a special historical, architectural, or environmental character as designated by __(name of designation body)___. The historic district may also include appurtenances and environmental setting with the written consent from the owner(s) of record.

"Historic landmark" is a historic assets that has been recognized as having historical, architectural, archaeological or cultural importance or value which the __(name of designation body)__ has determined shall be protected and preserved in the interest of the culture, prosperity, education and welfare of the public. Historic landmark may also

include the interior of a structure, appurtenances and environmental setting [*if required by state law:* with written consent from the owner(s) of record.]

“Historic resource” is a site, land area, building, structure, object or work of art which may also include appurtenances and environmental setting, which has historical, cultural, aesthetic, architectural and/or archaeological significance, or is a site, land area, building, structure, object or work of art with potential importance or value.

“Integrity” is the ability of a property to convey its significance.

“Materials” are the physical elements that were combined or deposited during a particular period of time and in a particular pattern or configuration to form a historic asset.

“Noncontributing buildings, structures, sites, objects and works of art” are those properties which do not share the architectural, historic, archaeological or geographical characteristics of the historic district except for their physical presence within the district. These properties are not individually eligible for designation and do not contribute to the historic district’s characteristics. Inclusion of these properties within an historic district subjects these properties to those design review standards and guidelines applicable to noncontributing properties established during the creation of the historic district, unless specifically excluded under the district designation plan. All pertinent municipal zoning and building codes are applicable. New construction shall be considered a noncontributing structure.

“Object” means constructions primarily artistic in nature or relatively small in scale and simply constructed. An object is typically associated with a specific setting or environment, such as a fountain.

“Replica” means any reconstruction or recreation of any buildings, structures or other resources deemed to be of historic importance by the Commission.

“Setting” means the physical environment of a building, structure, object or work of art.

“Site” is the location of a significant event, a constructed or natural landscape, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined or vanished, where the location itself possesses historic, cultural or archaeological value regardless of the value of the existing structure. Examples include a burial mound, a battlefield and a cemetery.

“Structure” is anything constructed or erected, the use of which requires, directly or indirectly, a permanent location on or in the ground, including bridges, garages, fences, gazebos, signs, street paving, utility meters, antennas, swimming pools, walks, walls, steps, and sidewalks.

“Work of art” is a product of one of the fine arts; a painting, sculpture or mural of high artistic quality; something giving high aesthetic satisfaction to the viewer.

Historic Districts as Separate Entities

Historic districts are not alike, even when they exist within the same city or county. Why, then, should they be treated exactly the same in an ordinance? Why not acknowledge their individual characteristics and preservation challenges? It is not uncommon for a historic district to be included in a preservation ordinance. What I am speaking to here is a historic description which goes beyond a boundary description, and incorporates history, ethnography, and architecture. I am also speaking to the possibility of adding elements (e.g., appropriate uses) to a district's individual chapter or section within an ordinance. A community may not need to go into as much detail as the City of Seattle (see Appendix I), but this type of inclusion may validate the creation of the district to the public, and define specific characteristics, architectural styles or ethnic heritage that should be preserved. The statements below are from the Harvard-Belmont Landmark District ordinance in Seattle, and provide an excellent example of historic and architectural context for a district.

Sociological criteria for District designation.

Much of the area known today as Capitol Hill was laid out and developed by realtor J. A. Moore. He opened the area north of Howell Street to homeowners in 1901, naming it after Capitol Hill in Denver. The area, even then, had enormous advantages as a new residential district because of its closeness to the business district, its prominent siting and its spectacular views. As a result, and in addition to a sprinkling of existing farm or country houses, many magnificent homes were built on the hill from 1901 until the Great Depression. In the Harvard-Belmont area of Capitol Hill, most of these older and impressive homes are still extant and interspersed with them are good examples of more modest residential architecture representative of every decade of this century (to date). Included in the District also are several of the Anhalt apartment houses, precursors of planned group living, including carefully maintained yards, romantic details, and garaging for automobiles; the main building of Cornish Institute, one of the more significant cultural-historical landmarks in the City; the Loveless apartment-retail building; the Harvard Exit Theatre, for many years the home of the Woman's Century Club; and the Rainier Chapter of the D.A.R., a careful replica of George Washington's home, Mt. Vernon. This mixture of function, uses, scale and economics is among the more interesting aspects of the area. Moreover, the combination of urban and almost

pastoral qualities, the tree-shaded streets, the several open vistas, and the wooded ravines to the northwest, all create a neighborhood of outstanding and enduring character.

Architectural criteria for District designation.

The Harvard-Belmont District includes a rich variety of residential buildings in the prevailing eclectic styles of the earlier years of this century, combined with a few late Victorian residences, significant Spanish and Tudor apartment groups, the modified Spanish style of the Cornish Institute, and many modest, noneclectic houses. Uniting this variety of architectural expression are the tree-lined streets, the many walled yards and drives, interesting retaining walls and generous plantings all of which collectively create a backdrop and contiguous streetscape and neighborhood that are compatible in terms of design, scale and use of materials.

Appropriate Uses

The first standard in *The Secretary of the Interior's Standards for Rehabilitation* relates to appropriate use, "A property shall be used for its historic purpose or be placed in a new use that requires minimal changes to the defining characteristics of the building and its site and environment." It is unrealistic to think that a property will house the same business for its lifespan; therefore we have to look at compatible usage or a usage appropriate to the building's materials and construction. (An extreme example of incompatibility would be the installation of a library on the second floor of a Queen Anne house. In all likelihood the floor structure would not be sufficient to carry the weight of books and shelving, and fail as a result.)

One way to ensure compatible uses is by codifying usage in a preservation ordinance. An interesting list of permitted uses for buildings and structures within a historic district was created by the City of Pittsburgh [909.01.I.3 SP-4(III)]. Note the inclusion of a gaming enterprise and attention given to neon signs.

Permitted Uses

Within the __(district)__, land and structures may be used, and structures may be erected, altered, and enlarged for only the following uses:
(1) Multiple-unit dwellings;
(2) Restaurants, including those with entertainment;
(3) Office;
(4) Institutional, limited to museum, exhibition, and library;
(5) Hotels;
(6) Retail sales, including personal service;
(7) Theaters;
(8) Child day care center;
(9) Accessory uses that are clearly incidental to permitted principal uses, and only when located within a structure housing a permitted principal use;
(10) Signs larger than twenty (20) square feet visible from the river or from across the river shall be neon and positioned so as to maximize reflection in the river; and
(11) Gaming enterprise.

A less-detailed example of appropriate/permitted use is provided below and relates to appropriate use as defined by the underlying zoning code:

> Any uses permitted by the existing zones over which __(district)__ zoning is superimposed shall be permitted. The property will be designated by its underlying zoning classification and any other overlay zone.

Economic Hardship

Not all property owners will have the financial means to maintain, rehabilitate or stabilize their buildings. As a result an equitable solution for this problem must be present in a preservation ordinance. Ideally the language should be clear, and the bureaucratic process easy to understand. The following text is based on the economic hardship provision currently included in the Liberty, Missouri preservation ordinance.

Economic Hardship

(1) If an appeal of the denial of a certificate of appropriateness is based solely upon hardship of the property, proof of hardship shall be the burden of the property owner and the following information shall be required for consideration by __(city council, county supervisors, etc.)__:
a. Estimate of the cost of the proposed work;

b. Estimate of any additional cost that would be incurred to comply with the recommendations of the __(city council, county supervisors, etc.)__ or historic commission for changes necessary for the issuance of a certificate of appropriateness;
c. Report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any structures on the property and their suitability for rehabilitation;
d. Estimated market value of the property in its current condition;
e. Estimated market value of the property after completion of the proposed construction, alteration, demolition, or removal;
f. Estimated market value of the property after any changes recommended by the historic commission or __(city council, county supervisors, etc.)__;
g. In the case of a proposed demolition, estimated market value of the property after renovation of the existing property for continued use;
h. In the case of proposed demolition, an estimate from an architect, developer, real estate consultant, appraiser, or other real estate professional experienced in rehabilitation as to the economic feasibility of rehabilitation or reuse of the existing structure on the property;
i. The date of purchase of the property;
j. Amount paid for the property;
k. Party from whom purchased, including a description of the relationship, if any, between the owner of record or applicant and the person from whom the property was purchased;
l. Any terms of financing between the seller and buyer;
m. If the property is income-producing, the annual gross income from the property for the previous three (e) years;
n. Itemized operating and maintenance expenses;
o. Depreciation for the previous three (3) years;
p. Annual cash flow before and after debt service, if any, for the previous three (3) years;
q. Remaining balance on any mortgage or other financing secured by the property and annual debt service, if any, for the previous three (3) years;
r. All appraisals obtained within the previous three (3) years by the owner or applicant in connection with the purchase, financing, or ownership of the property;
s. Any listing of the property for sale or rent, price asked and offer received, if any, within the previous three (3) years;
t. Assessed value of the property according to the three (3) most recent assessments;
u. Real estate taxes for the previous three (3) years;
v. Form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture, or other;
w. Information about plans prepared for the property, if a building or structure is demolished, including material on the timing and financing of the new construction; and
x. Any other information considered desirable by the __(city council, county supervisors, etc.)__ or historic commission to make a determination as to whether the property owner will suffer undue economic hardship in the form of deprivation of reasonable use or a reasonable economic return on the property by the denial of a certificate of appropriateness.

(2) A ruling in favor of economic hardship shall not be approved unless the applicant presents clear and convincing evidence that the following criteria are met:
a. Any deterioration or damage cited to establish hardship shall not be due to the present owner's willful act, neglect or inattention to maintenance and repairs. Evidence

showing that the owner or applicant failed to maintain or protect the property, or performed or permitted any acts to the detriment of the property and this evidence may be used as basis to reject allegations of hardship;
b. For income producing property, a reasonable rate of return cannot be obtained from the property if it retains its historic features or structures in either its present condition or if its features or structures are rehabilitated; or
c. For non-income producing property, the property has no beneficial use in its present condition or if rehabilitated.

Determination of hardship must be based upon conditions of the site in question, and not conditions personal to the landowner. The __(city council, county supervisors, etc.)__ shall not consider evidence of the applicant's personal financial hardship unrelated to any economic impact upon the land.

The appeal hearing will take place no more than thirty (30) days from the receipt of relevant materials from the property owner. A copy of the hearing judgment will be sent to the commission no more than fifteen (15) days after judgment is reached. Any additional appeals must be brought in front of __(judicial or governing body)__.

Enforcement

"From the reign of the emperors through the rule of the popes, Rome had known no shortage of preservation edits, proclamations, and statutes. Some of these called for death, dismemberment, and scourging as penalties for the destruction of historic assets."[5] Death and dismemberment are very harsh penalties for the loss of historic fabric, but they do speak to the need for recourse after the loss of a resource, albeit it in a dramatically violent way.

Research indicates that financial penalties are the most popular method for enforcing ordinance violations. When considering a financial penalty, each community should assess what dollar amount would be noticeable for property owners within their community without being so small as to be ineffective and so large as to be judged burdensome. As stated throughout Chapter 3, however, any enforcement or penalty section is only as good as a government's desire or ability to enforce a planning/zoning

[5] Anthony M. Tung, *Preserving the World's Great Cities* (New York: Three Rivers Press, 2001), 64.

process already in place. The text below is derived from a number of local ordinances, and addresses the financial penalty most of the survey participants felt was the best form of enforcement. It may be easy to ignore a written violation, but everyone understands money.

Enforcement and Penalties

It is unlawful to construct, reconstruct, structurally alter, remodel, renovate, restore, demolish, deface, move or maintain any historic landmark or asset within a historic district in violation of the provisions of this ordinance. In addition to other remedies, the _(department name)_ shall be authorized to enforce this chapter and anyone violating or failing to comply with its provisions and, upon conviction thereof, be fined in any daily sum not to exceed Three Hundred Dollars ($300). Each day's violation or failure to comply shall constitute a separate offence.

Tax Incentives

Tax incentives are important to preservation because they provide a tangible benefit to the property owner. For many owners the retention of historic fabric is less important than the economics of a rehabilitation or restoration; they need the financial 'carrot.' Merely stating in an ordinance that a preservation commission has the power to encourage the use of tax incentives is not enough. Codifying a tax incentive – if allowed by local or state law – is a way to improve their status as an economic tool. The most detailed, codified ad valorem tax exemption located to date is that used by St. Augustine, Florida. For the purposes of this discussion and because of the length of the ordinance section, the entire text is included in Appendix III and excerpted below.

Qualifying properties will be eligible to receive an ad valorem tax exemption of one hundred (100) percent of the assessed value of the improvements, as defined in section 2-383(7) of this article, resulting from renovation, restoration or rehabilitation of the property. All qualifying projects must complete the review process outlined in this article. The exemption shall apply only to improvements to real property. All qualifying improvements must be commenced on or after the date of adoption of this article

[Ordinance No. 95-20]. If the property is used for non-profit or governmental purposes, and is regularly and frequently open for the public's visitation, use and benefit, then one hundred (100) percent of the assessed value of the property, as improved, is exempt provided the assessed value of the improvement is at least fifty (50) percent of the total assessed value of the property, as improved, and the improvement is made by or for the use of the existing owner. The exemption shall apply only to ad valorem taxes levied by the City of St. Augustine…

In order to be eligible for the historic preservation tax exemption, (1) the value of the proposed improvements must be equal to at least fifty (50) percent of the total assessed value of the property, before the improvement, or twenty thousand dollars ($20,000.00), whichever is less; and (2) at least twenty-five (25) percent of the valuation of the proposed improvements must be for work to the exterior or foundation of the structure….

Demolition By Neglect

A description of demolition by neglect in a preservation ordinance allows a community to define the minimum level of maintenance it will tolerate. The following text defines demolition by neglect, and includes a bureaucratic process with a beginning, middle, and end. A property owner cannot extend the neglect through the legal or appeal process until the only equitable solution is demolition. There is also an economic hardship provision in order to provide a measure of fairness to the property owner in extreme circumstances. Some cities, such as Chicago, include various provisions that allow the city to place liens onto a property and/or obtain ownership of a neglected property in order to circumvent demolition by neglect. The text provided below offers a middle ground.

Demolition by neglect is neglect of regular maintenance or repair, or not securing a resource which results in the deterioration of exterior features or the loss of structural integrity of the resource. In the event of demolition by neglect of a historic landmark or structure within a historic district on public or private property, the following provisions shall apply:

(1) If a historic landmark or a property within a historic district has been determined by the ___(commission or planning/zoning office)__ to be the subject of demolition by neglect, the __(commission or planning/zoning office)__ shall provide the owner of record with a written notice specifying the conditions of deterioration and the minimum items of repair or maintenance necessary to correct or prevent further deterioration.

(2) Such notice shall be sent by certified mail, return receipt requested, addressed to the owner of the property, contract purchaser, if applicable, at his or her last known address, or the address shown on the real property tax records in the __(clerk's office – city, county and state). Such notice, when so addressed and deposited with the United States Postal Service with proper postage prepaid, shall be deemed complete and sufficient. In the event that notification cannot be accomplished, as aforesaid, after reasonable efforts, notice shall be accomplished by posting a public notice on the property. A copy shall also be provided to the __(appropriate city/county office)__.

(3) The notice shall provide that corrective action shall commence no later than thirty (30) days from the receipt or posting of said notice. The owner or contract purchaser, if applicable, shall demonstrate continual progress and all repairs shall be completed within a reasonable period of time. The notice shall state that the owner(s) of record of the subject property may within ten (10) days request a hearing before the __(commission or planning/zoning office)__ challenging the finding of demolition by neglect and/or the notice to repair. If such request for a hearing is received within this time period, a hearing will be at the next regular meeting of the __(commission or planning/zoning office)__. The __(commission or planning/zoning office)__ shall review all evidence of demolition by neglect at the scheduled hearing.

(4) In the event that the __(commission or planning/zoning office) finds that, notwithstanding the necessity for such improvements, corrective action would impose a substantial hardship on the owner or any or all persons with any right or title in the subject property, then the commission shall establish a period of forty-five (45) days and direct __(preservation or planning/zoning staff)__ to seek alternative methods to preserve the historic landmark or property located within a historic district. If no alternative method can be agreed on within the forty-five (45) day period, the case will be sent to the ___(appeals body)__ for review at their next regular meeting. Property owners are responsible for corrective action during both the forty-five (45) day and appeal(s) period(s). Both the __(commission or planning/zoning office)__ and property owner may each appeal the __(appeals body)__ decision one time. It is the responsibility of the property owner, the ___(commission or planning/zoning office)__ and the __(appeals body)__ to ensure that the local appeal process concludes within a twelve (12) month period. Any further appeals will be directed to the __(state district court)__. The __(city)__ reserves the right to place a lien on the property for the amount of all fine violations of __(city / county)__ zoning code.

(5) If no alternative is found to preserve the structure without undue hardship to the owner and the structure is determined a threat to human safety and is in violation of city code a demolition permit may be issued.

Design Review / Design Guidelines

Design guidelines are just as the name implies – suggestions for property owners to follow during the process of maintaining, rehabilitating or restoring buildings. In order for a historic commissions' design review/COA process to function, the guideline

document must be easy to obtain by any property owner, and the review process detailed within the preservation ordinance and made available to the public. Because guidelines are defined by the community and may be as rigid or flexible as it feels necessary in order to retain integrity and character, codifying guidelines is a possibility. By doing so, however, a community would require an ordinance update in order to edit the document. This may not be the most efficient editing method. Therefore, codifying the review process provides the public with a framework under which they can plan a project before consulting with preservation or planning office. The design review criteria codified by Burlington, Vermont is particularly thorough, especially in its consideration of climate and landscape.

The following criteria shall be considered in connection with any application for a certificate of appropriateness:

a. *Relate development to its environment.* The proposed development shall relate appropriately to its context. It shall relate harmoniously to the terrain and to the use, scale and architecture of existing buildings in the vicinity which have a functional or visual relationship to the proposed structure(s). Proposals that deviate substantially from established neighborhood patterns should be discouraged;

b. *Preserve the landscape.* The landscape, existing terrain, and any significant trees and vegetation shall be preserved in its natural state insofar as practicable. Tree and soil removal shall be minimized and any grade changes shall be in keeping with the general appearance of neighboring developed areas. If natural features and existing landscaping are proposed to be removed, special attention shall be accorded to plans to replace such features and landscaping;

c. *Provide open space.* All open space shall be designed to be visually and physically accessible to the extent feasible. Open space shall add to the visual amenities of the vicinity by maximizing its visibility for persons passing or overlooking the site from neighboring properties. If open space is intended for active use, it shall be so designed as to maximize its accessibility for all individuals, including the disabled, encourage social interaction, and facilitate ease of maintenance;

d. *Provide efficient and effective circulation.* With respect to vehicular and pedestrian circulation, special attention shall be given to the location and number of access points to public streets and sidewalks, to the separation of vehicles and pedestrians, to the arrangement of parking areas and to service and loading areas, and to the location of accessible routes and ramps for the disabled;

e. *Provide for nature's events.* Special attention shall be accorded to stormwater runoff so that neighboring properties and/or the public stormwater drainage system are not adversely affected. Attention shall also be accorded to design features which address the affects of rain, snow and ice at building entrances and to provisions for snow and ice removal from circulation areas;

f. *Make advertising features understandable.* The size, location, design, texture, lighting, and materials of all exterior signs and advertising features shall not detract from the use and enjoyment of proposed buildings or surrounding properties. Signs and similar features shall be appropriately sized and located in a manner that does not detract from nor disrupt the immediate visual environment. Buildings that include publicly accessible restrooms shall include appropriate exterior signs indicating their availability;

g. *Integrate special features with the design.* Exposed storage areas, machinery and equipment installation, service areas, truck loading areas, utility connections, meters and structures, mailboxes, lighting, and similar accessory structures shall be subject to such setbacks, screen planting or other mitigation or screening methods as shall reasonably be required to prevent their being incongruous with or offensive to existing or proposed structures and surrounding properties. Special features, which are essential to a structure's function, shall be incorporated into the original structure design, not added as an afterthought;

h. *Make spaces secure and safe.* With respect to personal safety, all open and enclosed spaces shall be designed to facilitate building evacuation, maximize accessibility by fire, police or other emergency personnel and equipment, and, to the extent feasible, provide for adequate and secure visibility for persons using and observing such spaces;

i. *Protect Burlington's heritage.* The removal or disruption of historic, traditional or significant, uses, structures or architectural features or neighborhood patterns shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties. Significant structures and/or structures with important architectural features shall be identified by their inclusion in the Burlington Register of Historic Resources. New structures, additions, and alterations shall be sympathetic to and complement the scale and design ofsurrounding historic structures and locally significant buildings of architectural merit; and

j. *Consider the microclimate.* Any development which proposes new structures, additional lot coverage, or the installation of machinery or equipment which emits heat, vapor, fumes, or noise shall endeavor to minimize, insofar as practicable, any adverse impact on light, air, and water resources, or on the noise and temperature levels of the immediate environment.

Property Rights

The property rights contingent in the United States is a strong and vocal block. It cannot, and should not, be ignored by preservation because the two viewpoints must

coexist. One way preservation can be seen as something other than a 'taking,' I believe, is for a community to codify its position on property development. The community of Liberty, Missouri does this within a chapter of its code entitled "Unified Development Ordinance." Sections of this chapter include "Historic Preservation Overlay" and "Site Development and Design Standards." While the chapter does not address property rights per se, it has found a way to validate historic preservation and site development standards as a way to protect natural resources, retain community character, and create a desirable place to live.

The purpose of Liberty's historic overlay district is not that much different from Phoenix's purpose outlined earlier in this chapter so it is not included below. The purpose of the Unified Development Ordinance (UDO) section is,

> The purpose of this UDO is to promote the public health, safety, comfort and general welfare of this community. By adopting this UDO, the city council intends to implement the goals, objectives, and principles of the Comprehensive Plan of the City of Liberty, and, in addition, to specifically:
> (1) Manage and reduce congestion in the public streets;
> (2) Establish standards and regulations for the development and use of land;
> (3) Regulate the density and intensity of land use, and determine the area of open spaces within and surrounding development;
> (4) Require reasonable site improvements to, among other objectives, manage site access, control erosion and stormwater runoff and preserve and develop general neighborhood character;
> (5) Conserve and protect the beauty, heritage and character of the city;
> (6) Foster appropriate uses of land that reflect sustainable growth and development;
> (7) Create an attractive and desirable place to live, work and engage in recreation; and
> (8) Prescribe penalties for the violation of the provisions of this UDO.

The purpose of the "Site Development" section is described as,

> The purpose of this article is to ensure that regulations are in place to promote good site design, connectivity, and sustainability while promoting the goals of the city's comprehensive plan and protecting the health, safety and welfare of the community. These standards are intended to encourage quality site design that will enable calmer traffic patterns, encourage pedestrian access, provide adequate public facilities, promote enhanced building design, create memorable streetscapes, encourage the creative use and design of sites to provide a variety of architectural styles and building types, preserve open space and natural features, and to create innovative and compatible residential and commercial development while providing for necessary access and

services. Sustainable development practices, including infill and redevelopment of underused sites, providing alternative transportation facilities, and innovation in addressing and managing stormwater, site disturbance, energy use and landscaping design are encouraged.

Education

Granting a commission the power to educate the public about historic preservation is a worthy ordinance inclusion; however, hoping that a commission's educational committee will have the time or energy to promote community education may not accomplish the task. Education also comes in the form of commissioner training. As the NAPC's commissioner training evaluations attest, commissioner education is just as important as that of the public's, albeit in a different context. As stated by the Arkansas preservation official interviewed for the survey, the quality of commission work improved dramatically when Arkansas made commissioner training a priority.

It would be impossible, in the time allotted for this thesis, to examine all of the historic preservation ordinances in the U.S. in order to determine whether or not they contain a mandate for commission and/or public education. A search of state enabling legislation returned the following,

> …the Idaho State Historical Society shall be governed by a board of trustees and shall be placed within the office of the state board of education….Vests in the board powers and duties to include, among others, the following: encourage and promote interest in the history of Idaho;…[6]

"Encourage and promote" appears to be the closest thing to a mandate for public preservation education in the State of Idaho, and Idaho is not alone in this view. The emphasis must come from local government, and one way for a local government to

[6] Idaho Code §67-4123 through §67-4126.

emphasize the need for regular public/commissioner education is through an ordinance.

It is easier to ignore a commission memo than a local ordinance.

Public Education

Education is the key to creating greater community awareness as to the value of its historic fabric. By educating citizens in historic preservation for permit, the design review process can be accelerated. By educating citizens and city official on the value of historic preservation to the community, an appreciation can be developed for the existing historic environment, be it architectural, archaeological, cultural, rural, ethnographic or landscape. Therefore, it will be the mandate for the __(committee name or HDC)__ to educate the public in any of the following ways. The commission and its committees are encouraged to partner with local non-profit and volunteer preservation, conservation, cultural and historic groups in order to facilitate the public education process.

1. Prepare and make available for distribution brochures on common design review issues including, but not limited to, window policies, synthetic siding, roofing materials, and building integrity;

2. Prepare and make available for distribution brochures on the economics of historic preservation and the financial incentives available;

3. Develop programs for educating the public on local architectural styles;

4. Develop mailings to residents within the historic district on a set, regular basis to include informational/educational material;

5. Develop a presentation for the Chamber of Commerce regarding commissions' role and the economics of historic preservation;

6. Develop a presentation for local realtors regarding the commission, the economics of historic preservation, tax incentives, and selling properties in the historic district;

7. Develop a presentation for local educators regarding the commission, locally designated properties, walking tours, and how to integrate historic preservation into existing curriculum;

8. Establish agenda items for presentation at City Council meetings;

9. Establish a resource center on historic preservation topics;

10. Promote national preservation month and state preservation week.

Commissioner Education

The commission is an extension of local government, and as such it is the duty of all commission members to be aware of preservation trends and regulations, rules of order, and the scope of their job. Therefore, it will be the duty of every incoming commission member to read the following booklets published by the National Trust for Historic Preservation within the first twelve (12) months of their term:

A Self-Assessment Guide for Local Preservation Commissions
Celebrating National Preservation Week in Your Community
Design Review in Historic Districts
Design and Development: Infill Housing Compatible with Historic Districts
Procedural Due Process in Plain English: A Guide for Preservation Commissions
Takings Law in Plain English
What Every Board Member Needs to Know: An Introduction to Historic Preservation

It is also advised for every member of the commission to attend a minimum of one training session (preservation, architectural, economic, etc.), sponsored by either a state or national organization, during their tenure.

Staffing and Funding

I did not make a conscious effort to place this section at the end of the list of recommendations, but it is by far the most difficult and leaving it to the end seems to be the most appropriate. So much of what has come before (especially the educational component) is monetarily driven. Preservation funding in the United States is trickle down; the funds often originate from a governmental authority, specifically a local appropriation from the general fund. The lack of staff and funding, as expressed by the Tennessee preservation official, for example, affects communities in her state on many levels. How do you mandate funding and staffing through an ordinance?

My inspiration for this section originated from the "Grants" page on the Pennsylvania Historical and Museum Commission website. This state commission provides grant funding for projects (e.g., archives, education, public/local history, and organizational development), general operating support, technical assistance, and

conferences. The Pennsylvania Historical and Museum Commission proves that there a precedence for the inclusion of funding in an ordinance. It is merely up to the community to make it a priority.

Staffing and Funding

It is recognized that funds are needed in order to create educational materials and/or programs, and to enable commission members to attend training classes. Therefore, the __(committee name or commission)__ will be tasked with researching available state and non-profit grant funding opportunities in order to move these mandates forward.

It is the duty of the commission chair to notify the __(department director)__ when additional staff and/or resources are required, especially during a time of unusual volume or demand, if current staffing levels cannot adequately administer public applications and/or inquiries.

It is also the duty of the professional staff to notify the __(department director)__ when additional staff and/or resources are required in order to meet unusual volume or demand.

Conclusion

The individuals who create ordinance language have my respect, and I understand why a local government would be willing to adopt an existing code verbatim (or almost verbatim). Ordinances are difficult. They are, however, a necessity and cannot be overlooked. Weakness attracts undesirable outcomes. The following quote is attributed to legendary University of Notre Dame football coach Knute Rockne, and I think it aptly describes U.S. preservation ordinances, "Build up your weaknesses until they become your strong points." Below are my suggestions for local preservation ordinance 'must haves':

1. A *purpose* statement which adequately defines historic preservation for a community. Ideally, it should equate preservation with economic vitality, and state that the retention of historic fabric is akin to civic pride and community character. I also recommend that it mention all forms of fabric – landscape, archaeology, buildings, ethnography, objects – in order to reinforce what can be historic.

2. An *effects* statement which clearly states what designation means to a property owner – what is expected of the owner; what triggers the preservation ordinance; what design review is and is not.

3. A historic preservation ordinance should include more than just a definition for "historic building" and "historic structure" in its definitions in order to reinforce the point that there is more to preservation than houses, churches, and civic buildings. This helps reinforce the *purpose* statement, and will hopefully define preservation as less of a taking to skeptical members of the public.

4. If a historic district is defined within an ordinance, include a paragraph about its social/cultural history and the building types found within it. Include design review elements particular to that district, and how those elements must be addressed by property owners. Treating a *district as a distinct entity* may help eliminate problems stemming from design solutions included within code that attempt to be 'one size fits all'.

5. Working in conjunction with number 4, if appropriate, stipulate the *appropriate uses* for buildings within a historic district be it single-family housing, art galleries or gaming enterprises. The uses should be appropriate for the district's building stock (to avoid structural problems), and not conflict with any pre-existing zoning.

6. Adequately define *economic hardship,* and state a clean process with a definite beginning, middle, and end. Endless appeals and a murky bureaucratic process do not serve either the community or the property owner. The onus should be on the property owner to prove economic hardship because ultimately what a commission is trying to do is protect a historic resource. A well-defined process may help remove emotion from the discussion.

7. An ordinance should include an *enforcement* clause/chapter/subchapter that is plausible. Everyone understands money, and a violation with an accumulating daily fine is difficult to ignore. It also places preservation enforcement within a planning/zoning context. The public is accustomed to planning/zoning departments, and as such may be more willing to accept a daily fine administered by a planning/zoning department as an enforcement tool.

8. If allowed by state or local laws, codifying a *tax incentive* gives it a higher status as an economic development tool.

9. Adequately define *demolition by neglect,* and as with economic hardship, create a process with a beginning, middle, and end. Without a clearly defined process, a property can languish for years and eventually succumb to the bulldozer. Every community will need to work within its state constitution, laws and/or enabling legislation, but many communities have shown that it is not impossible to craft a workable definition and fair process.

10. Codifying the *design review process,* ideally, takes the mystery out of the process for the public, but only if the information is made available. Design guidelines and the review process must be shown that at their core they are intended to retain community/district character, and not to create extra burdens on the property owner. What is often overlooked is that a property's distinctive character may have been what drew the owner to it in the first place, so the process is a way to find a middle ground between a design ideal and the property owner's desires (assuming they are within reason).

11. Addressing the *property rights movement* in a preservation ordinance may not be a solution for every community, but Liberty, Missouri has shown that it can be done. It may be more appropriate to include one a paragraph about the need for quality site design, pedestrian access, memorable streetscapes, and sustainable development practices, etc. within a *purpose* statement. Regardless, including it in the ordinance legitimizes preservation by placing it within an overall context.

12. Historic preservation is often seen as reactionary, something which appears only when there is an eminent threat. It is not out of the realm of possibility that the number of eminent threats could decrease if a preservation ordinance mandated regular public, government, and commissioner *education.* As stated in earlier chapters, a rule is more difficult to ignore when it is included in an ordinance. Preservation must be more proactive with regard to education. Somebody just has to do it.

13. *Staffing and funding,* as shown in Pennsylvania, can be stipulated in an ordinance. Ideally, the ordinance would define a city/county staff (number of individuals and an overview of their responsibilities) and stipulate that funding and yearly training will be made available for these positions. At least one training session should also be stipulated for commission members. Since most funding originates from local appropriations, include in the ordinance a provision for a percentage of monies every year from a general fund.

Finally, my research identified some key ingredients to a successful preservation ordinance: 1) Community involvement, 2) Government backing / city hall support, 3) A community's realistic examination of their economic situation, and 4) A realistic examination of outside threats. Community will was discussed by some of the survey respondents, most notably for ordinance review and enforcement; however, it may be unrealistic to expect a community to demand review of ineffective ordinance chapters or to demand the enforcement of demolition by neglect provisions if they are unaware of

their existence. As noted by the Arkansas official, the most successful preservation programs in that state are those in which preservation has partnered with sophisticated non-profit groups. Unfortunately, you cannot leverage partnerships with sophisticated non-profit groups (both within and outside of preservation) if the groups do not exist. It is also difficult to create community partners if local education is not a priority.

A local government's desire to see preservation as a priority is very difficult to quantify. As stated earlier, Liberty, Missouri did not have government backing until the town identified encroaching Kansas City development as a threat and elected a pro-preservation mayor. The Butte, Montana preservation officer only found local government support when his office was moved from planning and zoning to the local health department. Government backing comes in many forms, and it will take different approaches in order to leverage that backing.

It is very simple to require infrastructure improvements from developers, but developers (in a gross generalization) are in the business of making money and less concerned with a community's historic fabric. A community must take care of itself, and in order to do so from a preservation standpoint it must readily acknowledge both its positive and negative points. And you cannot turn negatives into positives until you have community support and a plan.

Final Thoughts

The broad nature of preservation ordinances does not allow a complete analysis of the topic in the time allowed for a typical master's thesis. Additional research could include any of the following:

- An individual could write an entire thesis based on interviews with cooperative developers and owners, and what they feel 'works' and 'doesn't work' within

their own community's preservation ordinances. Identification of local owner/developer 'carrots' would be of interest to many communities, CLG coordinators, and preservation organizations.

- I would have been interesting to have spoken with more people on the local government level during the NAPC survey, but schedules and interest did not permit me to do so. Interviewing preservationists with a state purview provides good information; however, just as with owners and developers, an entire study could be made as to the thoughts of local planning, zoning, and staff.

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APPENDIX I

Chapter 8 HISTORIC PRESERVATION

Section 801. Title.

This chapter shall be known as the "Historic Preservation Ordinance of the City of Phoenix."

Section 802. Purpose.

A. It is hereby declared as a matter of public policy that the protection, enhancement and preservation of properties and areas of historical, cultural, archaeological and aesthetic significance are in the interests of the health, prosperity and welfare of the people of the City of Phoenix. It is further intended to recognize past needless losses of historic properties which had substantial value to the historical and cultural heritage of the citizens of Phoenix, and to take reasonable measures to prevent similar losses in the future. Therefore, this ordinance is intended to provide for the establishment of Historic Preservation Districts in order to:

1. Effect and accomplish the protection, enhancement and preservation of improvements and landscape features of landmarks, districts and archaeological resources which represent distinctive elements of the City's cultural, educational, social, economic, political, architectural and archaeological history.
2. Safeguard the City's historic, aesthetic and cultural heritage, as embodied and reflected in such districts.
3. Foster civic pride in the accomplishments of the past.
4. Protect and enhance the City's attraction to visitors and the support and stimulus to the economy thereby provided.
5. Promote the use of Historic Preservation Districts and properties for the education, pleasure and welfare of the people of the City of Phoenix.

B. It is further declared that the purposes of this ordinance are:

1. With respect to an historic property and the properties in Historic Preservation Districts:

a. To retain and enhance those properties which contribute to the character of the Historic Preservation District and to encourage their adaptation for current use.
b. To assure that alterations of existing structures are compatible with the character of the Historic Preservation District.

c. To assure new construction and subdivision of lots in an Historic Preservation District are compatible with the character of this Historic Preservation District.
d. To recognize the value of Historic Preservation Districts and the contributions which they make to the cultural, educational and historical values of the City, and to encourage the maintenance and preservation of Historic Preservation Districts for future generations by appropriate changes to historic properties.
e. To retain and enhance historic properties in the City of Phoenix and to encourage their adaptation for current use.
f. To encourage the restoration of historic properties.
2. With respect to archaeological resources:
a. To encourage identification of the location of both pre-historic and historic archaeological resources.
b. To assist with the preservation of these resources, within developments where appropriate, and with recovery of the resources where applicable.
c. To encourage recognition of the fact that archaeological resources found on public land are the property of all citizens, and are not private property. Archaeological resources found on City-owned lands are the property of the City.
C. The adoption of this ordinance is declared to be in the public interest and is for a public purpose.

Section 803. Definitions.
Alter: Any architectural, mechanical or structural change to an historic property which requires a permit under the Construction Code of the City.
Archaeological resources: Any material remains of past human life, activities or habitation which are of historic or pre-historic significance. Such material includes, but is not limited to pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, skeletal remains, personal items and clothing, household or business refuse, printed matter, manufactured items, or any piece of any of the foregoing items.
Area: Two or more parcels of land, sites, houses, buildings or structures which may include streets and alleys.
Association: The direct link between an important historic event or person and a historic property. +2
Building Official: The person or his designee authorized to grant permits for construction, alterations and demolitions pursuant to the Phoenix Construction Code and to make interpretations thereof.
Certificate of Appropriateness: An official form of the City stating that proposed work on historic property is compatible with the historic character of the property and, therefore: 1) may be completed as specified in the Certificate; and 2) any building permits or other Construction Code permits needed to do with work specified in the Certificate may be issued by the City's Development Services Department; and 3) any other permits required by other City ordinances, such as Grading and Drainage may be issued. *2
Certificate of no effect: An official form of the City stating that proposed work on historic property will have no detrimental effect on the historic character of the property and therefore may proceed as specified in the certificate without obtaining further authorization under this ordinance, and authorizing the issuance of any permits required by the City Construction Code for said proposed work.
City at large: All land within the corporate limits of the City.
City Council: The Mayor and City Council of the City of Phoenix, Arizona.

Construction Code: The Construction Code of the City which regulates construction in the City and requires building permits, electrical permits, plumbing permits and other permits to do work regulated by the Construction Code.
Demolish: Any act or process which requires a permit under Construction Code of the City and which destroys in part or in whole a house, building or other structure within an Historic Preservation District other than solely interior elements or demolition that does not alter exterior features or demolition that is not visible from outside the house, building or other structure. +1
Demolition approval: Authorization for removal of all or part of a structure which is located within an Historic Preservation District or an area under applications for historic preservation designation.
Design: The combination of elements that create the form, plan, space, structure and style of a property. +2
Development: Any modification, alteration, remodeling, new construction or excavation which requires a permit under the Construction Code of the City, or which affects the historical character of an historic property.
Feeling: A property's expression of the aesthetic or historic sense of a particular period of time. +2
HP: Historic preservation.
HP Commission: The Historic Preservation Commission of the City of Phoenix Commission.
HP district: Historic Preservation District of the Phoenix Zoning Ordinance.
Historic Preservation Commission: The Commission created by this ordinance.
Historic Preservation District: A zoning district in the form of an overlay zone, in which property retains the uses of and is subject to the regulations of the underlying zone, but which property is also subject to the provisions of the Historic Preservation Ordinance.
Historic Preservation Officer (of the City of Phoenix): The City official who administers this ordinance and maintains the Phoenix Historic Property Register.
Historic property: One or more parcels of land, sites, houses, buildings, structures, objects, or areas which have been zoned HP. *2
Integrity: The ability of a property to convey its significance. +2
Landmark: A structure or site which contains an outstanding or unique example of an architectural style, which contains or is associated with a major historic event or activity, which contains important, intact archaeological resources, which is a site or structure of unique visual quality and identification, or which is a site of general historic or cultural recognition by the community. A landmark shall also meet all criteria for designation as an HP district.
Location: The place where the historic property was constructed or the place where the historic event occurred. +2
Materials : The physical elements that were combined or deposited during a particular period of time and in a particular pattern or configuration to form a historic property. +2
Minor work: Any change, modifying, restoring, rehabilitating, renovating, surfacing, or resurfacing of the features of historic property which does not materially change the historic characteristics of the property.
Move: Any relocation of a structure on its site or to another site.
Owner: The owner as shown on the records of the Property Records Section of the Phoenix City Clerk's office on the date of the filing of an application.
Phoenix Historic Property Register: The list of contributing resources, including sites, structures, buildings, districts and objects within Historic Preservation Districts in the City of Phoenix as compiled and kept by the Historic Preservation Officer of the City of Phoenix.

Planning Commission: The Planning Commission of the City of Phoenix, Arizona.
Record owner: Same as "owner."
Remodel: Same as "alter."
Removal: Same as "move". *2
Replacement/reuse plan: A plan for redevelopment of a site within an HP district indicating a proposed development which shall be in accordance with existing zoning, adopted specific plans, and HP design guidelines. Such plans shall consist of a plot plan illustrating building locations, parking, walls and landscaping. They shall also include general elevation drawings of structures including roofs, doors and windows and other openings.
Setting: The physical environment of a historic property. +2
Workmanship: The physical evidence of the crafts of a particular culture or people during any given period in history or prehistory. +2
Date of Addition/Revision/Deletion - Section 803
*1 Revision on 4-15-1992 by Ordinance No. G-3513
+2 Addition on 5-5-2004 by Ordinance No. G-4603, eff. 6-4-2004
*2 Revision on 5-5-2004 by Ordinance No. G-4603, eff. 6-4-2004

Section 804. Historic Preservation Commission.
A. Creation of Commission; Members; Terms; Vacancies. The Historic Preservation Commission is hereby created, to consist of nine members who are residents of the City at large, to be appointed by the City Council within sixty days of the adoption of this ordinance. The members shall serve for terms of three years, except that the members of the first Commission shall serve as designated by the City Council for the following terms: three members for one year, three members for two years; and three members for three years. Any vacancy shall be filled by the City Council within a reasonable time after the vacancy occurs, for the unexpired term. Members shall serve until their successors are appointed. The members of the Commission shall serve without compensation.
B. Qualifications of Members. Members of the HP Commission shall be persons who have demonstrated special interest, knowledge or experience in historic preservation. At least one member shall be selected from each of the following: registered architect, real estate professional, archaeologist, historian.
C. Chairman, Vice-Chairman, Secretary, Rules. The HP Commission shall elect its chairman and vice-chairman who shall have the power to administer oaths and take testimony. The Historic Preservation Officer or his designee shall serve as secretary to the HP Commission. The HP Commission shall adopt rules of procedure for the conduct of its business.
D. Member's Failure To Attend Meetings, Successor. If a member of the HP Commission fails to attend three consecutive regular meetings of the HP Commission, or fails to attend fifty percent or more of the regular meetings of the HP Commission during a calendar year, unless excused by the Chairman, the City Council may declare such member's seat vacant and appoint a new member to serve the balance of the unexpired term.
E. Powers and Duties. The HP Commission shall work with City Council on matters of historic preservation; take the initiative in bringing people together on historic preservation issues; review proposed alterations to historic properties, historic districts and archaeological resources through the certificate of appropriateness process; and develop, maintain and from time to time amend, a plan for historic preservation in the City. The Commission shall establish and maintain a Phoenix Historic Property Register, survey historic properties including archaeological resources, recommend to the City

Council designations for Historic Preservation Districts, and establish guidelines for evaluation of historic properties, districts including archaeological resources, provide public information and education on preservation, coordinate resources and provide technical assistance, develop criteria and review procedure, promote revitalization of the City through preservation and make recommendations to the City Council and citizens of the City regarding historic preservation. The HP Commission may also confer with other City, County, regional, State and national historic preservation boards and commissions. The HP Commission shall work with and assist departments of the City in matters affecting historic preservation. The HP Commission shall initiate plans for the restoration or rehabilitation of City-owned buildings, and shall advocate and recommend plans for the restoration or rehabilitation of privately owned buildings and the preservation of archaeological resources. The HP Commission shall discourage, and work with City departments to prevent, unwanted demolition of historic buildings and structures, and the destruction of archaeological resources.

F. Conflict of Interest. Conflict of interest of HP Commission members is controlled by the Arizona Revised Statutes and judicial decisions on conflict of interest.

Section 805. Historic Preservation Officer.

A. The position of Historic Preservation Officer is hereby created in the City Manager's Office to work under the direction of the City Manager. The Historic Preservation Officer shall: *1

1. Perform administrative acts required by the Historic Preservation Ordinance, including giving notice, researching background material, preparing reports and recommendations, receiving and processing appeals, attending meetings of the HP Commission, and rendering such assistance to the HP Commission as is required.
2. Work with and assist departments of the City in matters affecting historic preservation.
3. In conjunction with policy as established by the Historic Preservation Commission, shall establish and maintain a program of incentives. The incentives shall be used to encourage owners of historic properties to obtain HP designation and to assist owners of designated property in recognition, restoration and maintenance of their historic, architectural or archaeological resources.
4. Issue certificates of determination of potential eligibility for Historic Preservation District designation. Upon receipt of an application for a certificate, the Historic Preservation Officer shall evaluate the property based on the criteria set forth in Sections 807.D., E. and 808 to determine whether the property could qualify for designation as a HP District or could qualify for inclusion in a HP District. A determination made by the Historic Preservation Officer pursuant to this section shall be advisory only and shall not limit future consideration of HP designation in accordance with the provisions of this chapter. Certificates shall be issued within thirty days of receipt of applications.
5. Perform such other acts as are required by this ordinance or by the HP Commission.

B. Duties of the Historic Preservation Officer may be delegated as necessary. +1

Date of Addition/Revision/Deletion - Section 805

+1 Addition on 5-5-2004 by Ordinance No. G-4603, eff. 6-4-2004
*1 Revision on 5-5-2004 by Ordinance No. G-4603, eff. 6-4-2004

Section 806. Temporary Restraint of Demolition.

A process is established for the review of proposed demolitions of structures which are located in areas where an application for HP designation is under consideration.

A. It is the purpose of this ordinance to preserve structures of historic or architectural significance, but it is recognized that all areas of significance cannot be identified,

analyzed, and designated at one time. However, it is important to protect properties with potentially qualifying buildings from inappropriate demolitions until review and hearings can be completed for possible HP designation.
B. The following procedures are established to ensure a review of all proposed demolitions of structures within areas under application for HP designation.
C. No demolition permit shall be issued by the Building Official within the designated areas unless a demolition approval is issued by the HP Officer, the HP Commission, or the City Council.
D. These procedures shall apply to any building that is located within an area of an application for an HP District between such time as the application is initiated or filed and the time the action is taken on the application by the City Council.
E. Procedures for review of applications for a demolition permit:
1. The Building Official shall refer all applicants for demolition permits within these areas to the HP Officer. Upon receipt of the application, the hp officer shall issue a demolition approval if: *2
a. It is determined that the building contains no historic or architectural significance and is not an essential contribution to other historic features in the area. *2
2. Standards of review by the HP Officer shall include:
a. The architectural or historical value or significance of the structure or feature and its relationship or contribution to other historic value of the property.
b. The relationship of the exterior architectural features or landscape features to the remainder of the structure, site or property.
c. The relation of historic or architectural features found on the site to other such features within the surrounding area.
d. Any other factors, including aesthetic, which may be relevant to the historical or architectural aspects of the property.
3. If a demolition approval is not issued then the application shall be set for a public hearing and decision according to the following procedures:
a. The HP Officer shall review the application and shall conduct a public hearing within twenty days of receiving the application. Notice of the application shall be posted on the property at least ten days before the date set for the public hearing. The HP Officer shall review the application in light of the standards set forth in Section 806.E.5. below and the evidence presented at the hearing, and shall either grant or deny the application. *2
b. Any person aggrieved by the HP Officer's decision may, within five days of the action, appeal to the HP Commission. If appealed, the matter shall be set on the next available agenda of the Commission. Notice of the hearing shall be mailed to the applicant at least fourteen days prior to the hearing and shall be posted on the property at least ten days prior to the hearing. *2
c. The Commission's decision shall be final unless appealed by either the applicant or any aggrieved person within five days of the action. If appealed, the matter shall be set for a public hearing before the City Council at their next available meeting. The hearing shall be noticed and the property posted in accordance with Section 806.E.3.b.
d. In the event the initial hearing on an appeal to the HP Commission is not held within sixty days of the date the appeal was filed, the application shall be deemed approved. *2
4. In the event a demolition approval is denied, no permit for demolition shall be issued for one year from the date of the HP Officer's initial hearing on the subject property unless a subsequent demolition approval has been requested and granted or until adoption of HP zoning for the property.
a. If HP zoning has not been placed on the property at the time of expiration of the one year, the HP Officer shall grant a demolition approval for the subject property.

b. At the time of adoption of HP zoning, the temporary restraint of demolition and any stays of demolition in effect shall expire. Demolition approvals at that time shall be regulated by Section 813. Requests for demolition approvals shall be filed in accordance with the procedures of that Section.
5. Standards for granting demolition permit. A demolition permit shall only be granted if the applicant demonstrates:
a. That the building is of minimal historic significance because of its location, condition, modifications or other factors, and its demolition shall be inconsequential to historic preservation needs of the area; or
b. If the building is determined to have historic or architectural significance, that the denial of the demolition permit will result in an economic hardship to the property owner. Such hardship shall be determined in accordance with Section 814.
6. An application for a demolition permit shall be exempt from these demolition review requirements if the City Manager or designee notifies the HP Officer in writing that the building has been ordered to be demolished in whole or in part by the City Manager or designee, or by the City of Phoenix Rehabilitation Appeals Board to protect the public health, safety and welfare.
7. The provisions of this section apply to all areas of the city under application for HP designation on the effective date of this ordinance and to all areas of the city for which applications for HP designation are initiated after the effective date of this ordinance.
8. A demolition approval may be conditioned on stipulations which provide for rights of access to the property for the purposes of documentation or for agreed upon removal of artifacts.
Date of Addition/Revision/Deletion - Section 806
*1 Revision on 11-5-1997 by Ordinance No. G-4056
*2 Revision on 5-5-2004 by Ordinance No. G-4603, eff. 6-4-2004

Section 807. Procedure to Establish Historic Preservation District.
A. Applications to establish Historic Preservation Districts shall be filed as provided by Section 506 of the Phoenix Zoning Ordinance.
B. The Planning Department shall transmit the application to the Historic Preservation Officer of the City of Phoenix who shall compile and transmit to the HP Commission a complete report on the property in the application, including the location, condition, age, historical features and other relevant information, together with a recommendation to grant or to deny the application and the reasons for the recommendation.
C. The HP Commission shall set a date for public hearing on the application. Notice of the hearing shall be mailed to the property owner and to the applicant at least thirty days prior to the hearing. The notice shall clearly state the implications of HP zoning to the property owner. Notice of the hearing shall be posted at least fifteen days prior to the hearing, on or near the property in one or more locations so that the notice is visible to persons living or working in the neighborhood and to persons passing through the neighborhood. *1
D. Evaluation Criteria. The HP Commission shall evaluate each parcel of property and each parcel of property within an area that is included in the application for a demonstrated quality of significance in local, regional, state or national history, architecture, archaeology, engineering or culture according to the following criteria:
1. Significance. *1
a. Associated with the events that have made significant contribution to the broad patterns of our history; and/or
b. Associated with the lives of persons significant in our past; and/or

c. Embody the distinctive characteristics of a type, period or method of construction or that represent the work of a master or that possess high artistic values or that represent a significant and distinguishable entity whose components may lack individual distinction; and/or
d. Have yielded or may be likely to yield information important in the understanding of our pre-history or history of the City of Phoenix.
2. Age. *1
a. Are at least fifty years old; or
b. Have achieved significance within the past fifty years if the property is of exceptional importance. *1
3. Integrity. Retain sufficient integrity of location, design, setting, materials, workmanship, feeling and association to convey their significance. +1
E. The HP Commission shall, when applying the evaluation criteria in Section 807.D. above, draw the boundaries of an historic district as carefully as possible to ensure that: *1
1. The district contains documented historic, architectural, archaeological or natural resources; and *1
2. The district boundaries coincide with documented historic boundaries such as early roadways, canals, subdivision plats or property lines; and
3. Other district boundaries coincide with logical physical or manmade features and reflect recognized neighborhood or area boundaries; and
4. Other, non-historic resources or vacant land is included where necessary to create appropriate boundaries to assist in meeting the criteria in Section 807.D.1 through 3. *1
F. Following the hearing, the HP Commission shall transmit to the Planning Commission the HP Commission's decision, report and recommendations.
G. Upon receipt of the decision, report and recommendations of the HP Commission, the Planning Commission shall schedule a hearing on the application in the same manner and with the same notice requirements as are specified in Section 506 of the Phoenix Zoning Ordinance for public hearings on other zoning applications by the Planning Commission. Notice of hearings shall be sent to each real property owner, as shown on the last assessment of the property, of the area to be designated HP and all property owners,as shown on the last assessment of the property, within six hundred feet of the property to be designated HP.
H. The Planning Commission shall conduct a public hearing at which the property owner, parties in interest and citizens shall have an opportunity to be heard. After such public hearing, the Planning Commission shall make a report and recommendation to City Council.
I. The City Council may set a public hearing on the application, or may adopt the Planning Commission's recommendations without holding another public hearing unless:
1. The property owner, member of the public, or a City Council member, within seven calendar days after the Planning Commission announces its recommendations; either:
a. Objects in writing to adoption of the recommendation without a City Council hearing; or
b. Requests in writing that a public hearing be held; or
2. The Planning Commission has recommended approval of the application and a written protest causing a three-fourths vote of City Council under Section 506 of the Zoning Ordinance has been filed.
J. In the event that a public hearing before the City Council is to be held, the date, time and place of such hearing and the nature of the application shall be published at least once in a newspaper of general circulation in the City of Phoenix at least fifteen days before the hearing, and notice of hearing shall be sent first class mail to each real

property owner, as shown on the last assessment of the property, of the area to be designated HP and all property owners, as shown on the last assessment of the property, within six hundred feet of the property to be designated HP. The date, time and place of such hearing and application shall be posted within the area included in the application so as to give at least fifteen days notice of such Council hearing. In the case of a continuance, at least seven days posting is required but no publication is required. *1

K. If a public hearing is held by City Council, then City Council may do one of the following:

1. Adopt the recommendation of the Planning Commission;
2. Modify the decision of the Planning Commission and adopt it as modified; or
3. Deny the application; or
4. Remand the application to the Planning Commission or HP Commission for further proceedings.

L. Designation of property by City Council as historic preservation shall be followed by City Council adoption of a supplemental zoning map adding the suffix "HP" to the zoning classification of the property.

M. The HP Commission may elect to first transmit its decision, report and recommendations to the Zoning Hearing Officer.

1. In the event the HP Commission elects to first transmit its decision, report and recommendations to the Zoning Hearing Officer, the proceedings, including any hearings by the Planning Commission and City Council, shall be governed by the provisions of Section 506 of the Zoning Ordinance.
2. Notices of hearings held pursuant to this Section shall be sent first class mail to each real property owner, as shown on the last assessment of the property, of the area to be designated HP and all property owners, as shown on the last assessment of the property, within six hundred feet of the property to be designated HP. *1

N. Before any of the required hearings before the Planning Commission and/or the City Council, any member of the public may express any issues or concerns they may have regarding an HP zoning application at meetings of the Village Planning Committee governing the area in which the application is being made, if the application is on the agenda of such committee. The proceedings of the Village Planning Committee, including meeting notice and posting requirements, shall be governed by the provisions of Section 506 of the Zoning Ordinance. +1

Date of Addition/Revision/Deletion - Section 807

+1 Addition on 5-5-2004 by Ordinance No. G-4603, eff. 6-4-2004
*1 Revision on 5-5-2004 by Ordinance No. G-4603, eff. 6-4-2004

Section 808. Landmark Designation.

A classification of historic preservation zoning, landmark, is created to recognize that there are some historic properties that possess historic or architectural significance, integrity, distinctive visual character and quality that is a level of exceptional significance among historic properties. Designation by this category gives public recognition of the importance of these properties.

A. Landmark designation can occur for a property already within an HP district or in conjunction with designation as an HP district.

B. Review and hearing procedures for designation as a landmark shall be as set forth in Section 807; and

C. At the time of recommendation for landmark designation, the HP Commission shall adopt a set of findings documenting the uniqueness and significance of the subject building or site.

Section 809. Procedure to Remove HP Zoning Designation.
The procedure to remove the HP zoning district designation from property shall be the same procedure specified by this ordinance to establish Historic Preservation District zoning.

Section 810. Permitted Uses; Suffix "HP," "HP-L."
Any uses permitted by the existing zones over which Historic Preservation District zoning is superimposed shall be permitted. The property will be designated by its underlying zoning classification and any other overlay zone, plus the suffix "HP." Property designated by the HP suffix is subject to the Historic Preservation provisions of this ordinance, as well as being subject to those provisions of the Zoning Ordinance which are applicable to property in the underlying classification.
A. Landmark designation shall be indicated by the suffix "HP-L" for the property affected by such designation.

Section 811. Effect of HP Zoning Designation.
A. From and after the adoption by City Council of an application designating property with the Historic Preservation HP suffix, any removal or demolition of structures, or construction, alteration or remodeling of structures, or signs, or any landscaping on such property or development of archaeological sites are subject to the provisions of this ordinance. *2
B. The owners of HP property shall maintain and preserve buildings, structures and sites at such a level that they are not a safety hazard to the occupants or to the public.
C. The HP Commission shall adopt design guidelines which shall apply to the exterior features of structures in all HP districts. The guidelines are intended to offer assistance to property owners when building or modifying structures in the district, as well as to establish a set of standards to be used in reviewing proposals for certificates of appropriateness. The guidelines shall be a set of principles that give direction on how the parts and details of a building's scheme or plan should be assembled involving the following categories of work in historic districts or on historic structures:
1. Rehabilitation of historic structures.
2. Additions or alterations to historic structures.
3. New construction on vacant land located in historic districts or adjacent to historic structures.
D. Design guidelines may contain provisions which modify the standards for signs contained in Section 705 of the Zoning Ordinance. Such modifications may not change the safety or permit provisions of that chapter, but may specify size, height, placement, numbers, materials and lighting of signs. Further, these guidelines may specify the location of off-street parking or loading spaces as contained in Section 702 of the Zoning Ordinance. If any of these provisions are to be contained in design guidelines, the guidelines shall be approved according to the procedures contained in Section 807.
E. No building, permanent sign, or other structure within an HP District may be erected, demolished, moved, restored, rehabilitated, reconstructed, altered or changed in exterior appearance until plans for such activities have been submitted to and approved by the Historic Preservation Officer, HP Commission or City Council, and a Certificate of No Effect, a Certificate of Appropriateness, or a Demolition Approval is issued. Failure to comply with a stipulation, guideline or plan made a part of any of these approvals shall constitute a violation of this ordinance. An approved plan shall be binding upon the applicant and their successors and assignees. No building permit shall be issued for any building or structure not in accord with the plan except that temporary facilities shall be

permitted in conjunction with construction. No structure or other element specified on the plan shall be eliminated, or altered and provided in another manner, unless an amendment is approved in conjunction with the procedures for original approval. *2
F. Nothing in this ordinance shall be construed to prevent ordinary maintenance or repair of any structure in the HP District, which does not alter or modify the historic character of the structure. Demolition of a structure without obtaining a demolition approval shall constitute a violation of this ordinance.
Date of Addition/Revision/Deletion - Section 811
*1 Revision on 6-19-1996 by Ordinance No. G-3938
*2 Revision on 5-5-2004 by Ordinance No. G-4603, eff. 6-4-2004

Section 812. Review Process On Application For Certificate of No Effect, or Certificate of Appropriateness.
A. When a building permit or other permit is sought from the City to alter, remodel, move, build or otherwise develop or landscape property or archaeological sites in the HP District, issuance of the permit shall be deferred until after a Certificate of No Effect or a Certificate of Appropriateness is obtained from the Historic Preservation Officer, or the HP Commission.
B. In the event work requiring a Certificate of Appropriateness is being performed without such a Certificate, the Historic Preservation Officer shall contact the person performing the work and ask that all work cease. If work continues, the Historic Preservation Officer shall ask that a Stop Work Order be issued by the Building Official. In the event work is being performed that is not in accordance with a Certificate of Appropriateness issued by the HP Commission, the Historic Preservation Officer shall askthat a Stop Work Order be issued by the Building Official. The City may seek an injunction to enforce a Stop Work Order.
C. The Building Official shall refer applicants for building permits located within an HP District to the HP Officer. The HP Officer shall hold a pre-application meeting with the applicant to review the request and determine whether a certificate of no effect or certificate of appropriateness is required. *2
1. The HP Officer shall issue a Certificate of No Effect if:
a. It is determined the proposed work is minor and clearly within adopted design guidelines, and
b. If modifications to the proposed work are requested by the HP Officer, they are agreed to by the applicant, and
c. In any case, the proposed work will not diminish, eliminate, or adversely affect the historic character of the subject property or its affect on the district.
2. If a Certificate of No Effect is not issued, a Certificate of Appropriateness shall be required.
3. The review and decision on certificates of appropriateness shall be conducted in the following manner:
a. The HP Officer shall review the application and shall conduct a public hearing within twenty days of the filing of an application for a certificate of appropriateness. Notice of application shall be posted on the property at least ten days before the date set for the public hearing. The HP Officer shall review the application in light of the standards set forth in Section 812.D. below and the evidence presented at the hearing, and shall either grant or deny the application, or grant it with stipulations. *2
b. Any person aggrieved by the HP Officer's decision may, within five days of the action, appeal to the HP Commission. If appealed, the matter shall be set on the next available agenda of the Commission. Notice of the hearing shall be mailed to the

applicant at least fourteen days prior to the hearing and shall be posted on the property at least ten days prior to the hearing. *2
c. The HP Commission may uphold, reverse, or modify the decision of the HP Officer. The Commission's decision shall be final unless appealed by either the applicant or any aggrieved person within five days of the action. If appealed, the matter shall be set for a public hearing before the City Council at their next available meeting. The hearing shall be noticed and the property posted in accordance with Section 812.C.3.b. *2
d. In the event the initial hearing on an appeal to the HP Commission is not held within sixty days of the date the appeal was filed, the application shall be deemed approved. *2
D. Standards for Consideration of a Certificate of Appropriateness:
1. The proposed work will be compatible with the relevant historic, cultural, educational or architectural qualities characteristic of the structure, site or district and shall include but not be limited to elements of size, scale, massing, proportions, orientation, surface textures and patterns, details and embellishments and the relation of these elements to one another.
2. Conformance with the guidelines approved by the HP Commission.
E. Any person aggrieved by a decision of City Council on a Certificate of No Effect or a Certificate of Appropriateness may file a special action in Superior Court in accordance with the law, to have the court review that decision.
F. No change shall be made in the approved plans of a project after issuance of a Certificate of No Effect or a Certificate of Appropriateness without resubmittal to the Historic Preservation Officer and approval of the change in the same manner as provided above.
G. All certificates approved in accordance with this section expire one year from the date of issuance unless work is started within that time. *2
Date of Addition/Revision/Deletion - Section 812
*1 Revision on 6-19-1996 by Ordinance No. G-3938
*2 Revision on 5-5-2004 by Ordinance No. G-4603, eff. 6-4-2004

Section 813. Demolition or Moving of Structures.
It is the intent of this ordinance to preserve the historic and architectural resources within HP Districts. However, it is recognized that there can be circumstances beyond the control of the owner, or situations involving public health, safety, and welfare which may result in the necessary demolition of a structure within an HP District. These situations include a building which constitutes a danger to the public health, safety and welfare, or which involves a resource whose loss does not diminish or adversely affect the integrity of the district, or which imposes an economic hardship on its owners.
A. No permit shall be issued by the Building Official to move or demolish all or any part of a house, building, or other structure in an Historic Preservation District without a demolition approval authorized by the HP Officer, HP Commission or City Council. *3
B. Requests for demolition approval shall be considered in the following manner:
1. The Building Official shall refer applicants for demolition permits to the HP Officer. *3
2. Within three days of receiving the application, the HP Officer shall make a determination if a demolition approval can be issued. Criteria used to make this determination shall be: *3
a. The structure is of no historic or architectural value or significance and does not contribute to the historic value of the property, and
b. Loss of the structure would not adversely affect the integrity of the HP District or the historic, architectural or aesthetic relationship to adjacent properties and its demolition shall be inconsequential to historic preservation needs of the area.

3. If a demolition approval cannot be granted, the applicant for the demolition permit may request a public hearing. If filed, such application shall contain a completed request for Certification of Economic Hardship.
4. Upon receipt of a request for demolition approval hearing, the HP Officer shall review the application and conduct a public hearing within twenty days. Notice of the application shall be posted on the property at least ten days before the date set for the public hearing. The HP Officer shall review the application in light of Section 814 and Sections 813.B.2.a. and b. above, and the evidence presented at the hearing, and shall either grant or deny the demolition approval. *3
5. Any person aggrieved by the HP Officer's decision may, within five days of the action, appeal to the HP Commission. If appealed, the matter shall be set on the next available agenda of the Commission. Notice of the hearing shall be mailed to the applicant at least fourteen days prior to the hearing and shall be posted on the property at least ten days prior to the hearing. *3
6. The Commission's decision shall be final unless appealed by either the applicant or any aggrieved person within five days of the action. If appealed, the matter shall be set for a public hearing before the City Council at their next available meeting. The hearing shall be noticed and the property posted in accordance with Section 813.B.5.
7. In the event the initial hearing on an appeal to the HP Commission is not held within sixty days of the date the appeal was filed, the application shall be deemed approved. *3
8. The City Manager or designee shall give written notice to the HP Officer that a building located in an HP District is the subject of a proposed demolition pursuant to a legal hearing process. The City Manager or designee shall provide such notice at the same time that notice of a hearing on the demolition is given to the owner and any lienholders of the building. Upon receipt of such notice, the HP Officer shall give notice to any person who has requested to be notified of such pending demolition hearings.The HP Officer shall also place an item on each agenda of the HP Commission to discuss any demolition notices in an HP District. The notice provisions of this Section shall not apply if the City Manager or designee is entitled as a matter of law to order that a building be demolished in whole or in part without notice and hearing because the condition of the building is so dangerous, and harm to the public is so imminent that time will not permit a notice and hearing process. The City Manager or designee shall also give notice to the HP Officer in writing that a demolition order has been issued for the building by the City Manager or designee or by the City of Phoenix Rehabilitation Appeals Board because the building constitutes a danger to the public health, safety and welfare.
9. An application for a demolition permit shall be exempt from the demolition review requirements of Sections 813.A. and B. if the City Manager or designee notifies the HP Officer in writing as required in Section 813.B.8.
C. If a demolition approval is not granted, then no demolition permit shall be issued for a period of one year from the date on which the request for demolition approval was denied by the Historic Preservation Officer, unless a subsequent demolition approval has been requested and granted pursuant to Section 813.B.2. of this ordinance.
1. Upon denial of a demolition approval, the HP Officer shall contact the property owner to determine what available assistance might be feasible to place the property into productive use.
2. If a feasible rehabilitation plan or use is not found for the property, the HP Officer shall investigate methods of private or public acquisition of the property.
D. For properties designated landmarks, the restraint of demolition shall be three years. Review upon request by the owner may be made after two years. Procedures shall be as follows: two years after denial of a demolition approval, if no feasible use or

ownership is found for the structure, the owner may request of the HP Commission a waiver of all or a part of the balance of the restraint of demolition. Factors to be considered by the Commission shall include:

1. Efforts made by the property owner to make necessary repairs, to find an appropriate user, or to find a purchaser for the property, and
2. Efforts made by the HP Officer to locate available assistance and make that known to the owner as well as the use which was made by the owner of that assistance.

E. If a demolition approval is:

1. Granted on any basis other than that of economic hardship; or
2. Denied, and the restraint of demolition under Sections 813.C. or 813.D. above has expired,

Then the Building Official shall not issue a demolition permit until a redevelopment or reuse plan for the property has been filed with the HP Officer. The plan may be filed at any time following denial of the demolition request and shall be in compliance with existing zoning, the General Plan and any adopted Specific Plan, and the HP design guidelines applicable to the property. Vacant or non-use shall not be responsive to this requirement. Upon notification from the HP Officer that an approved reuse or redevelopment plan has been filed, the Building Official may issue a demolition permit at any time within one year from the date of the expiration of the demolition restraint or the grant of approval for demolition by the HP Officer. If the applicant fails to obtain a demolition permit within the one-year period authorized above, the HP Officer may grant an extension of up to six months due to unforeseeable conditions preventing or inhibiting demolition. If demolition is not completed within the one year period, or any extension thereof, the Building Official shall not issue a demolition permit until the applicant has made a new application for demolition approval as provided in Section 813.B.

a. The filing of a reuse or redevelopment plan shall not be required when demolition of the building in whole or in part will occur pursuant to an order of the City Manager or designee or the City Rehabilitation Appeals Board to protect the public health, safety and welfare.

b. The requirement for filing a redevelopment or reuse plan shall be waived by the HP Officer if, following demolition, no historic feature will remain in the HP district and upon a finding that such requirement is unnecessary to assure compatibility with other HP designated properties in the vicinity.

c. The HP Officer shall make a decision on a request for a waiver within three days of receipt of the request. The applicant or an aggrieved person may appeal the decision of the HP Officer within five days of the action. Upon receipt of an appeal, it shall be placed on the next available agenda of the HP Commission who shall conduct a public hearing. Notice of the hearing shall be mailed to the applicant at least fourteen days prior to the hearing and shall be posted on the property at least ten days prior to the hearing. At the hearing, the Commission shall either grant or deny the request. The Commission's decision shall be final unless appealed by the applicant or an aggrieved person within five days of the action. If appealed, the matter shall be set for a public hearing before the City Council on its next available agenda. Notice of the hearing shall be mailed to the applicant at least fourteen days prior to the hearing and shall be posted on the property at least ten days prior to the hearing. If a waiver is approved, the Commission shall, upon demolition or removal of the structure, initiate an application to remove the HP designation from the property. *3

F. Any new development on the property shall be in conformance with the plan submitted in conjunction with the demolition approval. Any changes from the plan shall require a Certificate of Appropriateness.

G. A demolition approval may be conditioned on stipulations which provide for rights of access to the property for the purposes of documentation or for agreed upon removal of artifacts.

Date of Addition/Revision/Deletion - Section 813

*1 Revision on 4-15-1992 by Ordinance No. G-3513
*2 Revision on 11-5-1997 by Ordinance No. G-4056
+2 Addition on 11-5-1997 by Ordinance No. G-4056
*3 Revision on 5-5-2004 by Ordinance No. G-4603, eff. 6-4-2004

Section 814. Economic Hardship.

Separate standards for obtaining certification of economic hardship are established for investment or income-producing and non-income-producing properties. Nonincome properties shall consist of owner occupied single-family dwellings and non-income-producing institutional properties.

A. The basis to establish economic hardship for an income-producing property shall be that a reasonable rate of return cannot be obtained from a property that retains its historic features or structures in either its present condition or if its features or structures are rehabilitated. +1

B. Economic hardship in regard to a non-income-producing property shall be found when the property owner demonstrates that the property has no beneficial use as a single-family dwelling or for an institutional use in its present condition or if rehabilitated.

C. Demonstration of an economic hardship shall not be based on or include any of the following circumstances:

1. Willful or negligent acts by the owner.
2. Purchase of the property for substantially more than market value.
3. Failure to perform normal maintenance and repairs.
4. Failure to diligently solicit and retain tenants.
5. Failure to provide normal tenant improvements.

Date of Addition/Revision/Deletion - Section 814

*1 Revision on 4-15-1992 by Ordinance No. G-3513

Section 815. Phoenix Historic Property Register.

A. The Phoenix Historic Property Register is hereby established for the purpose of recording the historic sites, structures, buildings, objects and areas which exist in the City of Phoenix.

B. The register shall consist of historic sites, structures, buildings, objects and areas and which are zoned "Historic Preservation District" by the City Council [which] shall forthwith be listed on the Phoenix Historic Property Register by the Historic Preservation Officer.

Section 816. Enforcement; Violations; Penalties.

Any violation of the provisions of this chapter is a violation of the Zoning Ordinance and is subject to enforcement and penalties prescribed by Section 1004 of the Zoning Ordinance.

Chapter 25.32 TABLE OF HISTORICAL LANDMARKS

The Seattle City Council has enacted ordinances imposing landmark controls on the buildings, structures and objects listed below. Alteration of any designated feature of these properties requires the approval in advance of the Landmarks Preservation Board pursuant to SMC Chapter 25.12.

TABLE INSET:

I	Residences
II	Buildings
III	Churches
IV	Schools
V	Firehouses
VI	Bridges and Waterways
VII	Boats
VIII	Libraries
IX	Miscellaneous

TABLE OF CITY LANDMARKS

I Residences	Address	Ord. No.
Anhalt Apartments	**1005 East Roy**	**108731**
Anhalt Apartments	**1014 East Roy**	**108227**
C.H. Black House and Gardens	**615 West Lee Street**	**115036**
Black Property	**1319 12th Avenue South**	**110353**
Belltown Cottages	**2512, 2512A and 2516 Elliott Avenue**	**121220**
Bowen/Huston Bungalow	**715 West Prospect Street**	**111887**
Boyer/Lambert Residence	**1617 Boyer Avenue East**	**111021**
Brace/Moriarty Residence	**170 Prospect Street**	**109586**
Brehm Brothers Houses	**219 and 221-36th Avenue East**	**108734**
Charles Bussell House	**1630 36th Avenue**	**108212**
Bystrom House	**1022 Summit Avenue East**	**108214**
Chelsea Apartments	**620 West Olympic Place**	**107755**
Cotterill House	**2501 Westview Drive West**	**107751**
Del a Mar Apartments	**115 West Olympic Place**	**107752**
Drake House	**6414 22nd Avenue N.W.**	**111025**
El Rio Apartments	**1922-28 9th Avenue**	**121219**
P.P. Ferry Mansion (St. Mark's	**1531 10th Avenue East**	**108213**

Deanery)		
Fisher/Howell House	**2819 Franklin Avenue East**	**111885**
Gibbs House	**1000 Warren Avenue North**	**121426**
Hainsworth/Gordon House and Grounds	**2657 37th Avenue Southwest**	**109734**
Handschy/Kistler House	**2433 9th Avenue West**	**111024**
Harvard Mansion	**2706 Harvard Avenue East**	**116053**
Ballard Howe House	**22 West Highland Drive**	**108226**
Samuel Hyde House	**3726 East Madison Street**	**117097**
Italianate Victorian Pair	**208 and 210 13th Avenue South**	**108225**
Kraus/Andersson House	**2812 South Mount St. Helens Place**	**110492**
Maryland Apartments	**626 13th Avenue East**	**114995**
McFee/Klockzien Residence	**524 West Highland Drive**	**109318**
James A. Moore Mansion and its site	**811 14th Avenue East**	**116971**
Nelson/Steinbrueck House	**2622 Franklin Avenue East**	**111023**
New Pacific Apartments	**2600-04 1st Avenue**	**108517**
Norvell House	**3306 Northwest 71st Street**	**108210**
Myron Ogden Residence	**702 35th Avenue**	**107522**
Parker-Fersen House	**1409 East Prospect Street**	**113423**
Parsons/Gerrard Residence	**618 West Highland Drive**	**109317**
Ramsing House	**540 Northeast 80th Avenue**	**113261**
Rosen House	**9017 Loyal Avenue Northwest**	**121215**
San Remo Apartment Building	**606 East Thomas Street**	**113988**
Satterlee House	**4866 Beach Drive Southwest**	**111022**
Henry Owen Shuey House	**5218 16th Avenue Northeast**	**121274**
Stimson-Green House	**1204 Minor Avenue**	**106068**
Ellsworth Storey Cottages Group	**1706, 1710, 1710- 1/2, 1800, 1804, 1808, 1810, 1814, and 1816 Lake Washington Boulevard South, and 1725 and 1729-36th Avenue South**	**108733**
Ellsworth Storey Houses	**260, 270 Dorffel Drive East**	**106071**
Stuart/Balcom House and Gardens	**619 West Comstock**	**111886**
Thompson/La Turner House	**3119 South Day Street**	**107613**
23rd Avenue Rowhouse Group	**812-828 23rd Avenue**	**108732**
Victorian Group	**2000, 2006, 2010, 2014 and2016 14th Avenue West**	**108211**
The Victorian Row Apartments	**1236 38th South King Street**	**108224**

Ward House	**1423 Boren Avenue**	**106067**
James W. Washington, Jr., Home and Studio	**1816 26th Avenue**	**116052**
H. L. Yesler's First Addition, Block 32, Lots 12, 13 & 14	**103, 107 and 109 23rd Avenue**	**118983**
Treat House	**1 West Highland Drive**	**122353**
II Buildings	**Address**	**Ord. No.**
Admiral Theater	**2343 California Avenue S.W.**	**116972**
Arctic Building	**700 Third Avenue/306 Cherry Street**	**116969**
Barnes Building	**2320 1st Avenue**	**107754**
Austin A. Bell Building	**2320-2326 1st Avenue**	**107753**
Black Manufacturing Building	**1130 Rainier Avenue South**	**113601**
Brooklyn Building	**1222 Second Avenue**	**113088**
Camlin Hotel and site	**1619 9th Avenue**	**119470**
Coliseum Theater	**5th Avenue and Pike Street**	**107526**
Colman Building	**801-821 First Avenue**	**114993**
Decatur Building	**1521 Sixth Avenue**	**112275**
Dexter Horton Building	**710 Second Avenue**	**116970**
Eagles Temple Building	**1416 Seventh Avenue**	**112272**
Eastern Hotel	**506- 1/2-510 Maynard Avenue South**	**107750**
84 Union Building (U.S. Immigration Building)	**84 Union Street**	**113990**
Exchange Building	**821 Second Avenue**	**115038**
Fir Lodge/Alki Homestead Restaurant	**2717 61st Avenue S.W.**	**118235**
First Avenue Groups/Waterfront Center Project	**First Avenue, Spring Street, and Western Avenue**	**111058**
Flatiron Building (Triangle Hotel)	**551 1st Avenue South**	**106141**
Ford Assembly Plant Building and site	**1155 Valley Street**	**119114**
Fort Lawton Landmark District		**114011**
Administrative Building		
Band and Barracks		
Civil Employees' Quarters		
Guard House		
Quartermaster's Stable		
Frederick & Nelson Building	**500 Pine Street**	**118716**
Fremont Hotel	**3421 - 3429 Fremont Avenue North**	**107993**
Georgetown Steam Plant		**111884**

Good Shepherd Center	**4647 Sunnyside North**	**111882**
Golden Gardens Bath House	**8001 Seaview Avenue Northwest**	**121716**
J. S. Graham Store/Doyle Building	**119 Pine Street**	**113987**
Guiry Hotel	**2101 - 2105- 1/2 First Avenue**	**113422**
Hillcrest Apartment Building	**1616 East Howell Street**	**109733**
Hoge Building	**705 Second Avenue**	**111889**
Holyoke Building	**107 Spring Street**	**107521**
Langston Hughes Cultural Arts Center	**104 17th Avenue South**	**110354**
Hull Building	**2401 - 05 1st Avenue**	**108518**
Jolly Roger Roadhouse	**8721 Lake City Way Northeast**	**108730**
Lake Union Steam Plant and Hydro House and its site	**1179 Eastlake Avenue East**	**117251**
Leamington Hotel and Apartments	**317 Marion Street**	**117398**
Liggett Building	**1424 Fourth Avenue**	**113426**
Log House Museum	**3003 61st Avenue S.W.**	**118237**
Louisa Building	**5220 20th Avenue Northwest**	**113424**
Lyon Building	**607 Third Avenue**	**118236**
Mann Building	**1411 Third Avenue**	**115037**
Medical Dental Building	**509 Olive Way**	**122316**
New Richmond Laundry Building	**224 Pontius Avenue North**	**121216**
Old Georgetown City Hall	**6202 13th Avenue South**	**111302**
Olympic Tower/United Shopping Tower	**217 Pine Street**	**113425**
Olympic Warehouse and Cold Storage Building	**1203 - 1207 Western Avenue**	**113429**
Pacific Medical Center/U.S. Marine Hospital	**1200 12th Avenue South**	**116055**
Paramount Theater	**901 Pine Street**	**117507**
Providence 1910 Building	**528 17th Avenue**	**121588**
Puget Sound Bank (Bank of California)	**815 Second Avenue**	**113602**
Rainier Cold Storage and Ice/Seattle Brewing and MaltingCompany Building and its site	**6000 - 6004 Airport Way South**	**116973**
Schillestad Building	**2111 First Avenue**	**113460**
Seattle Empire Laundry Building	**2301 Western Avenue/66 Bell Street**	**119352**

Seattle Times Building	**1120 John Street**	**118046**
Shafer Building	**515 Pine Street**	**113430**
L. C. Smith Building (Smith Tower)	**502 - 508 Second Avenue**	**113427**
Times Square Building	**414 Olive Way**	**111883**
Troy Laundry Building	**311 - 329 Fairview Avenue North (also known as 307 Fairview Avenue North)**	**118047**
United States Assay Office/German House	**613 Ninth Avenue**	**111712**
Van Vorst Building	**413 421 Boren Avenue North**	**121218**
Wintonia Hotel	**1431 Minor Avenue**	**118048**
YMCA Central Branch (South Building)	**909 Fourth Avenue**	**116056**
Ill Churches	**Address**	**Ord. No.**
Beacon Hill First Baptist Church	**1607 South Forest Street**	**110349**
Bethany Presbyterian Church	**1818 Queen Anne Avenue North**	**112801**
Capitol Hill United Methodist Church	**128 16th Avenue East**	**106144**
Church of the Blessed Sacrament,Rectory and Grounds	**5041 9th Avenue Northeast**	
Epiphany Chapel	**3719 East Denny Way**	**107756**
Fauntleroy Community Church	**9260 California Avenue Southwest**	**110348**
First African Methodist Episcopal Church	**1522 14th Avenue**	**111928**
First Church of Christ, Scientist	**1519 East Denny Way**	**106145**
First Covenant Church	**1500 Bellevue Avenue**	**112425**
Immaculate Conception Church	**820 18th Avenue**	**106142**
Immanuel Lutheran Church	**1215 Thomas Street**	
New Age Christian Church	**1763 Northwest 62nd Street**	**110352**
St. James Cathedral, Rectory and site	**Ninth Avenue and Marion Streets**	**111579**
St. Nicholas Cathedral	**1714 13th Avenue**	**106098**
St. Spiridon Cathedral	**402 Yale North**	**106099**
Seattle Buddhist Church	**4277 South Main Street**	**106100**
Seattle First Baptist Church	**1121 Harvard Avenue**	**110351**
Seattle Hebrew Academy	**1617 Interlaken Drive East**	**108519**
Temple de Hirsch Sinai; Old Sanctuary	**15th Avenue and East Union Street**	**109731**
Trinity Parish Episcopal Church	**609 8th Avenue**	**106087**

University Methodist Episcopal Church	**4142 and 4138 Brooklyn Avenue Northeast**	**110350**
University Presbyterian Church "Inn"	**4555 16th Avenue Northeast**	**112089**
IV Schools	**Address**	**Ord. No.**
Bryant Elementary School	**3311 Northeast 60th Street**	**120916**
Cooper Elementary School	**4408 Delridge Way SW**	**121866**
Grover Cleveland High School	**5511 15th Avenue South**	**121275**
Concord Elementary School	**723 South Concord Street**	**120918**
Dunlap Elementary School	**8621 48th Avenue South**	**120917**
Emerson Elementary School	**9709 60th Avenue South**	**120919**
Martha Washington School	**6612 65th Avenue South**	**114074**
Old Broadway High School	**Block bounded by Broadway, East Pine Street, Harvard Avenue and East Olive Street**	**103459**
Old Main Street School	**307 6th Avenue**	**106147**
Queen Anne High School	**215 Galer Street**	**112274**
St. Nicholas/Lakeside School	**1501 10th Avenue East**	**111881**
Summit School/Northwest School	**1415 Summit Avenue**	**114994**
West Queen Anne Elementary School	**515 West Galer**	**106146**
V Firehouses	**Address**	**Ord. No.**
Fire Station #2	**2318 Fourth Avenue**	**113089**
Old Firehouse #3	**301 Terry Avenue**	**106051**
Old Firehouse #18	**5429 Russell Northwest**	**106052**
Old Firehouse #23	**722 18th Avenue**	**106050**
Old Firehouse #25	**1400 Harvard Avenue**	**106054**
Old Firehouse #33	**Rainier Beach**	**106053**
Wallingford Fire and Police Station	**1629 North 45th Street**	**111888**
VI Bridges and Waterways	**Address**	**Ord. No.**
Arboretum Aqueduct	**Lake Washington Boulevard**	**106070**
Cowan Park Bridge	**15th Avenue Northeast between Northeast 62nd Street and Cowan Park Northeast**	**110344**
Fremont Bridge	**Fremont Avenue North over Lake Washington Ship Canal**	**110347**

Montlake Bridge and Montlake Cut	**24th East and Montlake Boulevard**	**107995**
Lacey V. Murrow Bridge, West Plaza, Mt. Baker Tunnels, and East Tunnel Portals (Mercer Island Floating Bridge)		**108270**
North Queen Anne Drive Bridge	**North Queen Anne Drive overWolf Creek Canyon**	**110343**
Salmon Bay Burlington Northern Bridge, Bridge No. 4	**Between West Commodore Way and Northwest 54th Street**	**109738**
Schmitz Park Bridge	**Admiral Way over Schmitz Park Ravine**	**110346**
20th Avenue Northeast Bridge	**20th Avenue Northeast and Northeast 62nd**	**106143**
George Washington Memorial "Aurora" Bridge	**Aurora Avenue North over Lake Washington Ship Canal**	**110345**
VII Boats		**Ord. No.**
Arthur Foss Tug		**106276**
Duwamish Fireboat		**113428**
M.V. Malibu		**119419**
M.V. Thea Foss		**119418**
Relief Lightship		**106275**
San Mateo Steam Ferry		**106273**
Virginia V Excursion Boat		**106278**
Wawona Schooner		**106274**
W.T. Preston Snagboat		**106277**
VIII Libraries	**Address**	**Ord. No.**
Douglass-Truth Library	**2300 Yesler Way**	**121107**
Fremont Library	**731 N. 35 th Street**	**121103**
Green Lake Library	**7364 Greenlake Drive N**	**121106**
Lake City Library	**12501 28 th Avenue NE**	**121105**
Magnolia Library	**2801 34 th Avenue West**	**121100**
North East Library	**6801 35 th Avenue NE**	**121099**
Queen Anne Library	**400 W. Garfield Street**	**121101**
University Library	**5009 Roosevelt Way NE**	**121104**
West Seattle Library	**2306 42 nd Avenue SW**	**121102**
IX Miscellaneous	**Address**	**Ord. No.**
Brill Trolley #798		**107621**

Chinese Community Bulletin Board	**511 7th Avenue South**	**106072**
East Republican Street Stairway	**Between Melrose Avenue East and Bellevue Avenue East**	**109320**
Fort Lawton Landmark District		**114011**
Fremont Trolley Barn/Red HookAle Brewery	**3400 Phinney Avenue North**	**116054**
Gas Works Park		**121043**
Hiawatha Playfield	**2700 California Avenue Southwest**	**113090**
Jensen Block	**601-611 Eastlake Avenue East**	**118045**
Lincoln Park/Lincoln Reservoir and Bobby Morris Playfield		**121042**
McGraw Square (McGraw Place)	**Intersection of Fifth Avenue, Westlake Avenue and Stewart Street**	**112271**
Parsons Memorial Gardens	**7th Avenue West and West Highland Drive**	**109319**
Pier 59	**1415 Alaskan Way**	**121270**
Queen Anne Water Tank #1	**1410 1st Avenue North**	**121217**
Rainier Club	**810 Fourth Avenue**	**113459**
Seattle Monorail		**121240**
Space Needle	**219 Fourth Avenue North**	**119428**
Statue, "Seattle, Chief of Suquamish"	**Intersection of Fifth Avenue, Denny Way and Cedar Street (Tillicum Place)**	**112273**
West Queen Anne Walls		**106069**

Chapter 25.24 PIKE PLACE MARKET HISTORICAL DISTRICT

Sections:

Severability: If any section, paragraph, subdivision, clause, phrase or provision of this chapter shall be adjudged to be invalid or held unconstitutional, the same shall not affect the validity of this chapter as a whole or any part or provision thereof other than the part so decided to be invalid or unconstitutional.
(Ord. 100475 § 9, 1971.)
Editor's Note: A map of the Pike Place Market Historical District is included at the end of this chapter.

25.24.010 Purpose.

In order to promote the educational, cultural, farming, marketing, other economic resources, and the general welfare; and to assure the harmonious, orderly, and efficient growth and development of the municipality, it is deemed essential by the people of the City that the cultural, economic, and historical qualities relating to the Pike Place Markets and the surrounding area, and an harmonious outward appearance and market uses which preserve property values and attracts residents and tourists be preserved and encouraged; some of the qualities being: the continued existence and preservation of historical areas and buildings; continued construction and use of buildings for market activities, especially on street levels; and a general harmony as to style, form, color, proportion, texture, material, occupancy and use between existing buildings and new construction.
(Ord. 100475 § 1, 1971.)

25.24.015 Historic Preservation Officer.

The Historic Preservation Officer is the person described in the Landmarks Preservation Ordinance, SMC Section 25.12.320.
(Ord. 118012 § 138, 1996.)

25.24.020 Historical District designated.

There is created a Pike Place Market Historical District (hereafter called "Historical District") whose physical boundaries are illustrated on a map attached as Exhibit "A" to Ordinance 100475 which is codified at the end of this chapter.1
(Ord. 113199 § 1, 1986; Ord. 100475 § 2, 1971.)
1. Editor's Note: Exhibit A was amended by Ordinance 113199.

25.24.030 Commission created.

There is created a Market Historical Commission (hereafter called "Commission") appointed by the Mayor with the consent of a majority of the City Council and to be composed of two (2) representatives each from the Friends of the Market, Inc., Allied Arts of Seattle, Inc., and the Seattle Chapter of the American Institute of Architects; and two (2) owners of property within the Historical District, two (2) merchants of the markets, and two (2) residents of the Historical District. The Mayor shall make his appointments of the representatives of Friends of the Market, Allied Arts, and the Seattle Chapter of the American Institute of Architects, from a list of four (4) nominees submitted by each of the said organizations. The members shall serve three (3) year terms with the terms of the first Commission to be staggered. The Commission shall have for its purpose the preservation, restoration, and improvement of such buildings and continuance of uses in the Historical District, as in the opinion of the Commission shall be deemed to have architectural, cultural, economic, and historical value as described in Section 25.24.040, and which buildings should be preserved for the benefit of the people of Seattle. The Commission shall also make rules, regulations, and guidelines according to the criteria as contained in this chapter for the guidance of property owners within the Historical District. The Commission shall also develop plans for the acquisition and perpetuation of the Pike Place Markets and of market activities through either public ownership or other means and shall make recommendations to the City Council from time to time concerning their progress. Staff assistance and other services shall be provided by the Department of Neighborhoods to the Commission as requested.
(Ord. 115958 § 36, 1991: Ord. 100475 § 3, 1971.)

25.24.040 Criteria.

A. In carrying out its function, the Commission shall consider the purposes of this chapter as outlined in the chapter and the nature, function, and history of the District as described in this section.

B. The Historical District has played and continues to play a significant role in the development of Seattle and the Puget Sound Region since the inception of the Public Market in 1907. It has served as the center of local farm marketing, and other marketing businesses through varied economic times. It is significant in the culture of the region drawing together a broad spectrum of people from all ethnic, national, economic, and social backgrounds as a prototype of truly cosmopolitan urban life. It promotes local farming while making available local produce to shoppers and others. The District provides considerable housing for a community of low-income residents who are part of the life and color of the market. It has achieved world-wide fame as an uniquely American market and serves as the source of inspiration for markets elsewhere.

C. The Historical District is associated with the lives of many Seattle and Puget Sound region families and persons as farmers, merchants, and shoppers through marketing activities. It is an outstanding example of small independent businesses operating in the best tradition of American enterprise.

D. The buildings with their marketing activities and residential uses combine to form a distinctive area focusing on the central Market buildings which although humble and anonymous in character are an example of intriguing, dramatic architectural space servicing and adjusting to the varied and varying characteristic marketing activities. The central building spaces are particularly unique in form and character having grown to their present form through years of anonymous and functional creation to conform to the changing market activities always serving low-income customers along with other

special needs of the public. The District possesses integrity of location, original construction, use, and of feeling and association.
E. The preservation of the Historical District will yield information of educational significance regarding our culture and our ecology as well as retaining its color, attraction, and interest for the City. Preservation of the District will retain a characteristic environment of a period of Seattle's history while continuing a vital cultural and economic aspect of the City.
(Ord. 100475 § 4, 1971.)

25.24.050 Commission procedures.

The Commission shall adopt rules and regulations for its own government, not inconsistent with the provisions of this chapter or any other ordinance of the City. Meetings of the Commission shall be open to the public and shall be held at the call of the Chairman and at such other times as the Commission may determine. All official meetings of the Commission shall keep minutes of its proceedings, showing the action of the Commission upon each question, and shall keep records of its proceedings and other official actions taken by it, all of which shall be immediately filed in the Department of Neighborhoods and shall be a public record. All actions of the Commission shall be by resolution which shall include the reasons for each decision. A majority vote shall be necessary to decide in favor of an applicant on any matter upon which it is required to render a decision under this chapter.
(Ord. 115958 § 37, 1991: Ord. 100475 § 5, 1971.)

25.24.055 Definition.

"Certificate of approval" means written authorization which must be issued by the Commission before any change to any building, structure or other visible element may be made. The term includes written approval of a preliminary design as well as of subsequent design phases.
(Ord. 119121 § 16, 1998.)

25.24.060 Approval of changes to buildings, structures and other visible elements.

A. No structure or part thereof shall be erected, altered, extended, or reconstructed, and no structure, lot or public place as defined in Section 15.02.040 shall be altered, used or occupied except pursuant to a certificate of approval authorized by the Commission which shall not be transferable; and no building permit shall issue except in conformance with a valid certificate of approval. However, no regulation nor any amendment thereof shall apply to any existing building, structure, or use of land to the extent to which it is used at the time of the adoption of such regulation or amendment or any existing division of land, except that such regulation or amendment may regulate nonuse or a nonconforming use so as not to unduly prolong the life thereof. No new off-premises advertising signs shall be established within the boundaries of the Historical District including public places except where areas have been reserved for groups of signs or for signs which identify the Market District as a whole, as determined by the Commission. The fee for certificates of approval shall be according to the SMC Chapter 22.901T, Permit Fee Subtitle.
B. Application.
1. Applications for certificates of approval involving structures or sites within the Historical District shall be submitted to the Commission. If an application is made to the Director for a permit for which a certificate of approval is required, the Director of

Construction and land use shall require the applicant to submit an application to the Commission for a certificate of approval. Submission of the application for a certificate of approval to the Commission shall be required before the permit application to the Department of Construction and land use may be determined to be complete.

2. The following information must be provided in order for the application to be complete, unless the Commission's staff indicate in writing that specific information is not necessary for a particular application:

a. Business name and business address;

b. Name of the building(s) located at the site of the proposed work;

c. The square footage of the shop where the proposed work would take place;

d. Applicant's name and address;

e. Landlord or building owner's name and address;

f. A written description of the ownership interest and role in the business operation;

g. Applicant's telephone number;

h. The building owner's signature on the application, or a signed letter from the owner designating the applicant as the owner's representative, if the applicant is not the owner;

i. Confirmation that the fee required by SMC Chapter 22.901T of the Permit Fee Subtitle has been paid;

j. A detailed description of the proposed merchandise, service, or work, including:

i. Any changes it will make to the building or the site,

ii. Any effect that the proposed work or use would have on the public right-of-way or other public spaces,

iii. Any new construction,

iv. Any proposed use, change of use, or expansion of use,

v. Any change of ownership or location,

vi. Any proposed increase in the business area;

k. Four (4) sets of scale drawings, with all dimensions shown, of:

i. A site plan of existing conditions, showing adjacent streets and buildings, and, if the proposal includes any work in the public right-of-way, the existing street uses, such as street trees and sidewalk displays, and another site plan showing proposed changes to the existing conditions,

ii. A floor plan showing the existing features and a floor plan showing the proposed new features,

iii. Elevations and sections of both the proposed new features and the existing features,

iv. Construction details,

v. A landscape plan showing existing features and plantings, and another landscape plan showing proposed site features and plantings;

l. Photographs of any existing features that would be altered and photographs showing the context of those features, such as the building facade where they are located;

m. One (1) sample of proposed colors, if the proposal includes new finishes, fixtures, furniture, or paint, and an elevation drawing or a photograph showing the location of proposed new finishes, fixtures, furniture, or paint;

n. If the proposal includes new signage, awnings, or exterior lighting:

i. Four (4) sets of scale drawings of proposed signage or awnings, showing the overall dimensions, material, design graphics, typeface, letter size, and colors,

ii. Four (4) sets of a plan, photograph, or elevation drawing showing the location of the proposed awning, sign, or lighting,

iii. Four (4) copies of details showing the proposed method of attaching the new awning, sign, or lighting,

iv. The wattage and specifications of the proposed lighting, and a drawing or picture of the lighting fixture,

v. One (1) sample of proposed sign colors or awning material and color;
o. If the proposal includes demolition of a structure or object:
i. A statement of the reason(s) for demolition,
ii. A description of the replacement structure or object, and the replacement use;
p. If the proposal includes replacement, removal, or demolition of existing features, a survey of the existing conditions of the features that would be replaced, removed, or demolished.
3. The staff shall determine whether an application is complete and shall notify the applicant in writing within twenty-eight (28) days of the application being filed whether the application is complete or that the application is incomplete and what additional information is required before the application will be complete. Within fourteen (14) days of receiving the additional information, the staff shall notify the applicant in writing whether the application is now complete or what additional information isnecessary. An application shall be deemed to be complete if the staff does not notify the applicant in writing by the deadlines in this section that the application is incomplete. A determination that the application is complete is not a determination that the application is vested.
4. The determination of completeness does not preclude the staff or the Commission from requiring additional information during the review process if more information is needed to evaluate the application according to the criteria in this chapter and in any rules adopted by the Commission, or if the proposed work changes. For example, additional information that may be required could include a shadow study or a traffic study when new construction is proposed.
5. After the Commission has given notice of the meeting at which an application for a certificate of approval will be considered, no other application for the same alteration or change of use may be submitted until the application is withdrawn or the Commission has approved or denied the existing application and all appeals have been concluded, except when an application is made for a certificate of approval for the preliminary design of a project, a later application may be made for a certificate of approval for a subsequent design phase or phases of the same project.
C. An applicant may make a written request to submit an application for a certificate of approval for a preliminary design of a project if the applicant waives in writing the deadline for a Commission decision on the subsequent design phase or phases of the project, and agrees in writing that the Commission decision on the preliminary design is immediately appealable by the applicant or any interested person of record. The staff may reject the request if it appears that approval of a preliminary design would not be an efficient use of staff or Commission time and resources, or would not further the goals and objectives of this chapter. To be complete, an application for a certificate of approval for a preliminary design must include the information listed above in subsection B2, subparagaphs a through j, k(i), k(ii), k(iii), k(v), l, o and p. A certificate of approval that is granted for a preliminary design shall be conditioned upon subsequent submittal of the final design and all of the information listed above in subsection B2 and Commission approval prior to issuance of permits for work affecting a building, structure or other visible element.
D. The Commission shall review and make recommendations regarding appropriateness of each proposed change or addition and a certificate of approval shall be issued by the Commission as provided in this chapter. The Commission, in considering the appropriateness of any alteration, demolition, new construction, reconstruction, restoration, remodeling, or other modification of any building or other structure in the Historic District, including structures to be located in public places, shall refer to the purpose of this chapter and shall consider among other things the historical and architectural value and significance, architectural style, the general design,

arrangement, texture, material, occupancy and use, and color of the building or structure in question or its appurtenant fixtures, including signs, the relationship of such features to similar features of the other buildings within the Historical District and the position of such building or structure in relation to the street, public way, or semipublic way and to other buildings and structures. The Commission shall also make no recommendations or requirements except for the purpose of preventing developments inconsistent with the criteria of this chapter. Where modification of the appearance of a structure within the Historical District does not require a building or demolition permit, an application for a certificate of approval shall nonetheless be filed with the Commission.

E. The Commission shall have sole responsibility for determining the appropriate location, design and use of signs and structures to be located on or above the surface of public places in the Historical District and the sole responsibility for licensing and determining the appropriate locations for performers as defined in Section 17.32.010 H1 of the Seattle Municipal Code, in the Historical District; provided, that property owned by the Pike Place Market Preservation and Development Authority shall not be considered a public place for the purposes of this subsection. The Commission shall establish guidelines for the use of public places in the District by performers, may assess reasonable permit fees, and may utilize the services of the Pike Place Market Preservation and Development Authority (PDA) or should the PDA decline to make its services available, may utilize the services of any other organization appropriate for implementation of performers licensing guidelines. It shall be unlawful for any performer to actively solicit donations by word of mouth, gestures, mechanical devices, second parties. It shall also be unlawful for any performer or other person to use any device for the reproduction or amplification of sound without the express written approval of the Commission secured in advance.

(Ord. 119121 § 17, 1998: Ord. 118012 § 139, 1996: Ord. 111235 § 1, 1983: Ord. 109125 § 8(part), 1980: Ord. 106985 § 7(part), 1977: Ord. 106309 § 1(part), 1977: Ord. 104658 § 1(part), 1975: Ord. 100475 § 6(part), 1971.)

1. Editor's Note: Former Chapter 17.32, on the Pike Place Market, was repealed by Ordinance 111236.

25.24.070 Issuance of certificate of approval.

A. The Commission shall consider and approve or disapprove or approve with conditions applications for a certificate of approval as contemplated in this chapter not later than thirty (30) days after any such application is determined to be complete, and a public meeting shall be held on each such application. If after such meeting and upon review of the Commission it determines that the proposed changes are consistent with the criteria for historic preservation as set forth in Section 25.24.040, the Commission shall issue the certificate of approval within forty-five (45) days of the determination that the application is complete, and shall provide notice of its decision to the applicant, the Department of Planning and Development, and to any person who, prior to the rendering of the decision, made a written request to receive notice of the decision or commented in writing on the application. After such a decision, the Director of Planning and Development is then authorized to issue a permit.

B. A certificate of approval for a use shall be valid as long as the use is authorized by the applicable codes. Any other type of certificate of approval shall be valid for eighteen (18) months from the date of issuance of the decision granting it unless the Director of the Department of Neighborhoods grants an extension in writing; provided however, that certificates of approval for actions subject to permits issued by the Department of Planning and Development shall be valid for the life of the permit issued by the

Department of Planning and Development, including any extensions granted by the Department of Planning and Development in writing.
(Ord. No. 121276 § 37, 2003; Ord. 118012 § 140, 1996: Ord. 109125 § 8(part), 1980: Ord. 106985 § 7(part), 1977: Ord. 106309 § 1(part), 1977: Ord. 104658 § 1(part), 1975: Ord. 100475 § 6(part), 1971.)

25.24.080 Appeal to Hearing Examiner.

A. Any interested person of record may appeal to the Hearing Examiner the decision of the Commission to grant, grant with conditions, or deny a certificate of approval by serving written notice of appeal upon the Commission and by filing such notice and a copy of the Commission's decision with the Hearing Examiner within fourteen (14) days after the date the Commission's decision is issued.

B. When the proposed action that is the subject of the certificate of approval is also the subject of one (1) or more related permit applications under review by the Department of Planning and Development, then the appellant must also file notice of the appeal with the Department of Planning and Development, and the appeal of the certificate of approval shall not be heard until all of the time periods for filing administrative appeals on the other permits have expired except that an appeal of a certificate of approval for the preliminary design or for subsequent design phases may proceed immediately according to Section 25.24.060 without being consolidated. If one (1) or more appeals are filed regarding the other permits, then the appeal of the certificate of approval shall be consolidated with them and shall be heard according to the same timelines established for the other appeals, except that appeals to the State Shoreline Hearings Board shall proceed independently according to the timelines set by the state for such appeals and except that an appeal of a certificate of approval for a preliminary design or for a subsequent design phase may proceed according to Section 25.24.060 without being consolidated. If the related permit decisions would not be appealable, then the appeal of the certificate of approval decision shall proceed immediately after it is filed.

C. The applicant for the certificate of approval may elect to have the appeal proceed immediately rather than postponed for consolidation with appeals of related permit applications, if the applicant agrees in writing that the Department of Planning and Development may suspend its review of the related permits, and that the time period for review of those permits shall be suspended until the Hearing Examiner issues a decision on the appeal of the certificate of approval.

D. The Hearing Examiner may reverse or modify an action of the Commission only if the Hearing Examiner finds that:

1. Such action of the Commission violates the terms of this chapter or rules, regulations or guidelines adopted pursuant to the authority of this chapter; or

2. Such action of the Commission is based upon a recommendation made in violation of the procedures set forth in this chapter or procedures established by rules, regulations or guidelines adopted pursuant to the authority of this chapter and such procedural violation operates unfairly against the applicant.

E. The Hearing Examiner shall issue a decision not later than ninety (90) days after the last of the appeals of related permit decisions is filed, or, if the applicant chooses to proceed immediately with the appeal of the certificate of approval, as provided in subsection C, then not later than ninety (90) days from the filing of that appeal. The time period to consider and decide the appeal of a certificate of approval shall be exempt from the deadlines for review and decision on both the certificate of approval and any related permit applications.

F. The Hearing Examiner's decision shall be final. Any judicial review must be commenced within twenty-one (21) days of issuance of the Hearing Examiner's decision, as provided by RCW 36.70C.040.
(Ord. 121276 § 35, 2003; Ord. 120157 § 20, 2000; Ord. 119121 § 18, 1998; Ord. 118012 § 141, 1996: Ord. 115958 § 38, 1991: Ord. 109125 § 8(part), 1980: Ord. 106985 § 7(part), 1977: Ord. 106309 § 1(part), 1977: Ord. 104658 § 1(part), 1975: Ord. 100475 § 6(part), 1971.)

25.24.085 Requests for interpretation.

A. An applicant for a certificate of approval may request an interpretation of the meaning of any part of this chapter as it relates to the requested certificate of approval. An interpretation shall not have any effect on certificates of approval that have already been granted.
B. An interpretation shall be requested in writing, specify the section of the code to be interpreted, and specify the question to be addressed. Requests shall be submitted to the Historic Preservation Officer.
C. If the requested interpretation relates to a certificate of approval for which an application has been filed, then the request for an interpretation cannot be made any later than fourteen (14) days after the application for the certificate of approval was submitted. Provided, however, that a request for an interpretation may be sought by the applicant at a later time if the applicant agrees in writing to suspend the time frames for review of the certificate of approval, and the time frames applicable to any related permits that are under review, until the interpretation is issued.
D. Interpretations shall be made in writing by the Historic Preservation Officer, and shall be issued within twenty-five (25) days of submission of the request. The interpretation decision shall be served on the requesting party, and notice of the decision shall be mailed to parties of record and interest persons of record.
E. A fee shall be charged for interpretations in the amount provided in the Permit Fee Subtitle of the Seattle Municipal Code, Chapter 22.901E, Table 6, Land Use Fees, and shall be collected by the Department of Neighborhoods.
F. An interpretation may be appealed by the applicant if the certificate of approval that the interpretation addresses is denied and the applicant is appealing the denial, or if the interpretation relates to conditions placed on the certificate of approval that the applicant is appealing. An appeal of an interpretation shall be filed at the same time as appeal of the related certificate of approval, and shall be consolidated with the appeal of the related certificate of approval. Appeal of the interpretation shall proceed according to the same procedures and time frames provided in Section 25.24.080 for appeal of a certificate of approval, including the provisions for consolidation with appeals of any related permit decisions.
G. The Hearing Examiner shall give substantial weight to the Historic Preservation Officer's interpretation. The appellant shall have the burden of establishing that the interpretation is erroneous.
H. The Hearing Examiner may affirm, reverse, or modify the Historic Preservation Officer's interpretation, in whole or in part. The Hearing Examiner may also remand the interpretation to the Historic Preservation Officer for further consideration.
I. The decision of the Hearing Examiner shall be final. The Hearing Examiner's decision shall be binding upon the Historic Preservation Officer and the Commission, as well as all parties of record to the proceeding. Copies of the Hearing Examiner's decision shall be mailed to the Historic Preservation Officer and to all parties of record before the Hearing Examiner. Judicial review must be commenced within twenty-one (21) days of issuance of the Hearing Examiner's decision, as provided by RCW 36.70C.040.

(Ord. 120157 § 21, 2000; Ord. 118012 § 142, 1996.)

25.24.090 Enforcement.

The provisions of this chapter shall be enforced by the Director of Planning and Development.
(Ord. No. 121276 § 37, 2003; Ord. 109125 § 9(part), 1980: Ord. 100475 § 7, 1971.)

25.24.100 Violation--Penalty.

Anyone failing to comply with any provisions of this chapter shall upon conviction thereof be subject to the penalties as provided by the laws of the City for failure to obtain a use permit from the Director of Planning and Development.
(Ord. No. 121276 § 37, 2003; Ord. 109125 § 9(part), 1980: Ord. 100475 § 8, 1971.)

Chapter 25.16 BALLARD AVENUE LANDMARK DISTRICT

Sections:

Editor's Note: A map of the Ballard Avenue Landmark District is included at the end of this chapter.

25.16.010 Legislative findings and purposes.

Throughout the City there are a few areas that retain individual identity through consistent historical or architectural character. The protection, enhancement, and perpetuation of such areas is in the interest of the prosperity, civic pride, and general welfare of the citizens of Seattle. The aesthetic standing of this City cannot be maintained or enhanced by disregarding the heritage of its communities or by allowing the destruction or defacement of these cultural assets. Ballard Avenue is an area of historical significance to the community of Ballard and The City of Seattle. The purposes for the creation of a Ballard Avenue Landmark District are:

A. To preserve, protect, enhance, and perpetuate those elements of the District's cultural, social, economic, architectural, historic, or other heritage;

B. To foster civic pride in the significance and accomplishments of the past;

C. To stabilize or improve the aesthetic and economic vitality and values of the District;

D. To promote and encourage continued private ownership and utilization of such buildings and other structures now so owned and used; and

E. To promote the local identity of the area to the extent that the objectives previously listed can be reasonably attained under such a policy.

(Ord. 105462 § 1, 1976.)

25.16.020 Legal description.

There is established the Ballard Avenue Landmark District whose boundaries are as follows:

Beginning at the intersection of the centerline of Northwest Market Street with the projection northwesterly of the southwestern margin of the alley in Block 72, Gilman Park Addition, thence southeasterly along said projection and margin to the west margin of 22nd Avenue Northwest, thence easterly across 22nd Avenue Northwest to the intersection of the east margin of 22nd Avenue Northwest and the midblock line of Block 71 Gilman Park Addition (said midblock line being that line which separates Lots 2 through 19 from Lots 21 through 37 in said Block 71), thence southeasterly along said midblock line through said Block 71 to the westerly margin of 20th Avenue Northwest, thence across 20th Avenue Northwest to the intersection of the easterly margin of 20th

Avenue Northwest and the midblock line of Block 70, Gilman Park Addition (said midblock line being that line which separates Lots 2 through 8, from Lots 31 through 35 in said Block 70), thence southeasterly along said midblock line to the southernmost corner of Lot 8, Block 70, Gilman Park Addition, thence northeasterly along the southeasterly margin of said Lot 8 to the southwesterly margin of Ballard Avenue Northwest, thence easterly across Ballard Avenue Northwest to the intersection of the northeasterly margin of Ballard Avenue Northwest and the southeasterly margin of Lot 22, Block 76, Gilman Park Addition, thence northeasterly along said southeasterly margin of said Lot 22, to the easternmost corner of said Lot 22, thence northwesterly along the northeasterly margin of said Lot 22 to its intersection with southeasterly margin of Northwest Dock Place, thence across Northwest Dock Place to the intersection of northwesterly margin of Northwest Dock Place and the midblock line of Block 75, Gilman Park Addition (said midblock line being that line which separates Lots 14 through 23, from Lots 2 through 13 in said Block 75), thence northwesterly along said midblock line to the easterly margin of 20th Avenue Northwest, thence across 20th Avenue Northwest to intersection of the westerly margin of 20th Avenue Northwest and the midblock line of Block 74 Gilman Park Addition (said midblock line being that line which separates Lots 21 through 37 from Lots 2 through 19), thence northwesterly along said midblock line to the easterly margin of 22nd Avenue Northwest, thence across 22nd Avenue Northwest to the intersection of the westerly margin of 22nd Avenue Northwest and the midblock line of Block 73, Gilman Park Addition (said midblock line being that line which separates Lots 5 through 8 from Lots 1 through 3 in said Block 73), thence northwesterly along said midblock line and its northwesterly projection to the centerline of Northwest Market Street, thence westerly along said centerline to the point of beginning.

all in Seattle, King County, Washington, and illustrated on a map attached as Exhibit "A" to Ordinance 105462 which is codified at the end of this chapter; and the custodian of the Official Zoning Map of the City is directed to add said District to the Official Zoning Map. All property within said District shall be subject to the controls, procedures and standards set forth or provided for in this chapter.

(Ord. 105462 § 2, 1976.)

25.16.030 Criteria for designation of the District.

A. Ballard Avenue has significant interest and value as part of the development of Seattle. Lumber and other mills located in Ballard contributed significantly to the rebuilding of Seattle following the 1889 fire. Certain commercial buildings on Ballard Avenue dating from the same era as those lumber and shingle industries are all that remain of the early "boomtown." Ballard Avenue therefore represents the early history and heritage of the Ballard community which has contributed greatly to the development of Seattle.

B. Ballard Avenue exemplifies the historic heritage of the Ballard community. It was the location of the first commercial development in Ballard before business interests moved further north to Northwest Market Street.

C. A significant number of buildings within the Ballard Avenue Landmark District embody the distinctive characteristics of turn-of-the-century modest commercial architecture. They possess integrity of location, compatibility of design, scale, and use of materials, and impart a feeling of association and sense of place.

(Ord. 105462 § 3, 1976.)

25.16.040 Ballard Avenue Landmark District Board--Created--Membership.

There is created the Ballard Avenue Landmark District Board (hereinafter called the "District Board"), which shall consist of seven (7) members, five (5) of whom shall be chosen at annual elections called and conducted by the Director of the Department of Neighborhoods (hereinafter called the "Director") for such purpose and at which all residents, tenants, persons who operate businesses and property owners of the Ballard Avenue Landmark District, of legal voting age, shall be eligible to vote. The elected membership of the District Board shall include two (2) property owners, two (2) property owner-district business persons, and one (1) tenant or resident. The remaining two (2) members of the District Board shall be appointed by the Mayor and approved by the City Council, and shall be an architect and a Ballard historian or a person having a demonstrated interest in the Ballard community. Initial terms for two (2) of the elected and one (1) of the appointed members shall be for one (1) year, and initial terms for the remaining four (4) persons shall be for two (2) years; thereafter all terms shall be for two (2) years. In the event of a vacancy an appointment shall be made by the Mayor subject to Council confirmation for the remainder of the unexpired term. The Director shall consult with the District Board regarding the scheduling and conduct of elections and shall adopt rules and procedures regarding the conduct of elections and shall file the same with the City Clerk.
(Ord. 115958 § 34, 1991: Ord. 105462 § 4(a), 1976.)

25.16.050 District Board--Rules of procedure.

The District Board shall elect its own chairman and adopt in accordance with the Administrative Code (Ordinance 102228)1 such rules of procedure as shall be necessary in the conduct of its business, including: (A) a code of ethics, (B) rules for reasonable notification of public hearings on applications for certificates of approval and applications for permits requiring certificates of approval in accordance with Sections 25.16.070 through 25.16.110, and (C) rules for reasonable notification of public hearings on development and design review guidelines and amendment thereof. A majority of the currently qualified and acting members of the District Board shall constitute a quorum necessary for the purpose of transacting business. All decisions shall be made by majority vote of those members present, and in case of a tie vote, the motion shall be lost. The District Board shall keep minutes of all of its official meetings, which shall be filed with the Director.
(Ord. 105462 § 4(b), 1976.)
1. Editor's Note: The Administrative Code is codified in Chapter 3.02 of this Code.

25.16.060 District Board--Staffing.

The District Board shall receive administrative assistance from the Director of the Department of Neighborhoods, who shall assign a member of his staff to provide such assistance. Such staff member shall be the custodian of the records of the District Board, shall conduct official correspondence, and organize and supervise the clerical and technical work of the District Board as required to administer this chapter.
(Ord. 115958 § 35, 1991: Ord. 105462 § 4(c), 1976.)

25.16.065 Certificate of approval--Definition.

"Certificate of approval" means written authorization that must be issued by the Board before any change may be made to the external appearance of any building or structure in the district or to the external appearance of any other property visible from a public street, alley or way in the district, or any new building or structure is constructed. The

term "certificate of approval" includes written approval of a preliminary design of a project as well as its subsequent design phases as provided for in Section 25.16.080. (Ord. 119121 § 7, 1998.)

25.16.070 Building alterations--Certificate of approval required.

No person shall make any change (including but not limited to alteration, demolition, construction, reconstruction, restoration, remodeling, painting, or signing) to the external appearance of any building or structure in the district, or to the external appearance of any other property in the district which is visible from a public street, alley or way, nor construct a new building or structure in the district, nor shall any permit for such be issued, except pursuant to a certificate of approval issued by the Director pursuant to this chapter.
(Ord. 109125 § 11(part), 1980: Ord. 105462 § 5(a), 1976.)

25.16.080 Certificate of approval--Application.

A. Application.
1. All applications for a certificate of approval shall be submitted to the District Board.
2. The following information must be provided in order for the application to be complete, unless the Board staff indicate in writing that specific information is not necessary for a particular application:
a. Building name and building address;
b. Name of the business(es) located at the site of the proposed work;
c. Applicant's name and address;
d. Building owner's name and address;
e. Applicant's telephone number;
f. The building owner's signature on the application, or a signed letter from the owner designating the applicant as the owner's representative, if the applicant is not the owner;
g. Confirmation that the fee required by SMC Chapter 22.901T of the Permit Fee Subtitle has been paid;
h. A detailed description of the proposed work; including:
i. Any changes it will make to the building or the site,
ii. Any effect that the work would have on the public right-of-way or other public spaces,
iii. Any new construction;
i. Four (4) sets of scale drawings, with all dimensions shown, of:
i. A site plan of existing conditions, showing adjacent streets and buildings, and, if the proposal includes any work in the public right-of-way, the existing street uses, such as street trees and sidewalk displays, and another site plan showing proposed changes to the existing conditions,
ii. A floor plan showing the existing features and a floor plan showing the proposed new features,
iii. Elevations and sections of both the proposed new features and the existing features,
iv. Construction details,
v. A landscape plan showing existing features and plantings, and another landscape plan showing proposed site features and plantings;
j. Photographs of any existing features that would be altered and photographs showing the context of those features, such as the building facade where they are located;
k. One (1) sample of proposed colors, if the proposal includes new finishes or paint, and an elevation drawing or a photograph showing the location of proposed new finishes or paint;
l. If the proposal includes new signage, awnings, or exterior lighting:

i. Four (4) sets of scale drawings of proposed signage or awnings, showing the overall dimensions, material, design graphics, typeface, letter size, and colors,
ii. Four (4) sets of a plan, photograph, or elevation drawing showing the location of the proposed awning, sign, or lighting,
iii. Four (4) copies of details showing the proposed method of attaching the new awning, sign or lighting,
iv. The wattage and specifications of the proposed lighting, and a drawing or picture of the lighting fixture,
v. One (1) sample of proposed sign colors or awning material and color;
m. If the proposal includes demolition of a structure or object:
i. A statement of the reason(s) for demolition,
ii. A description of the replacement structure or object;
n. If the proposal includes replacement, removal, or demolition of existing features, a survey of the existing conditions of the features that would be replaced, removed, or demolished.
3. The staff shall determine whether an application is complete and shall notify the applicant in writing within twenty-eight (28) days of the application being filed whether the application is complete or that the application is incomplete and what additional information is required before the application will be complete. Within fourteen (14) days of receiving the additional information, the staff shall notify the applicant in writing whether the application is now complete or what additional information is necessary. An application shall be deemed to be complete if the staff does not notify the applicant in writing by the deadlines in this section that the application is incomplete. A determination that the application is complete is not a determination that the application is vested.
4. The determination of completeness does not preclude the staff or the District Board from requiring additional information during the review process if more information is needed to evaluate the application according to the standards in this chapter and in any rules adopted by the Board, or if the proposed work changes. For example, additional information that may be required could include a shadow study or a traffic study when new construction is proposed.
B. An applicant may make a written request to submit an application for a certificate of approval for a preliminary design of a project if the applicant waives in writing the deadline for the decision on the certificate of approval for a subsequent desigin phase or phases of the project and the applicant agrees in writing that the Board decision on the preliminary design is immediately appealable by the applicant or any interested person of record. The staff may reject the request if it appears that approval of a preliminary design would not be an efficient use of staff or District Board time and resources, or would not further the goals and objectives of this chapter. To be complete, an application for a certificate of approval for a preliminary design must include the information listed above in subsection A2, subparagraphs a through h, i(i) through i(iii), j, m and n. A certificate of approval that is granted for a preliminary design shall be conditioned upon subsequent submittal of the final design and all of the information listed above in subsection A2, and upon obtaining a certificate of approval for final design, prior to issuance of permits for work affecting any building or property in the District.
C. If before a certificate of approval is obtained, an application is made to the Department of Construction and land use for a permit for which a certificate of approval is required, the Director of Construction and land use shall require the applicant to submit an application to the District Board for a certificate of approval. Submission of a complete application for a certificate of approval to the District Board shall be required before the permit application to the Department of Construction and land use may be deemed to be complete. The Department of Construction and land use shall continue to

process such application, but shall not issue any permit until a certificate of approval has been issued pursuant to this chapter, or the time has expired for filing with the Director of the Department of Construction and land use the notice of denial of a certificate of approval.

D. After the Board has commenced proceedings for the consideration of any application for a certificate of approval for a particular alteration or significant change by giving notice of a meeting pursuant to this section or otherwise, no other application for the same or a similar alteration or significant change may be made until the application has been withdrawn or such proceedings and all appeals there from have been concluded, except than an application may be made for a certificate of approval for the preliminary design of a project and a later application made for a certificate of approval for a subsequent design phase or phases of the same project.

(Ord. 119121 § 8, 1998: Ord. 118181 § 15, 1996: Ord. 118012 § 122, 1996: Ord. 109125 § 11(part), 1980: Ord. 105462 § 5(b), 1976.)

25.16.090 Certificate of approval--Consideration by Board.

In considering such application, the District Board shall keep in mind the purpose of this chapter, the criteria specified in Section 25.16.030, and the guidelines promulgated pursuant to this chapter, and among other things, the historical and architectural value and significance; architectural style and the general design; arrangement, texture, material and color of the building or structure in question and its appurtenant fixtures, including signs; the relationship of such features to similar features of other buildings within the Ballard Avenue Landmark District; and the position of such building or structure in relation to the street or public way and to other buildings and structures.

(Ord. 118012 § 123, 1996: Ord. 109125 § 11(part), 1980: Ord. 105462 § 5(c), 1976.)

25.16.100 Certificate of approval--Issuance or denial.

A. Within thirty (30) days after receipt of a complete application the District Board shall hold a public meeting thereon. If after such meeting and upon consideration of the foregoing, the District Board determines that the changes and any new construction proposed in the application are consistent with the purpose of this chapter, the criteria specified in Section 25.16.030, and the guidelines promulgated pursuant to this chapter, it shall recommend that a certificate of approval be granted and the Director shall, within fifteen (15) days of receiving the recommendation, issue a decision granting the certificate of approval in accordance with the District Board's recommendation. If the recommendation is to deny such application, the Director shall issue a written notice of denial. If the District Board does not recommend granting, granting with conditions, or denial of an application within the time provided for such recommendation, the Director of the Department of Neighborhoods shall issue a decision without a recommendation from the District Board. If the Director of the Department of Neighborhoods does not issue a decision within the time provided by this chapter, then the application shall be deemed approved. Provided, however, that the applicant may waive the deadlines in writing for the District Board to make a recommendation or the Director of the Department of Neighborhoods to make a decision, if the applicant also waives in writing any deadlines on the review or issuance of related permits that are under review by the Department of Construction and land use. Before issuing a recommendation of denial, the District Board may, upon agreement with the applicant that the deadlines shall be waived, defer such action and consult with the applicant for the purpose of considering means of modifying the application and considering alternatives in keeping with the aforesaid purpose, criteria and guidelines. If at the end of an agreed upon period of time

no acceptable solution has been reached, the District Board shall make its recommendation and the applicant shall be so notified by letter.
B. The Director of the Department of Neighborhoods shall send copies of the decision to the applicant, the property owner, the Director of Construction and land use and to the District Board. Notice of the Director's decision shall be provided to any person who, prior to the rendering of the decision, made a written request to receive notice of the decision or made written substantive comments on the application.
C. A certificate of approval shall be valid for eighteen (18) months from the date of issuance of the decision granting it unless the Director of the Department of Neighborhoods grants an extension in writing; provided however, that certificates of approval for actions subject to permits issued by the Department of Construction and land use shall be valid for the life of the permit, including any extensions granted in writing by the Department of Construction and land use.
(Ord. 118181 § 16, 1996; Ord. 118012 § 124, 1996: Ord. 109125 § 11(part), 1980: Ord. 105462 § 5(d), 1976.)

25.16.110 Certificate of approval--Appeal if denied.

A. The applicant may appeal the final denial of any such application to the Hearing Examiner within fourteen (14) days of the date of notice of the denials. When the proposed action that is the subject of the certificate of approval is also the subject of one (1) or more related permit applications under review by the Department of Construction and land use, then the appellant must also file notice of the appeal with the Department of Construction and land use, and the appeal of the certificate of approval shall not be heard until all of the time periods for filing administrative appeals on the other permits have expired, except that an appeal of a certificate of approval for the preliminary design or for subsequent design phases may proceed immediately according to Section 25.16.080 without being consolidated. If one (1) or more appeals are filed regarding the other permits, then the appeal of the certificate of approval shall be consolidated with them and shall be heard according to the same timelines established for the other appeals, except that appeals to the State Shoreline Hearings Board shall proceed independently according to the timelines set by the state for such appeals, and except that an appeal of a certificate of approval for a preliminary design or for a subsequent design phase may proceed according to Section 25.16.080 without being consolidated. If the related permit decisions would not be appealable, then the appeal of the certificate of approval decision shall proceed immediately after it is filed.
B. The applicant for the certificate of approval may elect to have the appeal proceed immediately rather than postponed for consolidation with appeals of related permit applications, if the applicant agrees in writing that the Department of Construction and land use may suspend its review of the related permits, and that the time period for review of those permits shall be suspended until the Hearing Examiner issues a decision on the appeal of the certificate of approval.
C. The time period to consider and decide the appeal of a certificate of approval shall be exempt from the deadlines for review and decision on both the certificate of approval and any related permit applications.
D. The Hearing Examiner after a public hearing in accordance with the procedure for hearings in contested cases in the Seattle Administrative Code, Chapter 3.02 of the Seattle Municipal Code, and in accordance with the Hearing Examiner's Rules of Practice and Procedure (unless all parties of record affected by such Board's decision consent to the review and decision without a public hearing) may affirm, reverse or modify the denial, but may reverse or modify only if the Hearing Examiner finds that:

1. Such denial violates the terms of this chapter or guidelines adopted pursuant to the authority of this chapter; or
2. Such denial is based upon a recommendation made in violation of the procedures set forth in this chapter or procedures adopted pursuant to the authority of this chapter and such procedural violation operates unfairly against the applicant.

E. The Hearing Examiner shall issue a decision not later than ninety (90) days after the last of the appeals of related permit decisions is filed, or, if the applicant chooses to proceed immediately with the appeal of the certificate of approval, as provided in subsection B, then not later than ninety (90) days from the filing of that appeal. The decision of the Hearing Examiner shall be final. Any judicial review must be commenced within twenty-one (21) days of issuance of the Hearing Examiner's decision, as provided by RCW 36.70C.040. Copies of the decision shall be mailed to all parties of record and transmitted to the Director, the District Board, and the property owner if the owner is not a party of record.

(Ord. 120157 § 14, 2000; Ord. 119121 § 9, 1998; Ord. 118012 § 125, 1996: Ord. 109125 § 11(part), 1980: Ord. 105462 § 5(e), 1976.)

25.16.115 Requests for interpretation.

A. An applicant for a certificate of approval may request an interpretation of the meaning of any part of this chapter as it relates to the requested certificate of approval. An interpretation shall not have any effect on certificates of approval that have already been granted.

B. An interpretation shall be requested in writing, specify the section of the code to be interpreted, and specify the question to be addressed. Requests shall be submitted to the Historic Preservation Officer.

C. If the requested interpretation relates to a certificate of approval for which an application has been filed, then the request for an interpretation cannot be made any later than fourteen (14) days after the application for the certificate of approval was submitted. Provided, however, that a request for an interpretation may be sought by the applicant at a later time if the applicant agrees in writing to suspend the time frames for review of the certificate of approval, and the time frames applicable to any related permits that are under review, until the interpretation is issued.

D. Interpretations shall be made in writing by the Historic Preservation Officer, and shall be issued within twenty-five (25) days of submission of the request. The interpretation decision shall be provided to the requesting party, and notice of the decision shall be mailed to parties of record and interested persons of record.

E. A fee shall be charged for interpretations in the amount provided in the Permit Fee Subtitle of the Seattle Municipal Code, Chapter 22.901E, Table 6, Land Use Fees, and shall be collected by the Department of Neighborhoods.

F. An interpretation may be appealed by the applicant if the certificate of approval that the interpretation addresses is denied and the applicant is appealing the denial, or if the interpretation relates to conditions placed on the certificate of approval that the applicant is appealing. An appeal of an interpretation shall be filed at the same time as appeal of the related certificate of approval, and shall be consolidated with the appeal of the related certificate of approval. Appeal of the interpretation shall proceed according to the same procedures and time frames provided in Section 25.16.110 for appeal of a certificate of approval, including the provisions for consolidation with appeals of any related permit decisions.

G. The Hearing Examiner shall give substantial weight to the Historic Preservation Officer's decision. The appellant shall have the burden of establishing that the interpretation is erroneous.

H. The Hearing Examiner may affirm, reverse, or modify the Historic Preservation Officer's interpretation, in whole or in part. The Hearing Examiner may also remand the interpretation to the Historic Preservation Officer for further consideration.
I. The decision of the Hearing Examiner shall be final. The Hearing Examiner's decision shall be binding upon the Historic Preservation Officer and the Board, as well as all parties of record to the proceeding. Copies of the Hearing Examiner's decision shall be mailed to the Historic Preservation Officer and to all parties of record before the Hearing Examiner. Judicial review must be commenced within twenty-one (21) days of issuance of the Hearing Examiner's decision, as provided by RCW 36.70C.040.
(Ord. 120157 § 15, 2000; Ord. 118012 § 126, 1996.)

25.16.120 Development and design review guidelines.

A. The District Board shall draft, and after consideration and review at least one (1) public hearing shall adopt development and design review guidelines and amendments thereof, which shall become effective upon filing with the City Clerk. Notice of such public hearings shall be given in accordance with rules adopted by the District Board.
B. The development and design review guidelines shall identify the unique values of the District, shall include a statement of purpose and intent, and shall be consistent with the purposes of this chapter and the criteria specified in Section 25.16.030. The guidelines shall identify design characteristics which have either a positive or negative effect upon such unique values of the District and shall specify the materials, colors, signage, planting and other design-related considerations which will be allowed, encouraged, limited, or excluded from the District. If such design considerations are limited, the guidelines shall state either the reasons for such limitation or conditions under which such considerations will be permitted.
(Ord. 105462 § 6, 1976.)

25.16.130 Advice and guidance to property owners.

The District Board may, at its official meetings upon request of a District property owner or business tenant, render advice and guidance with respect to any proposed work within the District.
(Ord. 105462 § 7, 1976.)

25.16.140 Enforcement and penalties.

The Director of Construction and land use shall enforce this chapter and anyone violating or failing to comply with its provisions shall, upon conviction thereof, be fined in any sum not exceeding Five Hundred Dollars ($500.00). Each day's violation or failure to comply shall constitute a separate offense.
(Ord. 109125 § 11(part), 1980: Ord. 105462 § 8, 1976.)

25.16.150 Conflicting provisions.

In case of conflict between this chapter and the Landmarks Preservation Ordinance (Ordinance 102229),1 the provisions of this chapter shall govern the Ballard Avenue Landmark District.
(Ord. 105462 § 9, 1976.)
1. Editor's Note: Ord. 102229 was repealed by Ord. 106348, the new Landmarks Preservation Ordinance codified in Chapter 25.12 of this Code.

Chapter 25.28 PIONEER SQUARE HISTORICAL DISTRICT

Sections:

1. Editor's Note: Historic District provisions were repealed by Ord. 110058. For provisions on the Pioneer Square Preservation District, see Chapter 23.66 of this Code.

2. A map of the Pioneer Square Historical District is included at the end of this chapter.

Cases: An order of the Pioneer Square Historic Preservation Board requiring an owner to replace a parapet, which was hazardous, did not take her property without just compensation. Buttnick v. Seattle, 105 Wn.2d 857, 719 P.2d 93 (1986).

Severability: The several provisions of Subchapter II are declared to be separate and severable and the invalidity of any clause, sentence, paragraph, subdivision, section, or portion of Subchapter II, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of Subchapter II or the validity of its application to other persons or circumstances.

(Ord. 107323 § 5.02, 1978.)

Subchapter II Minimum Maintenance Regulations

25.28.200 Short title.

This subchapter shall be known and may be cited as the "Pioneer Square Minimum Maintenance Ordinance" and is referred to herein as "this subchapter."

(Ord. 107323 § 1.01, 1978.)

25.28.210 Declaration of findings and purpose.

A. It is found and declared that historic buildings which reflect significant elements of the City's cultural, aesthetic, social, economic, political, architectural, engineering, historic and other heritage should be preserved, protected, enhanced, and perpetuated.

B. It is further found and declared that some buildings and structures located within the Pioneer Square Historic District are substandard, in danger of decay and deterioration occasioned by neglect, in danger of causing or contributing to the creation of blight adverse to the health, safety, and general welfare of the public.

C. It is further found and declared that certain conditions and circumstances endanger the preservation of the building or structure and the public safety; and it is the purpose of this subchapter to establish procedures for the correction of such conditions.

D. For the achievement of these purposes, certain minimum maintenance standards are established, and a building or structure which fails to meet such standards is identified in this subchapter as a "substandard historic building."
(Ord. 107323 § 1.02, 1978.)

25.28.220 Scope.

The subchapter shall apply to the buildings or structures within the following geographic boundaries:

Beginning at the intersection of South King Street and Alaskan Way South, then north along the west line of Alaskan Way South to the south line of South Washington Street; then west to the inner harbor line of Elliott Bay; then north to the north line of South Washington Street; then east to the west line of Alaskan Way South; then northwest to the center line of Columbia Street; then northeast to the east line of the alley between First Avenue and Second Avenue; then southwest to the center line of Cherry Street; then northeast to the east line of the alley between Second Avenue and Third Avenue; then southeast to the north line of James Street; then northeast to the east line of Third Avenue; then southeast to the north line of Jefferson Street; then northeast to the east line of Fourth Avenue; then southeast to the north line of Terrace Street; then northeast to the center line of Fifth Avenue; then southeast and south to the south line of Yesler Way; then west to a line midblock between Fourth Avenue South and Fifth Avenue South; then south to the south line of South Washington Street; then west to the center line of Fourth Avenue South; then south to the north line of South Jackson Street, then east to the center line of Fifth Avenue South; then south to a line one hundred twenty feet south of and parallel with the production east of the south line of South King Street; then west to the production south of the west line of Third Avenue South; then north to the south side of South King Street, then west to the point of beginning; all in Seattle, King County, Washington, and illustrated on a map attached to the ordinance from which this section derives as Exhibit "A."1
(Ord. 111874 § 1, 1984: Ord. 107323 § 1.03, 1978.)

25.28.230 Definitions.

A. For the purpose of this subchapter certain abbreviations, terms, phrases, words, and their derivations shall be construed as specified in this section. Words used in the singular include the plural and the plural the singular. Words used in the masculine gender include the feminine and the feminine the masculine.
B. "Building" means any structure other than the Burlington Northern railroad tunnel used or intended for supporting or sheltering any use or occupancy.
C. "Hearing Examiner" means the Hearing Examiner of the City created by Ordinance 102228,1 or his duly authorized representative.
D. "Owner" means any person who, alone or jointly or severally with others, has title or interest in any building, with or without accompanying actual possession thereof, and includes any person who as agent, or executor, administrator, trustee, or guardian of an estate has charge, care, or control of any building.
E. "Party affected" means any owner, tenant, or other person having a direct financial interest in the subject building or any adjacent property or any person whose health or safety is directly affected by the subject building, or the Pioneer Square Historic Preservation Board established by Ordinance 98852.2
F. "Permit" means any form of certificate, approval, registration, license, or other written permission which is required by law, ordinance or regulation to be obtained before engaging in any activity.

G. "Person" means any individual, firm, corporation, association or partnership and their agents or assigns.
H. "Superintendent" means the Director of Planning and Development and shall also include any duly authorized representative of the Director.
(Ord. 121276 § 36, 2003; Ord. 111874 § 2, 1984; Ord. 109125 § 17, 1980; Ord. 107323 §§ 3.01-3.08, 1978.)
1. Editor's Note: Ord. 102228 is codified in Chapter 3.02 of this Code.
2. Editor's Note: Ord. 98852 was repealed by Ord. 110058. For provisions on the Pioneer Square Preservation Board, see Chapter 23.66 of this Code.

25.28.240 Enforcement.

A. The Superintendent of Buildings is designated as the officer to exercise the powers assigned by this subchapter in relation to substandard historic buildings.
B. The Superintendent is authorized and directed to adopt, promulgate, amend and rescind in accordance with the Administrative Code of the City (Ordinance 102228),1 as now or hereafter amended, administrative rules consistent with this subchapter and necessary to carry out the duties of the Superintendent hereunder.
(Ord. 107323 § 2.01, 1978.)
1. Editor's Note: The Administrative Code is codified in Chapter 3.02 of this Code.

25.28.250 Right of entry.

A. Whenever necessary to make an inspection to enforce any of the provisions of this subchapter or whenever the Superintendent has reasonable cause to believe that there exists in any building or upon any premises any condition which makes such building or premises a substandard historic building as defined in Section 25.28.270, and upon presentation of proper credentials, the Superintendent may with the consent of the occupant or with the consent of the owner or person in charge of an unoccupied building or pursuant to a lawfully issued warrant, enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the Superintendent by this subchapter.
B. No owner or occupant or any other person having charge, care or control of any building or premises shall fail or neglect, after proper demand pursuant to a lawful warrant is made, to promptly permit entry therein by the Superintendent for the purpose of inspection and examination pursuant to this subchapter.
(Ord. 107323 § 2.02, 1978.)

25.28.260 Minimum Maintenance Historic Building Revolving Fund.

There is created in the City Treasury a special fund designated the "Minimum Maintenance Historic Building Revolving Fund," from which fund shall be paid costs and expenses incurred by the City in connection with the repair, alteration or preservation of any substandard historic building as defined by this subchapter and ordered repaired, altered or preserved, and into which fund shall be deposited:
A. Such sums as may be recovered by the City as reimbursement for costs and expenses of repair, alteration or improvement of historic buildings and structures found to be substandard;
B. Such other sums as may by ordinance be appropriated to or designated as revenue of such fund; and
C. The unencumbered balance remaining as of the effective date of the ordinance codified in this subchapter1 in the Pioneer Square Historic District Revolving Fund

created by Ordinance 98852,2 which fund is abolished and said balance transferred; and
D. Such other sums as may by gift, bequest or grants be deposited in such fund.
(Ord. 107323 § 2.03, 1978.)
1. Editor's Note: The effective date of Ord. 107323 is May 31, 1978.
2. Editor's Note: Ord. 98852 was repealed by Ord. 110058.

25.28.270 Conditions contributing to "substandard" designation.

Any building in which there exists any of the following conditions to the degree that the preservation of the building or the safety of the public is substantially endangered is declared for the purposes of this subchapter to be a "substandard historic building":
A. Structural defects or hazards, including but not limited to the following:
1. Footing or foundations which are weakened, deteriorated, insecure, or inadequate or of insufficient size to carry imposed loads with safety,
2. Flooring or floor supports which are defective, deteriorated, or of insufficient size or strength to carry imposed loads with safety,
3. Members of walls, partitions, or other vertical supports that split, lean, list, buckle, or are of insufficient size or strength to carry imposed loads with safety,
4. Members of ceilings, roofs, ceiling and roof supports, or other horizontal members which sag, split, buckle, or are of insufficient size or strength to carry imposed loads with safety,
5. Fireplaces or chimneys which list, bulge, settle or are of insufficient size or strength to carry imposed loads with safety;
B. Defective or inadequate weather protection, including but not limited to the following:
1. Crumbling, broken, loose, or falling interior wall or ceiling covering,
2. Broken or missing doors and windows,
3. Deteriorated, ineffective or lack of waterproofing of foundations or floors,
4. Deteriorated, ineffective, or lack of exterior wall covering, including lack of paint or other approved protective coating,
5. Deteriorated, ineffective, or lack of roof covering,
6. Broken, split, decayed or buckled exterior wall or roof covering;
C. Defects increasing the hazards of fire or accident, including, but not limited to the following:
1. Accumulation of rubbish and debris,
2. Any condition which could cause a fire or explosion or provide a ready fuel to augment the spread or intensity of fire or explosion arising from any cause.
(Ord. 107323 § 4.01, 1978.)

25.28.280 Determination of maintenance requirements.

A. Commencement of Proceedings. Whenever the Superintendent of Buildings has inspected or caused to be inspected any building, structure, premises, land, or portion thereof, and determines that it is a substandard historic building used or maintained in violation of this subchapter, he shall commence proceedings to cause the abatement of each violation.
B. Notice and Order. The Superintendent of Buildings shall issue a written notice and order directed to the owner of the building as shown upon the records of the Department of Records and Elections of King County in the manner prescribed in Section 25.28.290, with a copy to the Pioneer Square Historic Preservation Board. The notice and order shall contain:

1. The street address when available and a legal description of real property and/or description of personal property sufficient for identification of where the violation occurred or is located;
2. A statement that the Superintendent has found the building to be in violation of this subchapter with a brief and concise description of the conditions found to be in violation;
3. A statement of the corrective action required to be taken. If the Superintendent has determined that corrective work is required, the order shall require that all required permits be secured and the work physically commenced within such time and be completed within such time as the Superintendent shall determine is reasonable under the circumstances;
4. A statement specifying the amount of any civil penalty that would be assessed on account of the violation and, if applicable, the conditions on which assessment of such civil penalty is contingent;
5. A statement informing the recipient that he must comply with required permit procedures for historic buildings, including requirements for a certificate of approval;
6. Statements advising that: (a) if any required work is not commenced or completed within the time specified, the Superintendent will proceed to abate the violation and cause the work to be done and charge the costs thereof as a lien against the property, if not previously paid;
7. A statement advising that the order shall become final unless no later than thirty (30) days after the notice and order are served, any party affected by the order requests in writing an appeal hearing before the Hearing Examiner.
(Ord. 107323 § 4.02, 1978.)

25.28.290 Method of service of notice and order.

Service of the notice and order shall be made upon all persons having an interest in the property in the manner provided for the service of notices in Section 5.03 of the Housing Code (Ordinance 106319);1 provided, that when personal service is obtained upon all persons having an interest in the property, it shall not be necessary to post a copy of the notice and order of the property.
(Ord. 107323 § 4.03, 1978.)
1. Editor's Note: The Housing Code is codified in Title 22 of this Code.

25.28.300 Appeals.

A. Any party affected by an order of the Superintendent shall have the right to appeal to the Hearing Examiner.
B. In order for an appeal to be perfected the following provisions must be followed:
1. The appeal must be filed with the Hearing Examiner not later than the thirtieth day following the service of the notice and order of the Superintendent;
2. The appeal must be in writing and state in a clear and concise manner the specific exceptions and objections to the notice and order of the Superintendent.
C. The Hearing Examiner shall set a date for hearing the appeal in a timely manner and shall provide no less that twenty (20) days' written notice to the parties.
D. The appeal hearing shall be conducted pursuant to the contested case provisions of the Administrative Code (Ordinance 102228, as amended).1 The Hearing Examiner is authorized to promulgate procedural rules for the appeal hearing pursuant to the Administrative Code.
E. The appeal hearing shall be a new or de novo hearing. Substantial weight shall be given to the notice and order of the Superintendent and the burden of establishing the contrary shall be upon the appealing party.

F. The Hearing Examiner shall have the authority to affirm, modify, reverse, or remand the notice and order of the Superintendent, or to grant other appropriate relief.
G. Within fourteen (14) days after the hearing, a written decision containing findings of fact and conclusions shall be transmitted to the parties.
(Ord. 107323 § 4.04, 1978.)
1. Editor's Note: The Administrative Code is codified in Chapter 3.02 of this Code.

25.28.310 Final order.

A. Any order duly issued by the Superintendent pursuant to the procedures contained in this subchapter shall become final thirty (30) days after service of the notice and order unless a written request for an appeal hearing is received by the Hearing Examiner within that thirty (30) day period.
B. An order which is subject to the appeal procedures shall become final twenty-one (21) days after issuance of the Hearing Examiner's decision unless within that time period a person with standing to file a land use petition in King County Superior Court files such a petition as provided by Section 705 of Chapter 347 of the Laws of 1995.
C. Any final order shall be filed by the Superintendent with the Department of Records and Elections of King County, and the filing shall have the same effect as provided by laws for other lis pendens notices.
(Ord. 117789 § 17, 1995; Ord. 107323 § 4.05, 1978.)

25.28.320 Supplemental notice and order.

The Superintendent may at any time add to, rescind in part, or otherwise modify a notice and order by issuing a supplemental notice and order. The supplemental notice and order shall be governed by the same procedures applicable to all notices and orders contained in this subchapter.
(Ord. 107323 § 4.06, 1978.)

25.28.330 Enforcement of final order.

A. If, after any order duly issued by the Superintendent has become final, the person to whom such order is directed fails, neglects, or refuses to obey such order, the Superintendent may:
1. Institute an action in municipal court to collect a civil penalty assessed under this subchapter; and/or
2. Abate the violation using the procedures of this subchapter.
B. Enforcement of any notice and order of the Superintendent issued pursuant to this subchapter shall be stayed during the pendency of any appeal under this subchapter, or under Ordinance 98852,1 except when the Superintendent determines that the violation will cause immediate and irreparable harm and so states in the notice and order issued.
C. In the event that the Minimum Maintenance Historic Building Revolving Fund does not contain funds and/or the Superintendent elects not to abate the violation through repair, alteration or improvement of the building in the manner specified in Section 25.28.350, he shall file a statement with the Department of Records and Elections of King County stating that there is no money currently available to fund such abatement and that the action will be held in abeyance until such time as funding is available.
(Ord. 107323 § 4.07, 1978.)
1. Editor's Note: Ord. 98852 was repealed by Ord. 110058. For provisions on the Pioneer Square Preservation District, see Chapter 23.66 of this Code.

25.28.340 Civil penalty.

A. In addition to or as an alternative to any other judicial or administrative remedy provided in this subchapter or by law or other ordinance, any person who violates this subchapter, or rules and regulations adopted hereunder, or by any act of commission or omission procures, aids or abets such violation shall be subject to a civil penalty in an amount of Fifty Dollars ($50.00) per day for each continuous violation to be directly assessed until such violation is corrected. All civil penalties assessed shall be enforced and collected by civil action, brought in the name of the City and commenced in the municipal court, and the Superintendent of Buildings shall notify the City Attorney in writing of the name of any person subject to the penalty and the amount thereof, and the City Attorney shall, with the assistance of the Superintendent of Buildings, take appropriate action to collect the penalty.

B. The defendant in the action may show, in mitigation of liability:

1. That the violation giving rise to the action was caused by the wilful act, or neglect, or abuse of another; or

2. That correction of the violation was commenced promptly upon receipt of notice thereof, but that full compliance within the time specified was prevented by inability to obtain necessary materials or labor, inability to gain access to the subject building, or other condition or circumstances beyond the control of the defendant; and upon a showing of the above described conditions, the court may remit all or part of the accumulated penalty.

(Ord. 107323 § 4.08, 1978.)

25.28.350 Abatement.

A. In addition to or as an alternative to any other judicial or administrative remedy provided in this subchapter or by law or other ordinance, the Superintendent may order conditions which constitute a violation of this subchapter to be abated. The Superintendent may order any owner of a building in violation of this subchapter, or rules and regulations adopted hereunder, to commence corrective work and to complete the work within such time as the Superintendent determines reasonable under circumstances. If the owner fails to comply with a final order, the Superintendent, by such means and with such assistance as may be available to him, is authorized to cause such building to be repaired, altered or improved and the costs thereof shall be recovered by the City in the manner provided by law.

B. The cost of such work shall be paid from amounts appropriate for abatement purposes. Unless the amount of the costs thereof are repaid within sixty (60) days of the completion of the work, they shall be assessed against the real property as to which such costs were incurred. Upon certification by the Superintendent to the City Director of Executive Administration of the assessment amount being due and owing, the City Director of Executive Administration shall certify the amount to the county official performing the duties of the County Treasurer, who shall enter the amount of such assessment upon the tax rolls against such real property for the current year to be collected at the same time and with interest at such rates and in such manner as provided for in RCW 84.56.020, as now or hereafter amended, for delinquent taxes, and when collected, shall be deposited in the General Fund and credited to the Minimum Maintenance Historic Building Fund as provided in Section 25.28.260. The assessment shall constitute alien against the property of equal rank with state, county, and municipal taxes.

(Ord. 120794 § 297, 2002; Ord. 116368 § 309, 1992; Ord. 107323 § 4.09, 1978.)

25.28.360 Remedies not exclusive.

The remedies provided for in this subchapter to accomplish preservation of substandard historic structures are not exclusive and this subchapter shall not be construed to supersede or repeal by implication the remedies available for enforcement of the Housing Code (Ordinance 106319)1 or any other ordinance of the City.
(Ord. 107323 § 4.10, 1978.)

1. Editor's Note: The Housing Code is codified in Title 22 of this Code.

Chapter 25.20 COLUMBIA CITY LANDMARK DISTRICT

Sections:

Editor's Note: A map of the Columbia City Landmark District is included at the end of this chapter.

25.20.010 Definitions.

The following terms used in this chapter shall, unless the context clearly demands a different meaning, mean as follows:

A. "Alteration" is any construction, modification, demolition, restoration or remodeling for which a permit from the Director of Planning and Development is required.

B. "Application Review Committee" is the committee established by this chapter to conduct informal reviews of applications for certificates of approval and make recommendations to the Landmarks Board.

C. "Board" is the Seattle Landmarks Preservation Board as created by Ordinance 106348.1

D. "Certificate of approval" means written authorization which must be issued by the Board before any alteration or change may be made to the exterior of any building or structure, to the exterior appearance of any other property or right-of-way visible from a public street, alley, way or other public property, or to painting or signs, or before any new building or structure is constructed within the District. The term "certificate of approval" includes written approval of a preliminary design of a project as well as its subsequent design phases, as contemplated in Section 25.20.080.

E. "Council" is the City Council of The City of Seattle.

F. "Department or Director of Construction and land use" is the Department or Director of Planning and Development of the City of Seattle or such other official as may be designated from time to time to issue permits for construction or demolition of improvements upon real property in the City.

G. "Hearing Examiner" means any person authorized to act as a hearing examiner pursuant to the Administrative Code, Chapter 3.02 of the Seattle Municipal Code, or any ordinance amendatory or successor thereto.

H. "Historic Preservation Officer" means the person described in the Landmarks Preservation Ordinance, SMC Section 25.12.320.

I. "Significant change" is any change in external appearance, other than routine maintenance or repair in kind, not requiring a permit from the Director of Planning and Development, but for which a certificate of approval is expressly required by the Landmarks Board and by this chapter.

(Ord. 121276 §§ 32, 37, 2003; Ord. 119121 § 10, 1998; Ord. 118012 § 127, 1996; Ord. 109125 § 18, 1980; Ord. 107679 § 1, 1978.)

1. Editor's Note: Ord. 106348 is codified in Chapter 25.12 of this Code.

25.20.020 Legislative findings and purposes.

Throughout this City there are few areas that have retained individual identity, historical continuity or consistency of architectural character. The protection, enhancement and perpetuation of such areas is in the interests of the prosperity, civic pride, urban and visual quality, and general welfare of the citizens of Seattle. The aesthetic standing of this City cannot be maintained or enhanced by disregarding the heritage of its communities or by allowing the destruction or defacement of its patrimony. The purposes of the creation of the Columbia City Landmark District are:

A. To preserve, protect, enhance, and perpetuate those elements of the District's cultural, social, economic, architectural, and historic heritage;

B. To foster community and civic pride in the significance and accomplishments of the past;

C. To stabilize or improve the historic authenticity, economic vitality, and aesthetic value of the district;

D. To promote and encourage continued private ownership and use of buildings and other structures;

E. To ensure compliance with the District plan prepared in the spring of 1978 by The Richardson Associates;

F. To encourage continued City interest and support in the District; and

G. To promote the local identity of the area.

(Ord. 107679 § 2, 1978.)

25.20.030 Legal description.

There is established the Columbia City Landmark District whose boundaries are particularly described as follows:

A piece of land lying in the northwest one-quarter of Section 22, Township 24 North, Range 4 East W.M., in the County of King, State of Washington; more particularly described as follows:

Beginning at the northeast corner of Lot 1702, Block 60, Columbia Supplemental No. 1 as recorded in Volume 8 of plats, page 12, records of King County, Washington; thence north on a straight line to the northeast corner of Lot 1622, Block 59 of said plat; thence west on the north line of said Block 59 to an intersection with the centerline of an alley produced south, said alley being in Block 56 of said plat; thence north on the last described line to an intersection with the centerline of South Alaska Street; thence east along said centerline to an intersection with the easterly line of Rainier Ave. South produced northwesterly; thence southeasterly along said easterly line of Rainier Ave. South to an intersection with the north line of South Angeline Street; thence east along said north line produced east to intersect with the centerline of 39th Ave. South; thence south along said centerline to an intersection with the south line of an alley produced east, said alley being in Block 9, Plat of Columbia as recorded in Volume 7 of plats, page 97, records of King County, Washington; thence west along said south line to the northwest corner of Lot 224, Block 9 of said plat; thence south along the west line of said Lot to the southwest corner of said Lot 224; thence east along the north line of South Ferdinand Street to the southeast corner of Lot 229, Block 9 of said plat; thence south on a straight line to the northeast corner of Lot 270, Block 15 of said plat; thence west along the south line of South Ferdinand Street to the northwest corner of Lot 272, Block 15 of said plat; thence south on a straight line produced through the southwest corner of Lot 291, Block 15 of said plat to a point on the south line of South Hudson Street; thence east along said south line to an intersection with the west line of 39th Ave. South; thence south along said west line, 252.72 feet to the point of curve; thence on a curve to the

right, having a radius of 10.00 feet, an arc distance of 24.21 feet to a point of the end of curve, said point being on the northeasterly line of Rainier Ave. South; thence northwesterly along said northeasterly line to an intersection with a line produced east, 0.10 feet south of and parallel with the south line of Tract 14, Morningside Acre Tracts as recorded in Volume 9 of plats, page 64, records of King County, Washington; thence west along said parallel line to the east line of Tract 16 of said plat; thence south along said east line, 13.59 feet to the southeast corner of said Tract 16; thence west 180.2 feet, more or less, along the south line of said Tract 16 to an intersection with a line produced south, said line being the extension south of west line of Lots 277 and 286, Block 16, Plat of Columbia as recorded in Volume 7 of plats, page 97, records of King County, Washington; thence north along the last described line to the northwest corner of Lot 277, Block 16 of said Plat of Columbia; thence west along the south line of South Ferdinand Street to the northeast corner of Lot 1702, Block 60, Columbia Supplemental No. 1, as recorded in Volume 8 of plats, page 12, records of King County, Washington, and the point of beginning. all in Seattle, King County, Washington and illustrated on map, Exhibit A, attached to Ordinance 107679 and codified at the end of this chapter; and the custodian of the Official Zoning Map of the City is directed to add said district to the Official Zoning Map. All property within the District shall be subject to the controls, procedures, and standards set forth or provided for in this chapter, whether publicly or privately owned.
(Ord. 107679 § 3, 1978.)

25.20.040 Criteria for designation of the District.

A. Historical. Columbia City has significance and value as part of the development of Seattle. Its early growth, like that of Seattle, Ballard and other Puget Sound settlements, was as a pioneer mill town. But while Seattle grew and remained dominant in the region, because of its harbor, and later the railroads, Columbia City developed less dramatically only to be annexed by Seattle after fourteen (14) years as an incorporated town. Nonetheless, Columbia City retained its identity even following annexation, and to this day remains a distinct and historic part of Greater Seattle. Columbia City as a separate municipality contributed to the historic growth of the Seattle Area from the time of its incorporation in 1893 until its annexation in 1907, growing with logging and railroad development. When the Seattle, Renton and Southern Railways stretched the seven (7) miles from Seattle to Columbia City in 1890 it claimed a lucrative two-way freight business. Columbia City shipped surplus lumber to a rebuilding Seattle (after 1889 fire) and Columbia City needed the finished goods Seattle could provide. Much of Columbia City's lumber, as well as the goods from Seattle, went into its own buildings and lakeshore summer residences. Remote Columbia City, thanks to nearby Lake Washington and Wetmore Slough, was a busy summer escape for the neighboring city's residents. Until the lowering of Lake Washington with the cutting of the Ship Canal, Wetmore Slough had been considered by Columbia City as its port to the sea.

B. Sociological. The District is associated with the lives of many of the region's pioneers through business, transportation and commercial activities and general pioneering efforts that were concentrated in the area.

C. Architectural. A significant number of buildings within the Columbia City Landmark District embody distinctive characteristics of turn-of-the-century modest commercial and residential architecture. They possess integrity of location, compatibility of design, scale, and use of materials, and impart a sense of historic continuity, a feeling of association and a sense of place. The area is significant for landmark designation not only because of its buildings, but especially because of the total quality of an earlier small town: a

pleasant admixture of commercial buildings, churches, apartments and houses, and within its core a small and integral park.
(Ord. 107679 § 4, 1978.)

25.20.050 Administration.

Jurisdiction over changes and improvements in the District is vested in the Seattle Landmarks Preservation Board. In order, however, to maintain adequate community involvement and contact, an Application Review Committee is created which shall consist of two (2) members of the Landmarks Board appointed by the Chairman, at least one (1) of whom shall be an architect, and three (3) members of the Columbia City Development Association, appointed by the President of that organization, to review all proposed changes to public and private property and to make recommendations to the Landmarks Board for issuance or denial of certificates of approval. The two (2) Board Members of the Committee shall be appointed for renewable two (2) year terms, and the Association Members shall also be appointed for two (2) year renewable terms, but appointments shall be staggered with one (1) member of each group initially appointed for one (1) year only.
(Ord. 107679 § 5, 1978.)

25.20.060 Development and design review guidelines.

A. The Landmarks Preservation Board shall draft and, after consideration and review at no less than one (1) public hearing, shall adopt development and design review guidelines and amendments which shall become effective upon filing with the City Clerk; these guidelines shall include at least by reference the Columbia City Business District Plan prepared by The Richardson Associates for guidance in reviewing public properties and new developments. Notice and conduct of such public hearing(s) shall be in accordance with rules adopted by the Landmarks Preservation Board.

B. The development and design review guidelines shall identify the unique values of the District, shall include a statement of purpose and intent, and shall be consistent with the purposes of this chapter and the criteria specified in Section 25.20.030. The guidelines shall identify design characteristics which have either a positive or negative effect upon the unique values of the District and shall specify the materials, colors, signage, planting, and other design-related considerations which will be allowed, encouraged, limited or excluded from the District.
(Ord. 107679 § 6, 1978.)

25.20.070 Approval of changes to buildings, structures and other property.

No person shall make any change, including but not limited to alteration, demolition, construction, reconstruction, restoration, remodeling, and changes involving painting or signs, (but excluding in-kind maintenance and repairs which do not affect the appearance of the structure(s)) to the exterior of any building or structure in the District, or to the external appearance of any other property or public right-of-way in the District which is visible from a public street, alley, way, or other public property, nor construct any new building or structure in the District without first securing a certificate of approval from the Landmarks Preservation Board. No City building permit or other permit for alterations or new construction shall be issued until the Landmarks Preservation Board has granted a certificate of approval for the proposed activity.
(Ord. 107679 § 7, 1978.)

25.20.080 Application for certificate of approval.

A. Application.

1. Application for a certificate of approval may be made by filing an application for such a certificate with the Board.

2. The following information must be provided in order for the application to be complete, unless the Board staff indicate in writing that specific information is not necessary for a particular application:

a. Building name and building address;

b. Name of the business(es) located at the site of the proposed work;

c. Applicant's name and address;

d. Building owner's name and address;

e. Applicant's telephone number;

f. The building owner's signature on the application, or a signed letter from the owner designating the applicant as the owner's representative, if the applicant is not the owner;

g. Confirmation that the fee required by SMC Chapter 22.901T of the Permit Fee Subtitle has been paid;

h. A detailed description of the proposed work, including:

(1) Any changes it will make to the building or the site,

(2) Any effect that the work would have on the public right-of-way or other public spaces,

(3) Any new construction;

i. Four (4) sets of scale drawings, with all dimensions shown, of:

(1) A site plan of existing conditions, showing adjacent streets and buildings, and, if the proposal includes any work in the public right-of-way, the existing street uses, such as street trees and sidewalk displays, and another site plan showing proposed changes to the existing conditions,

(2) A floor plan showing the existing features and a floor plan showing the proposed new features,

(3) Elevations and sections of both the proposed new features and the existing features,

(4) Construction details,

(5) A landscape plan showing existing features and plantings, and another landscape plan showing proposed site features and plantings;

j. Photographs of any existing features that would be altered and photographs showing the context of those features, such as the building facade where they are located;

k. One (1) sample of proposed colors, if the proposal includes new finishes or paint, and an elevation drawing or a photograph showing the location of proposed new finishes or paint;

l. If the proposal includes new signage, awnings, or exterior lighting:

(1) Four (4) sets of scale drawings of proposed signage or awnings, showing the overall dimensions, material, design graphics, typeface, letter size, and colors,

(2) Four (4) sets of a plan, photograph, or elevation drawing showing the location of the proposed awning, sign, or lighting,

(3) Four (4) copies of details showing the proposed method of attaching the new awning, sign, or lighting,

(4) The wattage and specifications of the proposed lighting, and a drawing or picture of the lighting fixture,

(5) One (1) sample of proposed sign colors or awning material and color;

m. If the proposal includes demolition of a structure or object:

(1) A statement of the reason(s) for demolition,

(2) A description of the replacement structure or object;

n. If the proposal includes replacement, removal, or demolition of existing features, a survey of the existing conditions of the features that would be replaced, removed, or demolished.

3. The staff shall determine whether an application is complete and shall notify the applicant in writing within twenty-eight (28) days of the application being filed whether the application is complete or that the application is incomplete and what additional information is required before the application will be complete. Within fourteen (14) days of receiving the additional information, the staff shall notify the applicant in writing whether the application is now complete or what additional information is necessary. An application shall be deemed to be complete if the staff does not notify the applicant in writing by the deadlines in this section that the application is incomplete. A determination that the application is complete is not a determination that the application is vested.

4. The determination of completeness does not preclude the staff or the Board from requiring additional information during the review process if more information is needed to evaluate the application according to the criteria in this chapter and in any rules adopted by the Board, or if the proposed work changes. For example, additional information that may be required could include a shadow study or a traffic study when new construction is proposed.

B. An applicant may make a written request to submit an application for a certificate of approval for a preliminary design of a project if the applicant waives in writing the deadline for a Board decision on the subsequent design phase or phases of the project and any deadlines for decisions on related permit applications under review by the Department of Construction and land use and the applicant agrees in writing that the Board decision on the preliminary design is immediately appealable by the applicant orany interested person of record. The staff may reject the request if it appears that approval of a preliminary design would not be an efficient use of staff or Board time and resources, or would not further the goals and objectives of this chapter. To be complete, an application for a certificate of approval for a preliminary design must include the information listed above in subsection A2, subparagraphs a through h, i(1) through i(3), j, m and n. A certificate of approval that is granted for a preliminary design shall be conditioned upon subsequent submittal of the final design and all of the information listed above in subsection A2, and upon Board approval, prior to issuance of permits for work affecting any building or property in the District.

C. If before a certificate of approval is obtained, an application is made to the Department of Construction and land use for a permit for which a certificate of approval is required, the Director of Construction and land use shall require the applicant to submit an application to the Board for a certificate of approval. Submission of a complete application for a certificate of approval to the Board shall be required before the permit application to the Department of Construction and land use may be deemed to be complete. The Department of Construction and land use shall continue to process such application, but shall not issue any permit until a certificate of approval has been issued pursuant to this chapter, or the time has expired for filing with the Director of the Department of Construction and land use the notice of denial of a certificate of approval.

D. After the Board has commenced proceedings for the consideration of any application for a certificate of approval for a particular alteration or significant change, by giving notice of a meeting pursuant to this section or otherwise, no other application for the same or a similar alteration or significant change may be made until the application is withdrawn or such proceedings and all appeals there from have been concluded, except that an application may be made for a certificate of approval for the preliminary design of a project and a later application for a certificate of approval for a subsequent design phase or phases of the same project.

(Ord. 119121 § 11, 1998; Ord. 118181 § 17, 1996: Ord. 118012 § 128, 1996: Ord. 107679 § 8, 1978.)

25.20.090 Board meeting on certificate of approval.

A. Within thirty (30) days after the filing of an application for a certificate of approval with the Board, the Board shall hold a meeting thereon and shall serve notice of the meeting on the owner and the applicant not less than five (5) days before the date of the meeting.

B. In reviewing applications, the Application Review Committee and the Landmarks Preservation Board and the Hearing Examiner shall consider: (1) the purposes of this chapter; (2) the criteria specified in Section 25.20.040; (3) any guidelines promulgated pursuant to this chapter; (4) the properties' historical and architectural value and significance; (5) the properties' architectural style and general design; (6) the arrangement, texture, material and color of the building or structure in question, and its appurtenant fixtures, including signs; (7) the relationship of such features to similar features of other buildings within the Columbia City Landmark District; and (8) the position of such buildings or structures in relation to the street or public way and to other buildings and structures.

(Ord. 118012 § 129, 1996: Ord. 107679 § 9, 1978.)

25.20.100 Issuance of Board decision.

A. The Board shall issue a written decision either granting or denying a certificate of approval or granting it with conditions not later than forty-five (45) days after the application for a certificate of approval is determined to be complete and shall serve a copy thereof upon the owner, the applicant and the Director of the Department of Construction and land use within three (3) working days after such grant or denial. Notice of the Board's decision shall be provided to any person who, prior to the rendering of the decision, made a written request to receive notice of the decision or submitted written substantive comments on the application. A decision denying a certificate of approval shall contain an explanation of the reasons for the Board's decision and specific findings with respect to this chapter and adopted guidelines for the District.

B. A certificate of approval shall be valid for eighteen (18) months from the date of issuance of the Board's decision granting it unless the Board grants an extension in writing; provided however, that certificates of approval for actions subject to permits issued by the Department of Construction and land use shall be valid for the life of the permit, including any extensions granted in writing by the Department of Construction and land use.

(Ord. 118012 § 130, 1996: Ord. 107679 § 10, 1978.)

25.20.110 Appeal to Hearing Examiner.

A. Any interested person of record may appeal to the Hearing Examiner the decision of the Board to grant, deny or attach conditions to a certificate of approval by serving written notice of appeal upon the Board and filing such notice and a copy of the Board's decision with the Hearing Examiner within fourteen (14) days after such grant, denial or conditional grant.

B. When the proposed action that is the subject of the certificate of approval is also the subject of one (1) or more related permit applications under review by the Department of Construction and land use, then the appellant must also file notice of the appeal with the Department of Construction and land use, and the appeal of the certificate of approval

shall not be heard until all of the time periods for filing administrative appeals on the other permits have expired, except that an appeal of a certificate of approval for the preliminary design or for subsequent design phases may proceed immediately according to Section 25.20.080 without being consolidated. If one (1) or more appeals are filed regarding the other permits then the appeal of the certificate of approval shall be consolidated with them and shall be heard according to the same timelines established for the other appeals, except that appeals to the State Shoreline Hearings Board shall proceed independently according to the timelines set by the state for such appeals, and except that an appeal of a certificate of approval for a preliminary design or for a subsequent design phase may proceed according to Section 25.20.080 without being consolidated. If the related permit decisions would not be appealable, then the appeal of the certificate of approval decision shall proceed immediately after it is filed.

C. The applicant for the certificate of approval may elect to have the appeal proceed immediately rather than postponed for consolidation with appeals of related permit applications, if the applicant agrees in writing that the Department of Construction and land use may suspend its review of the related permits, and that the time period for review of those permits shall be suspended until the Hearing Examiner issues a decision on the appeal of the certificate of approval.

D. The Hearing Examiner shall issue a decision not later than ninety (90) days after the last of the appeals of related permit decisions is filed, or, if the applicant chooses to proceed immediately with the appeal of the certificate of approval, as provided in subsection C, then not later than ninety (90) days from the filing of that appeal. The time period to consider and decide the appeal of a certificate of approval shall be exempt from the deadlines for review and decision on both the certificate of approval and any related permit applications.

E. The Hearing Examiner shall hear and determine the appeal in accordance with the standards and procedures established for appeals to the Hearing Examiner under Sections 25.12.740 through 25.12.770 of this Code.

F. The Hearing Examiner's decision shall be final. Any judicial review must be commenced within twenty-one (21) days of issuance of the Hearing Examiner's decision, as provided by RCW 36.70C.040.

(Ord. 120157 § 16, 2000; Ord. 119121 § 12, 1998; Ord. 118012 § 131, 1996: Ord. 107679 § 11, 1978.)

25.20.115 Requests for interpretation.

A. An applicant for a certificate of approval may request an interpretation of the meaning of any part of this chapter as it relates to the requested certificate of approval. An interpretation shall not have any effect on certificates of approval that have already been granted.

B. An interpretation shall be requested in writing, specify the section of the code to be interpreted, and specify the question to be addressed. Requests shall be submitted to the Historic Preservation Officer.

C. If the requested interpretation relates to a certificate of approval for which an application has been filed, then the request for an interpretation cannot be made any later than fourteen (14) days after the application for the certificate of approval was submitted. Provided, however, that a request for an interpretation may be sought by the applicant at a later time if the applicant agrees in writing to suspend the time frames for review of the certificate of approval, and the time frames applicable to any related permits that are under review, until the interpretation is issued.

D. Interpretations shall be made in writing by the Historic Preservation Officer, and shall be issued within twenty-five (25) days of submission of the request. The interpretation

decision shall be served on the requesting party, and notice of the decision shall be mailed to parties of record and interested persons of record.

E. A fee shall be charged for interpretations in the amount provided in the Permit Fee Subtitle of the Seattle Municipal Code, Chapter 22.901E, Table 6, Land Use Fees, and shall be collected by the Department of Neighborhoods.

F. An interpretation may be appealed by the applicant if the certificate of approval that the interpretation addresses is denied and the applicant is appealing the denial, or if the interpretation relates to conditions placed on the certificate of approval that the applicant is appealing. An appeal of an interpretation shall be filed at the same time as appeal of the related certificate of approval, and shall be consolidated with the appeal of the related certificate of approval. Appeal of the interpretation shall proceed according to the same procedures and time frames provided in Section 25.20.110 for appeal of a certificate of approval, including the provisions for consolidation with appeals of any related permit decisions.

G. The Hearing Examiner shall give substantial weight to the Historic Preservation Officer's interpretation. The appellant shall have the burden of establishing that the interpretation is erroneous.

H. The Hearing Examiner may affirm, reverse, or modify the Historic Preservation Officer's interpretation, in whole or in part. The Hearing Examiner may also remand the interpretation to the Historic Preservation Officer for further consideration.

I. The decision of the Hearing Examiner shall be final. The Hearing Examiner's decision shall be binding upon the Historic Preservation Officer and the Board, as well as all parties of record to the proceeding. Copies of the Hearing Examiner's decision shall be mailed to the Historic Preservation Officer and to all parties of record before the Hearing Examiner. Judicial review must be commenced within twenty-one (21) days of issuance of the Hearing Examiner's decision, as provided by RCW 36.70C.040.

(Ord. 120157 § 17, 2000; Ord. 118012 § 132, 1996.)

25.20.120 Enforcement and penalties.

The Director of Construction and land use shall enforce this chapter and anyone violating or failing to comply with its provisions shall, upon conviction thereof, be fined in any sum not exceeding Five Hundred Dollars ($500). Each day's violation or failure to comply shall constitute a separate offense.

(Ord. 118012 § 132A, 1996: Ord. 107679 § 12, 1978.)

Chapter 25.22 HARVARD-BELMONT LANDMARK DISTRICT

Sections:

25.22.010 Legislative findings and purposes.

Throughout the City there are few areas that have retained individual identity, historical continuity or consistency of architectural character.

The Harvard-Belmont Landmark District, situated on the west slope of Capitol Hill above the City's major freeway and representing gracious residential quality in the urban setting, is one such area. The character of the district is defined by a substantial, well-established, and well-maintained residential fabric encompassing both large estates and modest houses, a mix of urban cultural and commercial institutions, within a framework of tree-lined streets, well-maintained grounds, and distinctive natural features.

The topography of the area is typical of those where the first outlying neighborhoods of quality residences were established in Seattle during a decade of rapid growth just after the turn of the century. From the relatively flat eastern boundaries of Broadway East and Harvard Avenue East the land slopes gradually and then more precipitously downward to the west, providing many of the properties with dramatic sites affording views of Lake Union and Queen Anne Hill. The northern boundary is marked by a deep wooded ravine separating the Sam Hill House from the properties around St. Mark's Cathedral. The southern boundary at East Roy Street changes to apartment, institutional, and commercial use and marks the transition to the denser multiple-unit residential area and the commercial shopping strip of Broadway East to the south. Within these boundaries the normally overriding grid system of platting gives way to some diagonal and curving streets that generally conform to the natural contours of the land.

H. C. Henry, a railroad builder and a powerful force in Seattle's business community, was the first man of influence to settle in the district. Although his house is now gone, his presence was instrumental in attracting others of like means and ability to the area. During the first decade of the twentieth century merchants, bankers, lawyers, engineers, and then lumber barons, successful businessmen and entrepreneurs built impressive residences along Harvard Avenue East, Belmont Place East and neighboring streets.

In the next two decades some additional large houses were built and some of the existing mansions were sold to equally affluent buyers.

Although many architectural styles are represented in the district, among the buildings of primary significance are a substantial number of residences which exhibit the enduring influence of Richard Norman Shaw. These Shavian houses impart a special quality to the area, a distinctive element which can be found in northern Pacific coast cities (Victoria and Vancouver, B.C., Seattle, Portland). The two Fisher houses on Belmont Place East together with their garage below on Summit Avenue East form a distinctive group of brick and half-timbered dwellings with fine leaded and beveled glass. The M. H. Young House, the C. H. Bacon House, the J. A. Kerr House, and the W. L. Rhodes House are additional examples of the use of brick and half-timbering to evoke the spirit of a romantic medievalism as filtered through the precepts of Shaw.

Other residences display the symmetry of a more classical tradition. The restrained formality of the R. D. Merrill House, the imposing mass of the Chapin-Eddy House relieved by delicate ornamentation, and the strong simple statement of the Brownell-Bloedel House all contribute a sense of solidity and permanence to the district.

Sometimes architects outside the City, such as Charles Al Platte, Hornblower & Marshall, Cutter & Malmgren, and Arthur Bodely, were called upon to satisfy a client's particular wishes. More often local firms with established reputations were commissioned, and works by Carl F. Gould, Somerwell & Cote, Bebb & Mendel, the Beezer Brothers, James H. Schack, Graham & Myers, Blackwell & Baker, and Andrew Willatsen can be found in the district. Interspersed among the mansions of the wealthy bankers, shipbuilders, lumbermen, and merchants are numerous wood frame houses of more modest scale. A few of these were built before 1900, many date from the first decade of the twentieth century, and there are a number of simple residences from the late 1930's and early 1940's.

The 1920's brought the introduction of the Spanish style Hacienda Apartments, the Tudor influenced Anhalt apartment groups, as well as the Cornish School and the Woman's Century Club. These structures, concentrated along the southern and western boundaries of the District, are particularly representative of the Capitol Hill character where a rich mix of architecture, and a successful mix of residential and commercial uses, exists.

The protection, enhancement and perpetuation of the Harvard-Belmont District is in the interests of the prosperity, civic pride, urban and visual quality, and general welfare of the citizens of Seattle.

The cultural standing of this City cannot be maintained or enhanced by disregarding the history of its communities or by allowing the destruction or defacement of its heritage. The Seattle Landmarks Preservation Board has identified the Harvard/Belmont area as one of these few remaining areas reflecting, in its architectural and landscape elements, its historical origins significant in the development of Capitol Hill and, therefore, Seattle.

The purposes for the creation of the Harvard-Belmont Landmark District are:
A. To preserve, protect, enhance, and perpetuate those elements of the District's cultural, social, economic, architectural, and historic heritage;
B. To foster community and civic pride in the significance and accomplishments of the past;

C. To stabilize or improve the historic authenticity, economic vitality, and aesthetic value of the district;
D. To promote and encourage continued private ownership and use of buildings and other structures;
E. To encourage continued City interest and support in the District; and to recognize and promote the local identity of the area.
(Ord. 109388 § 1, 1980.)

25.22.020 Definitions.

The following terms used in this chapter shall, unless the context clearly demands a different meaning, mean as follows:
A. "Application Review Committee" is the committee established by this chapter to conduct informal reviews of applications for certificates of approval and make recommendations to the Landmarks Board.
B. "Board" is the Seattle Landmarks Preservation Board as created by Ordinance 1063481 or any ordinance amendatory or successor thereto.
C. "Certificate of approval" means written authorization which must be issued by the Board before any demolition or exterior alteration of a structure, any new construction, any addition or removal of major or significant landscape and site elements may be undertaken within the District. The term "certificate of approval" includes written approval of a preliminary design of a project as well as its subsequent design phases, as provided for in Section 25.22.100.
D. "Council" is the City Council of The City of Seattle.
E. "Director" is the Director of the Department of Planning and Development of the City or such other official as may be designated from time to time to issue permits for construction, alteration, reconstruction or demolition of improvements upon real property in the City.
F. "Hearing Examiner" is any person authorized to act as a hearing examiner pursuant to the Administrative Code, Chapter 3.02 of the Seattle Municipal Code, or any ordinance amendatory or successor thereto.
G. "Historic Preservation Officer" means the person described in the Landmarks Preservation Ordinance, SMC Section 25.12.320.
H. "Significant change" is any external alteration, new construction, restoration or demolition other than routine maintenance or repair.
(Ord. 121276 § 33, 2003; Ord. 119121 § 13, 1998; Ord. 118012 § 133, 1996: Ord. 109388 § 2, 1980.)
1. Editor's Note: Ord. 106348 is codified in Chapter 25.12 of this Code.

25.22.030 District established--Boundaries.

There is established the Harvard-Belmont Landmark District whose boundaries are particularly described as follows:

Beginning at the northeast corner of Lot 10, Block 33, Supplemental Plat of A. Pontius Addition, as recorded in Volume 8, of King County Plats, Page 39; which is the point of beginning; thence south along the east line of said Lot 10 and Lot 9 to the southeast corner of Lot 9, said Block 33; thence west along the south line of Lot 9 to the east margin of Harvard Avenue East; thence north along said east margin to the south margin of East Roy Street; thence west along the south margin and margin extended ofEast Roy Street to the intersection of the southwest margin of Belmont Avenue East extended; thence northwesterly along said southwest margin and margin extended of Belmont Avenue East to the northwest margin of Bellevue Place East extended; thence

northeast along the northwest margin and margin extended of Bellevue Place East to the west margin of Summit Avenue East; thence north along the west margin of Summit Avenue East to the most easterly corner of Lot 3, Block 17, East Park Addition, as recorded in Volume 8, of King County Plats, Page 83; thence northwest along the northeasterly line of said Lot 3, a distance of 55.93 feet; thence southwest parallel with the southeast line of said Lot 3 a distance of 80.83 feet; thence northwesterly at right angles a distance of 49.66 feet; thence southwesterly at right angles a distance of 10.14 feet; thence northwesterly at right angles to the southeast line of Lot 5, of said Block 17; thence southwest along the southeast line of said Lot 5 to the northeast margin ofBelmont Avenue East; thence northwest along said northeast margin of Belmont Avenue East to the intersection of the southeasterly margin of Lakeview Boulevard East; thence northeast along the southeast margin of Lakeview Boulevard East to the most westerly corner of Lot 9, of said Block 17; thence southeast along the southwest line of said Lot 9 to the southernmost corner of said Lot 9; thence northeasterly, along the southeasterly line of Lots 9, 10, 11, and 12, to the easterly corner of said Lot 12, thence northwesterly along the northeast line of said Lot 12 to the southeasterly margin of East Prospect Street; thence northeast to the intersection of the north margin of East Prospect Street and the northwest margin of Summit Avenue East; thence northeasterly and southeasterly along said margin of Summit Avenue East to the west margin of Boylston Avenue East; thence east to the east margin of Boylston Avenue East; thence north along said east margin to the northwest corner of Lot 12, as platted, Block J, Phinney's Addition as recorded in Volume 1, of King County Plats, Page 175; thence east along the north line and line extended of said Lot 12 to the northeast corner of Lot 13, as platted, Block I, said Phinney's Addition; thence south along the east lot line and line extended to the northeast corner of Block B, said addition; thence west along the south margin of East Highland Drive to the east margin of Harvard Avenue East; thence south along said east margin to the northwest corner of Lot 8, Block B, of said Phinney's Addition; thence east along the north line of said Lot 8 to the northeast corner of said Lot 8; thence south along the east line of Lots 8, 9, and 10, to the southeast corner of said Lot 10; thence east along the south line of Lot 15, said Block B, a distance of 35 feet; thence at right angles south 35 feet; thence east, parallel to said south line of Lot 15, to the west margin of Broadway East; thence south along said west margin to the north margin of East Prospect Street; thence east along said north margin and margin extended to the southeast corner of Lot 12, Block C, said Phinney's Addition; thence south to the northeast corner of Lot 12, Block 5, Sarah B. Yesler's 1st Addition as recorded in Volume 2 of King County Plats, Page 31; thence south along the east lines of Lots 12, 11 and 10, said Block 5 to the southeast corner of said Lot 10; thence west along the south line of said Lot 10 to the east line of Broadway East; thence continuing west to the southeast corner of Lot 15, Block 4, of said Yesler's Addition; thence continue west along the south line of said Lot 15 to the southwest corner thereof; thence south along the east lines of Lots 1 through 9 inclusive of Block 4 to the north margin of East Aloha Street; thence south to the south margin of said street; thence west along said margin and margin extended to the west margin of Boylston Avenue East; thence north along said west margin to the northeast corner of Lot 13, Block 1, of before-mentioned East Park Addition; thence west along the north margin of said Lot 13 a distance of 60 feet; thence south parallel to the east margin of Lot 13 to the south line of Lot 13; thence west along the said south lot line and south lot line extended to the west margin of Belmont Place East; thence north along said west margin to the southeast margin of Bellevue Place East, which is the most northerly corner of Lot 9, Block 2, said East Park Addition; thence southwesterly along the northwesterly line of said Lot 9, to the northwest corner of said lot; thence south parallel to Belmont Place East to a point

20 feet north of the southwest corner of Lot 4, said Block 2; thence east parallel to the south line of said Lot 4 a distance of 8 feet; thence south parallel to Belmont Place East 40 feet; thence east parallel to said south line of Lot 4 a distance of 12 feet; thence south parallel to Belmont Place East a distance of 40 feet to the north line of Lot 2, said Block 2; thence west along said north line and north line extended to the northeast margin of Belmont Avenue East; thence southeast along said northeast margin to the south line of said Lot 2; thence east along said south line and south line extended to the east margin of Belmont Place East; thence south along said east margin to a point 20 feet north of the southwest corner of Lot 5, Block 1, said East Park Addition; thence east parallel to the south line of said Lot 5 to the east margin of Boylston Avenue East and the northwest corner of Lot 7, Block 2, of before-mentioned Yesler's 1st Addition; thence south along the west margin of said Block 2 to the southwest corner of Lot 3, said Block 2; thence easterly along the south lines of Lots 3 and 22, said Block 2, to the west margin of Harvard Avenue East; thence continuing easterly to the southwest corner of Lot 3, Block 3, said Yesler's 1st Addition; thence easterly along the south line of said Lot 3, to the southwest corner of Lot 22, said Block 3; thence north along the west line of said Lot 22 to the northwest corner of Lot 22; thence easterly alongthe north line of Lot 22 to the west margin of Broadway East; thence south along said margin to the north margin of East Roy Street as established by Ordinance 10065;1 thence south to the point of beginning.

all in Seattle, King County, Washington, and illustrated on the map attached hereto as Exhibit A.2 The City Clerk is directed to indicate the District on pages 102 and 103 of the Official Zoning Map. All property within the District shall be subject to the controls, procedures, and standards set forth in this chapter.

(Ord. 109388 § 3, 1980.)

1. Editor's Note: Ord. 10065 is not included in this Code. It is on file in the office of the City Clerk.

2. Editor's Note: Exhibit A to Ord. 109388 is not included in this Code. It is on file in the office of the City Clerk.

25.22.040 Historical criteria for District designation.

The history of Seattle and of its neighborhoods is a history of the destruction and reshaping of forested virgin lands for economic returns; the filling of tide flats and the cutting of new waterways for industry and commerce; the clearcutting of native forests by pioneer lumber barons; and the regrading of the natural topography to an extent seldom before or since practiced in an American city.

Neighborhoods such as Harvard-Belmont, which today have the appearance of heavily wooded retreats, were created from the wasteland left by the lumbering industry. Mansions were built on treeless lots, and landscaping, shrubs, and seeds were left to the graces of the climate and the fertile soil.

Within the first two decades of this century, the District was home to Samuel Hill (railroads), C. H. Bacon (building materials), J. H. Bloedel, and R. D. Merril (lumbering), C. J. Smith (banking), Dexter Horton (bank president), O. W. Fisher (flour mills), and John Eddy (lumbering and shipbuilding), among others. Queen Marie of Rumania, her children Prince Nicholas and Princess Ileeana, Marshall Joffre of France, and Grand Duchess Marie of Russia, were among the many distinguished foreign guests to the district.

A number of central Seattle residential areas have felt the effects of the move to the suburbs, changing populations, changes in use and zoning and deteriorating services. The Harvard-Belmont district, however, has maintained its identity, character, and quality to a degree which permits its continuance as a prestigious, liveable and highly desirable neighborhood in which to live.
(Ord. 109388 § 4(a), 1980.)

25.22.050 Sociological criteria for District designation.

Much of the area known today as Capitol Hill was laid out and developed by realtor J. A. Moore. He opened the area north of Howell Street to homeowners in 1901, naming it after Capitol Hill in Denver. The area, even then, had enormous advantages as a new residential district because of its closeness to the business district, its prominent siting and its spectacular views. As a result, and in addition to a sprinkling of existing farm or country houses, many magnificent homes were built on the hill from 1901until the Great Depression. In the Harvard-Belmont area of Capitol Hill, most of these older and impressive homes are still extant and interspersed with them are good examples of more modest residential architecture representative of every decade of this century (to date). Included in the District also are several of the Anhalt apartment houses, precursors of planned group living, including carefully maintained yards, romantic details, and garaging for automobiles; the main building of Cornish Institute, one of the more significant cultural-historical landmarks in the City; the Loveless apartment-retail building; the Harvard Exit Theatre, for many years the home of the Woman's Century Club; and the Rainier Chapter of the D.A.R., a careful replica of George Washington's home, Mt. Vernon. This mixture of function, uses, scale and economics is among the more interesting aspects of the area. Moreover, the combination of urban and almost pastoral qualities, the tree-shaded streets, the several open vistas, and the wooded ravines to the northwest, all create a neighborhood of outstanding and enduring character.
(Ord. 109388 § 4(b), 1980.)

25.22.060 Architectural criteria for District designation.

The Harvard-Belmont District includes a rich variety of residential buildings in the prevailing eclectic styles of the earlier years of this century, combined with a few late Victorian residences, significant Spanish and Tudor apartment groups, the modified Spanish style of the Cornish Institute, and many modest, noneclectic houses. Uniting this variety of architectural expression are the tree-lined streets, the many walled yards and drives, interesting retaining walls and generous plantings all of which collectively create a backdrop and contiguous streetscape and neighborhood that are compatible in terms of design, scale and use of materials.
(Ord. 109388 § 4(c), 1980.)

25.22.070 Development and design review guidelines.

A. The Landmarks Preservation Board shall draft and, after consideration and review in accordance with the Administrative Procedure Ordinance (102228)1 shall adopt development and design review guidelines as rules which shall become effective upon filing with the City Clerk. Notice and conduct of such public hearing(s) shall be in accordance with the rules of the Landmarks Preservation Board and Ordinance 102228.1

B. The development and design review guidelines shall identify the unique values of the District, shall include a statement of purpose and intent, and shall be consistent with

the purposes of this chapter and the criteria specified in Section 25.22.030. The guidelines shall identify design characteristics which have either a positive or negative effect upon the unique values of the District and shall specify design-related considerations which will be allowed, encouraged, limited or excluded from the District when certificate of approval applications are reviewed. All guidelines shall be consistent with the Zoning Ordinance (86300)2 and other applicable ordinances.
(Ord. 109388 § 5, 1980.)
1. Editor's Note: Ord. 102228 is codified in Chapter 3.02 of this Code.
2. Editor's Note: Ordinance 86300 and Title 24 were repealed by Ordinance 117570.

25.22.080 District administration.

Jurisdiction over changes and improvements in the District is vested in the Seattle Landmarks Preservation Board. In order, however, to maintain adequate community involvement and contact, an Application Review Committee is created which shall consist of two (2) members of the Landmarks Board, at least one (1) of whom shall be an architect, and three (3) members selected from property owners, residents, business owners or employees, or officers of institutions within the District boundaries.

The members of the committee shall be appointed annually by the Chairman of the Landmarks Board with the approval of the Landmarks Board. The Committee shall review and make recommendations to the Landmarks Board for issuance or denial of applications for certificates of approval within the District.
(Ord. 109388 § 6, 1980.)

25.22.090 Approval of significant changes to buildings, structures and other property.

Within the District, a certificate of approval, issued by the Landmarks Preservation Board, is required prior to the issuance of any City building, demolition, street use, or other permits for proposed work which work is within or visible from a public street, alley or way, and, which involves:
A. The demolition of, or exterior alterations or additions to, any building or structure;
B. Any new construction;
C. The addition or removal of major landscape and site elements, such as retaining walls, gateways, trees or driveways. In addition, for proposed removal or addition of significant landscape and site elements for which permits are not required, and which are identified specifically in the District development and design review guidelines, a certificate of approval from the Landmarks Preservation Board shall also be required prior to the initiation of the proposed work.
(Ord. 109388 § 7, 1980.)

25.22.100 Application for certificate of approval.

A. Application.
1. Application for a certificate of approval may be made by filing an application for such a certificate with the Board.
2. The following information must be provided in order for the application to be complete, unless the special review board staff indicate in writing that specific information is not necessary for a particular application:
a. Building name and building address;
b. Name of the business(es) located at the site of the proposed work;
c. Applicant's name and address;

d. Building owner's name and address;
e. Applicant's telephone number;
f. The building owner's signature on the application, or a signed letter from the owner designating the applicant as the owner's representative, if the applicant is not the owner;
g. Confirmation that the fee required by SMC Chapter 22.901T of the Permit Fee Subtitle has been paid;
h. A detailed description of the proposed work, including:
(1) Any changes it will make to the site,
(2) Any effect that the work would have on the public right-of-way or other public spaces,
(3) Any new construction;
i. Four (4) sets of scale drawings, with all dimensions shown, of:
(1) A site plan of existing conditions, showing adjacent streets and buildings, and, if the proposal includes any work in the public right-of-way, the existing street uses, such as street trees and sidewalk displays, and another site plan showing proposed changes to the existing conditions,
(2) A floor plan showing the existing features and a floor plan showing the proposed new features,
(3) Elevations and sections of both the proposed new features and the existing features,
(4) Construction details,
(5) A landscape plan showing existing features and plantings, and another landscape plan showing proposed site features and plantings;
j. Photographs of any existing features that would be altered and photographs showing the context of those features, such as the building facade where they are located;
k. One (1) sample of proposed colors, if the proposal includes new finishes or paint, and an elevation drawing or a photograph showing the location of proposed new finishes or paint;
l. If the proposal includes new signage, awnings, or exterior lighting:
(1) Four (4) sets of scale drawings of proposed signage or awnings, showing the overall dimensions, material, design graphics, typeface, letter size, and colors,
(2) Four (4) sets of a plan, photograph, or elevation drawing showing the location of the proposed awning, sign, or lighting,
(3) Four (4) copies of details showing the proposed method of attaching the new awning, sign, or lighting,
(4) The wattage and specifications of the proposed lighting, and a drawing or picture of the lighting fixture,
(5) One (1) sample of proposed sign colors or awning material and color;
m. If the proposal includes demolition of a structure or object:
(1) A statement of the reason(s) for demolition,
(2) A description of the replacement structure or object;
n. If the proposal includes replacement, removal, or demolition of existing features, a survey of the existing conditions of the features that would be replaced, removed, or demolished.
3. The staff shall determine whether an application is complete and shall notify the applicant in writing within twenty-eight (28) days of the application being filed whether the application is complete or that the application is incomplete and what additional information is required before the application will be complete. Within fourteen (14) days of receiving the additional information, the staff shall notify the applicant in writing whether the application is now complete or what additional information isnecessary. An application shall be deemed to be complete if the staff does not notify the applicant in

writing by the deadlines in this section that the application is incomplete. A determination that the application is complete is not a determination that the application is vested.

4. The determination of completeness does not preclude the staff or the Board from requiring additional information during the review process if more information is needed to evaluate the application according to the criteria in this chapter and in any rules adopted by the Board, or if the proposed work changes. For example, additional information that may be required could include a shadow study or a traffic study when new construction is proposed.

B. An applicant may make a written request to submit an application for a certificate of approval for a preliminary design of a project, if the applicant waives in writing the deadline for a Board decision on the subsequent design phase or phases of the project and the applicant agrees in writing that the Board decision on the preliminary design is immediately appealable by the applicant or any interested person of record. The staff may reject the request if it appears that approval of a preliminary design would not be an efficient use of staff or Board time and resources, or would not further the goals and objectives of this chapter. To be complete, an application for a certificate of approval for a preliminary design must include the information listed above in subsection A2, subparagraphs a through h, i(1) through i(3), j, m and n. A certificate of approval that is granted for a preliminary design shall be conditioned upon subsequent submittal of the final design and all of the information listed above in subsection A2, and upon Board approval, prior to issuance of permits for work affecting any building or property in the District.

C. If an application is made to the Director for a permit for which a certificate of approval is required, the Director of Construction and land use shall require the applicant to submit an application to the Board for a certificate of approval. Submission of a complete application for a certificate of approval to the Board shall be required before the permit application to the Department of Construction and land use may be determined to be complete. The Director shall continue to process the application, butshall not issue any permit until a certificate of approval has been issued pursuant to this chapter, or the time for filing the notice of denial of a certificate of approval with the Director has expired.

D. After the Board has commenced proceedings for the consideration of any application for a certificate of approval for a particular alteration or significant change by giving notice of a meeting pursuant to this section or otherwise, no other application for the same or a similar alteration or significant change at the same site may be made until the application is withdrawn or such proceedings and all appeals there from have been concluded, except that an application may be made for a certificate of approval for the preliminary design of a project and a later application may be made for a certificate of approval for subsequent design phase or phases of the same project.

E. A certificate of approval shall be valid for eighteen (18) months from the date of issuance of the Board's decision granting it unless the Board grants an extension in writing; provided however, that certificates of approval for actions subject to permits issued by the Department of Construction and land use shall be valid for the life of the permit, including any extensions granted in writing by the Department of Construction and land use.

(Ord. 119121 § 14, 1998; Ord. 118181 § 18, 1996: Ord. 118012 § 134, 1996: Ord. 109388 § 8, 1980.)

25.22.110 Board meeting on certificate of approval.

A. Within thirty (30) days after the filing of an application for a certificate of approval with the Board, the Board shall hold a meeting thereon and shall serve notice of the

meeting on the owner and the applicant not less than five (5) days before the date of the meeting.

B. In reviewing applications or appeals of decisions of the Board, the Application Review Committee, the Landmarks Preservation Board and the Hearing Examiner shall consider: (1) the purposes of this chapter; (2) the criteria specified in Sections 25.22.040 through 25.22.060; (3) guidelines promulgated pursuant to this chapter; (4) the properties' historical and architectural or landscape value and significance; (5) the properties' architectural or landscape type and general design; (6) the arrangement, texture, material and color of the building or structure in question, and its appurtenant fixtures, including signs; (7) the relationship of such features to similar features within the Harvard-Belmont Landmark District; and (8) the position of such buildings, structures or landscape elements in relation to the street or public way and to other buildings, structures and landscape elements.

(Ord. 118012 § 135, 1996: Ord. 109388 § 9, 1980.)

25.22.120 Issuance of Board decision.

The Board shall consider the recommendation of the Application Review Committee and shall, within forty-five (45) days after the application for a certificate of approval is determined to be complete, issue a written decision either granting, granting with conditions, or denying a certificate of approval and shall mail a copy of the decision to the owner, the applicant and the Director within three (3) working days after such decision. A decision denying a certificate of approval shall contain an explanation of the reasons for the Board's decision and specific findings with respect to this chapter and the adopted guidelines for the District. Notice of the Board's decision shall be provided to any person who, prior to the rendering of the decision, made a written request to receive notice of the decision or submitted written substantive comments on the application.

(Ord. 118012 § 135A, 1996: Ord. 109388 § 10, 1980.)

25.22.130 Appeal to Hearing Examiner.

A. Any interested person of record may appeal to the Hearing Examiner the decision of the Board to grant, grant with conditions, or deny a certificate of approval by serving written notice of appeal upon the Board and by filing such notice and a copy of the Board's decision with the Hearing Examiner within fourteen (14) days after the date the Board's decision is issued.

B. When the proposed action that is the subject of the certificate of approval is also the subject of one (1) or more related permit applications under review by the Department of Planning and Development, then the appellant must also file notice of the appeal with the Department of Planning and Development, and the appeal of the certificate of approval shall not be heard until all of the time periods for filing administrative appeals on the other permits have expired except that an appeal of a certificate of approval for the preliminary design or for subsequent design phases may proceed immediately according to Section 25.22.100 without being consolidated. If one (1) or more appeals are filed regarding the other permits, then the appeal of the certificate of approval shall be consolidated with them and shall be heard according to the same timelines established for the other appeals, except that appeals to the State Shoreline Hearings Board shall proceed independently according to the timelines set by the state for such appeals, and except that an appeal of a certificate of approval for a preliminary design or for a subsequent design phase may proceed according to Section 25.22.100 without being consolidated. If the related permit decisions would not be appealable, then the appeal of the certificate of approval decision shall proceed immediately after it is filed.

C. The applicant for the certificate of approval may elect to have the appeal proceed immediately rather than postponed for consolidation with appeals of related permit applications, if the applicant agrees in writing that the Department of Planning and Development may suspend its review of the related permits, and that the time period for review of those permits shall be suspended until the Hearing Examiner issues a decision on the appeal of the certificate of approval.
D. The Hearing Examiner shall hear and determine the appeal in accordance with the standards and procedures established for appeals to the Hearing Examiner under Seattle Municipal Code Sections 25.12.740 through 25.12.760 of the Landmarks Preservation Ordinance, and as prescribed under Section 25.22.110 B.
E. The Hearing Examiner shall issue a decision not later than ninety (90) days after the last of the appeals of related permit decisions is filed, or, if the applicant chooses to proceed immediately with the appeal of the certificate of approval, as provided in subsection C, then not later than ninety (90) days from the filing of that appeal. The time period to consider and decide the appeal of a certificate of approval shall be exempt from the deadlines for review and decision on both the certificate of approval and any related permit applications.
F. The Hearing Examiner's decision shall be final. The Hearing Examiner's decision shall be binding upon the Historic Preservation Officer and the Board, as well as all parties of record to the proceeding. Any judicial review must be commenced within twenty-one (21) days of issuance of the Hearing Examiner's decision, as provided by RCW 36.70C.040.
(Ord. 121276 § 34, 2003; Ord. 120157 § 18, 2000; Ord. 119121 § 15, 1998; Ord. 118012 § 136, 1996; Ord. 109388 § 11, 1980.)

25.22.135 Requests for interpretation.

A. An applicant for a certificate of approval may request an interpretation of the meaning of any part of this chapter as it relates to the requested certificate of approval. An interpretation shall not have any effect on certificates of approval that have already been granted.
B. An interpretation shall be requested in writing, specify the section of the code to be interpreted, and specify the question to be addressed. Requests shall be submitted to the Historic Preservation Officer.
C. If the requested interpretation relates to a certificate of approval for which an application has been filed, then the request for an interpretation cannot be made any later than fourteen (14) days after the application for the certificate of approval was submitted. Provided, however, that a request for an interpretation may be sought by the applicant at a later time if the applicant agrees in writing to suspend the time frames for review of the certificate of approval, and the time frames applicable to any related permits that are under review, until the interpretation is issued.
D. Interpretations shall be made in writing by the Historic Preservation Officer, and shall be issued within twenty-five (25) days of submission of the request. The interpretation decision shall be served on the requesting party, and notice of the decision shall be mailed to parties of record and interested persons of record.
E. A fee shall be charged for interpretations in the amount provided in the Permit Fee Subtitle of the Seattle Municipal Code, Chapter 22.901E, Table 6, Land Use Fees, and shall be collected by the Department of Neighborhoods.
F. An interpretation may be appealed by the applicant if the certificate of approval that the interpretation addresses is denied and the applicant is appealing the denial, or if the interpretation relates to conditions placed on the certificate of approval that the applicant is appealing. An appeal of an interpretation shall be filed at the same time as appeal of

the related certificate of approval, and shall be consolidated with the appeal of the related certificate of approval. Appeal of the interpretation shall proceed according to the same procedures and time frames provided in Section 25.22.130 for appeal of a certificate of approval, including the provisions for consolidation with appeals of any related permit decisions.

G. The Hearing Examiner shall give substantial weight to the Historic Preservation Officer's interpretation. The appellant shall have the burden of establishing that the interpretation is erroneous.

H. The Hearing Examiner may affirm, reverse, or modify the Historic Preservation Officer's interpretation, in whole or in part. The Hearing Examiner may also remand the interpretation to the Historic Preservation Officer for further consideration.

I. The decision of the Hearing Examiner shall be final. The Hearing Examiner's decision shall be binding upon the Historic Preservation Officer and the Board, as well as all parties of record to the proceeding. Copies of the Hearing Examiner's decision shall be mailed to the Historic Preservation Officer and to all parties of record before the Hearing Examiner. Judicial review must be commenced within twenty-one (21) days of issuance of the Hearing Examiner's decision, as provided by RCW 36.70C.040.

(Ord. 120157 § 19, 2000; Ord. 118012 § 137, 1996.)

25.22.140 Enforcement and penalties.

The Director of the Department of Construction and land use shall enforce this chapter. Any failure to comply with its provisions constitutes a violation subject to the provisions of Chapter 12A.02 and Chapter 12A.04 of the Seattle Criminal Code,1 and any person convicted thereof may be punished by a civil fine or forfeiture not to exceed Five Hundred Dollars ($500). Each day's violation shall constitute a separate offense.

(Ord. 109388 § 12, 1980.)

1. Editor's Note: The Criminal Code is codified in Title 12A of this Code.

909.01.I.3 SP-4 (III), Historic Subdistrict

The SP-4(III) subdistrict is generally bounded by the Monongahela River, Smithfield Street, and West Carson Street.
(a) Use Regulations
Within the SP-4(III) subdistrict, land and structures may be used, and structures may be erected, altered, and enlarged for only the following uses:
(1) Multiple-unit dwellings;
(2) Restaurants, including those with entertainment;
(3) Office;
(4) Institutional, limited to museum, exhibition, and library;
(5) Hotels;
(6) Retail sales, including personal service;
(7) Theaters;
(8) Child day care center;
(9) Accessory uses that are clearly incidental to permitted principal uses, and only when located within a structure housing a permitted principal use;
(10) Signs larger than twenty (20) square feet visible from the river or from across the river shall be neon and positioned so as to maximize reflection in the river; and
(11) Gaming enterprise.
(b) Maximum Height

The maximum height of structures hereafter erected or enlarged or used in the SP-4 (III) subdistrict shall not exceed one hundred twenty-five (125) feet (not to exceed ten (10) stories). Height for Residential and Hotel/Motel uses shall not exceed one hundred seventy-five (175) feet and twenty (20) stories. Additional height for Residential and Hotel/Motel uses may be allowed by the Planning Commission provided that the height of such use or uses shall not exceed two hundred seventy-five (275) feet and twenty-five (25) stories and that the building is oriented perpendicularly to the Monongahela and Ohio Rivers.

909.01.I.4 Regulations Applicable Throughout the SP-4 District

The following regulations shall apply throughout the SP-4 district:

(a) Height
That portion of the facade of any structure above one hundred (100) feet in height shall be no greater than one hundred twenty (120) feet in width when viewed directly opposite the structure from the river, perpendicular to the shore.
(b) Signs
Signs and sign structures shall be subject to Sign Guidelines adopted by the Planning Commission as a component of the Preliminary Land Development Plan.
(c) Floor Area Ratio
The maximum floor area ratio for the entire SP-4 District shall be four (4).
(d) Traffic Analysis
Traffic and Parking Demand Analyses shall be required for all new development in a format specified by the Zoning Administrator. The Zoning Administrator shall review the submitted analyses, including all sources of data, to establish appropriate traffic and parking mitigation measures. The costs for constructing and implementing all required mitigation measures shall be the responsibility of the Applicant.

(e) Urban Open Space
At least ten (10) percent of the entire SP-4 district shall be provided and maintained as Urban Open Space.
(f) Useable Open Space
For residential uses, Useable Open Space shall be provided in accordance with Land Use Intensity Rating System of the Subdivision Regulations and Standards.
(g) Height Exceptions
The following exceptions to the height regulations established for the SP-4 district and its subdistricts shall be permitted:
Exceptions in height which are authorized by the Zoning Administrator, according to the following:
(1) Erection above the height limit of certain portions of structures according to the following standards:
Structures with a gross floor plate not in excess of twenty thousand (20,000) square feet: one hundred fifty (150) feet; one hundred seventy (170) feet if a residential building.
Structures with a gross floor plate not in excess of fifteen thousand (15,000) square feet: One hundred eighty (180) feet; two hundred (200) feet if a residential building.
(2) No more than two (2) structures within the SP-4 (I) subdistrict shall be in excess of one hundred fifty (150) feet in height.
(3) No more than one (1) structure within the SP-4 (II) subdistrict shall be in excess of one hundred fifty (150) feet in height.

ARTICLE V. HISTORIC PRESERVATION*

*Editor's note: This article consists of the historic preservation districts ordinance, adopted Dec. 3, 1968. Future amendments will be indicated by parenthetical history notes following the section amended.

Sec. 735-500. Establishment of official zoning map; establishment of historic preservation districts.

(a) Establishment of the official zoning map.

(1) The county is divided into zoning districts, as shown on the official zoning map, which together with all explanatory matter thereon, is adopted by reference and declared to be a part of all zoning ordinances for Marion County, Indiana.

(2) The official zoning map shall be maintained in electronic form, and depicted in various formats and scales as appropriate to the need. The Director of the Department of Metropolitan Development shall be the custodian of the official zoning map.

(3) When changes are made in zoning district boundaries, such changes shall be made on the official zoning map promptly after the amendment has been adopted in accordance with IC 36-7-4-600 Series.

(4) No changes shall be made to the official zoning map except in conformity with the requirements and procedures set forth in the zoning ordinance and state law.

(b) Establishment of historic preservation districts. The following primary and secondary historic preservation districts for Marion County, Indiana, are hereby established, and land within the county is hereby classified, divided and zoned into such districts as designated on the official zoning map:

Historic Preservation Districts

TABLE INSET:

Symbol	
HP-I	Historic Preservation District One - Primary
HP-S	Historic Preservation District - Secondary

(G.O. 31, 2001, § 9)

Sec. 735-501. Historic preservation district regulations.

The following regulations shall apply to all land within the historic preservation districts:

(a) After the effective date of this article:

(1) With the exception of legally established nonconforming uses, no land, building, structure, premises or part thereof shall be used or occupied except in conformity with these regulations and for uses permitted by this article.

(2) No building, structure, premises or part thereof shall be constructed, erected, converted, enlarged, extended, reconstructed or relocated except in conformity with these regulations and for uses permitted by this article. Provided, however, legally established nonconforming uses may be reconstructed or structurally altered if such reconstruction or alteration does not exceed in aggregate cost fifty (50) percent of the market value thereof.

(b) Historic preservation district performance standards. All uses established or placed into operation after the effective date of this article shall comply with the following

performance standards. No use in existence on the effective date of this article shall be so altered or modified as to conflict with these standards.
(1) Vibration. No use shall cause earth vibrations or concussions detectable beyond the lot lines without the aid of instruments.
(2) Smoke. No use shall emit smoke of a density equal to or greater than No. 2 according to the Ringlemann Scale, as now published and used by the U.S. Bureau of Mines, which scale is on file in the office of the Metropolitan Planning Department of Marion County, Indiana, and is hereby incorporated by reference and made a part hereof.
(3) Dust. No use shall cause dust, dirt, or fly ash of any kind to escape beyond the lot lines in a manner detrimental to or endangering the public health, safety or welfare or causing injury to property.
(4) Noxious matter. No use shall discharge across the lot lines noxious, toxic or corrosive matter, fumes or gases in such concentration as to be detrimental to or endanger the public health, safety or welfare or cause injury to property.
(5) Odor. No use shall emit across the lot lines odor in such quantities as to be readily detectable at any point along the lot lines and as to be detrimental to or endanger the public health, safety or welfare or cause injury to property.
(6) Sound. No use shall produce sound in such a manner as to endanger the public health, safety or welfare or cause injury to property. Sound shall be muffled so as not to become detrimental due to intermittence, beat frequency, shrillness or vibration.
(7) Heat and glare. No use shall produce heat or glare creating a hazard perceptible from any point beyond the lot lines.
(8) Waste matter. No use shall accumulate within the lot or discharge beyond the lot lines any waste matter, whether liquid or solid, in violation of the applicable standards and regulations of the Division of Public Health of the Health and Hospital Corporation of Marion County, Indiana, the Indiana State Board of Health and the Stream Pollution Control Board of the State of Indiana, or in such a manner as to endanger the public health, safety or welfare or cause injury to property.

Sec. 735-502. HP-I Historic Preservation District One - Primary.
Note: The HP-I Historic Preservation District One - Primary is designated to permit the preservation, reconstruction, restoration or development of an historic area or site designated by the comprehensive plan as an historic preservation project area. In order to preserve an historic area, restore structures of historic, architectural or other planning significance, or recreate a neighborhood or site, including the environment and atmosphere of a past day, with appropriate contemporary land uses, the zoning district regulations must differ from those of other zoning districts in such aspects as character of land uses permitted, building setbacks, lot size, off-street parking, street standards, construction materials, architectural controls, etc. Because of the individuality inherent in any specific historic preservation project, architectural and site development standards appropriate for each historic area designated by the comprehensive plan shall be included in the zoning controls.
(a) Permitted HP-I District uses. The following uses shall be permitted in the HP-I District. All uses in the HP-I District shall conform to the regulations of section 735-201 and the HP-I District development standards (subsection (b) hereof).
(1) Historic structure, occupied, unoccupied and/or open to the public; historic use.
(2) Single- or multifamily dwelling; apartment hotel; hotel.
(3) Public and semi-public structures and facilities, including but not limited to, police or fire station, rail station, school, museum, church, civic or community center, auditorium or assembly hall, theatre, bandstand.

(4) Parks, playgrounds, malls, plazas, pedestrian areas, scenic areas, greenways, bridle paths, hiking and bicycle trails, and other open space uses.
(5) Business and professional offices; retail sales and services; other commercial establishments.
(6) Shops of tradesmen and craftsmen; arts or crafts studios, galleries, exhibition halls; outdoor uses, such as sidewalk safes, outdoor performing arts or exhibition areas, sculpture courts, gardens.
(7) Other uses similar and comparable in character to the above specified uses.
(8) Primary or accessory off-street parking lots or structures for historic preservation project occupants, employees and visitors; trolley terminal; stable, blacksmith shop.
(9) Historic preservation project management or information office.
(10) Accessory utility or maintenance structures and facilities.
(11) Temporary structures incidental to preservation, reconstruction, restoration or development.
(b) HP-I District development standards.
(1) Conformance with historic preservation area plan. All uses permitted in the HP-I District shall be in conformance with the applicable historic preservation area plan officially adopted as a part of the Metropolitan Plan Commission's Comprehensive Plan for Marion County, Indiana.
(2) Conformance with architectural and site development standards. All uses permitted in the HP-I District shall comply with the following applicable architectural and site development standards (as specified in subsection (c) below for each historic preservation area designated by the Metropolitan Plan Commission's Comprehensive Plan for Marion County, Indiana), setting forth, identifying and prescribing requirements for:
a. The general character of the historic preservation area, site development and land uses therein.
b. Types of buildings and structures.
c. Architectural style of buildings and structures.
d. Materials used in construction of buildings and structures.
e. Sizes of lots, location of buildings and structures on lots.
f. Location, design and materials used in construction of walls, fences, walks and other appurtenant features.
g. Location, character, design and orientation of parks, playgrounds, off-street parking areas or structures, off-street loading areas and other similar uses, vehicular access.
h. Location, character, design and orientation of identification, business and advertising signs; and materials of which such signs shall be constructed.
(c) Architectural and site development standards for Historic Preservation Area Plan I - Lockerbie Square. Purpose. The recreation of a neighborhood of a long-past period of Indianapolis' development, portraying realistically a way of life of the period 1870 to 1910, calls for meticulous care in the preservation, restoration, reconstruction and reproduction of every structure and feature to be included. Brick streets and sidewalks, limestone curbs, cobblestone alleys, gas street lights, and authentic fire hydrants, street name signs, park benches, etc., will be characteristic of the period to be recreated - with attention to developmental and operations details, such as characteristic landscaping, wrought-iron and board fences, backyard clotheslines. Occupancy of residential buildings, operating business establishments, and public and semi-public facilities open to community use will provide a living museum of early Indianapolis life.
Lockerbie Square will differ from an actual neighborhood of the 1880's only in its scale in order to include in the historic area the maximum variety of business shops, public and semi-public buildings, and other functions that once served its residents. One (1) of the

outstanding features of the neighborhood, as it originally existed, is the diversity of residential structures, not only architecturally, but in scale.

The architectural, site and project standards set forth herein are intended to assure the authenticity of all buildings, structures, public improvements, and appurtenances, in accordance with the Comprehensive Plan for Marion County, Indiana, and shall apply to all land designated in the Historic Area - Plan I for Marion County, Indiana, Lockerbie Square (adopted by the Metropolitan Plan Commission's Resolution 68-CPS-R-4, September 11, 1968) and zoned to the HP-I District classification.

(1) Architectural and site development standards for Historic Preservation Area I - Lockerbie Square.

a. Streets and alleys. Existing streets and alleys shall be restored or reconstructed in wood paver blocks, brick pavers, cobblestone, or other special material used in Indianapolis during the period 1870--1910, and in accordance with the original historic area development.

b. Curbs. Curbs shall be restored or reconstructed with cut limestone slabs or brick in accordance with the original historic area development.

c. Sidewalks. Existing sidewalks shall be restored or reconstructed of brick pavers, cobblestone, or other special material used in Indianapolis during the period 1870--1910. Width of walks, location adjacent to or the distance from the curb, and design of pavement materials of walks shall be in keeping with the original historic area development, except:

1. Sidewalks related to public, semi-public, business, and other nonresidential uses not originally existing in the historic area shall be designed, dimensioned and constructed appropriately for such uses existing in the period of approximately 1870--1910.

2. Sidewalks or walkways associated with the "Village Green," a park, playground, public garden, or other open space shall be designed, dimensioned, and constructed in character with such uses existing in Indianapolis in the period of approximately 1870--1910.

d. Trolley tracks. Tracks for horse-drawn trolley(s) shall be located in accordance with the approved site and development plan, making use of both streets and alleys to provide an appropriate circulation system through the historic area. Additional width of existing alleys may be necessary to accommodate trolley movement safely and without interference with pedestrian traffic.

e. Street lighting. Street lighting throughout Lockerbie Square shall be restricted to gas or gas-simulated electric fixtures and equipment. (It is recognized that location, placement and spacing of lighting fixtures cannot be wholly in keeping with the original historic area development pattern due to the need to provide adequate and appropriate lighting levels for evening visitors to the site, etc.)

f. Street name signs. Street name signs shall be authentic reproductions of original street signs of the historic area and shall be appropriately placed within the area.

g. Landscaping and plant materials. Landscaping of and plant materials used in street rights-of-way, public parks and other open space areas shall be characteristic of and common to the period approximately 1870--1910.

h. Other appurtenances and fixtures. Statuary, fountains, pools, benches, walls and fences, and other similar fixtures shall be of appropriate design and materials, and in keeping in their placement and relationship to surrounding uses, with the period approximately 1870--1910.

i. Limited automotive traffic. Beginning at an appropriate phase of development of the historic area, as determined by the Indianapolis Historic Preservation Commission, all automotive traffic shall thereafter be prohibited from the historic area, except:

1. In the general public parking area at the northeast corner of the historic area;

2. In the off-street parking area at the northwest corner of the historic area;
3. In the off-street parking areas designated for customers of the businesses and shops along the south boundary of the historic area;
or as otherwise or additionally limited by the Indianapolis Historic Preservation Commission. Provided, however, access and off-street parking by residents of the historic area shall be limited to the residential properties, and residents' vehicles shall be appropriately screened from public view.
j. Electrical and telephone service; television antennas. All electrical and telephone service to the historic area shall be underground. Television antennas shall not be permitted on any structure.
k. Outdoor advertising signs. No "billboards" or other outdoor advertising signs or devices shall be permitted within the historic area.
l. Architectural and site design. The design of all buildings, structures and architectural elements in the restoration, preservation, reconstruction, structural alteration, relocation, development, or redevelopment within the historic area shall conform to the best standards typifying architecture of Indianapolis during the period of approximately 1870--1910, and each structure shall represent an architectural style wholly compatible and in harmony with existing and planned uses and structures on adjacent properties.
The design of each lot or site upon which a building or structure is restored, preserved, reconstructed, relocated or developed or constructed shall be compatible and in harmony with the design of adjacent properties.
Site and development plans and architectural plans for all such restoration, preservation, reconstruction, structural alteration, relocation, development or redevelopment within the historic area shall be submitted to the Indianapolis Historic Preservation Commission for review. The approval thereof by the Commission shall be required prior to the issuance of a certificate of appropriateness by the Commission.
m. Construction materials. Where not specified, finish materials used in the construction of all buildings, structures, and appurtenant fixtures or features included on the lot or site shall be those found in common use in Indianapolis during the period of approximately 1870--1910. The choice among such qualifiable materials shall not create an incongruous and incompatible association with material used in buildings or structures on adjacent properties.
n. Residential structures.
1. Residential structures in the historic area may be single-family, two-family, or multifamily dwelling units.
2. Residential structures may be one (1) to three (3) stories in height. Provided however, not less than fifty (50) percent of the total residential structures within the historic area shall be one and one-half (1 1/2) to two and one-half (2 1/2) story single-family dwellings, constructed of brick or wood frame, having panel type doors, and double hung or casement windows.
3. Permitted outbuildings and accessory structures shall be appropriate to the lot and primary structure, and shall be of a scale, design and function in keeping with the primary use.
4. Setback: The front setback (or side or rear setback, as applicable) of structures on lots abutting streets bounding the historic area (New York Street, College Avenue, Michigan Street and East Street) shall be not less than fifteen (15) feet from the right-of-way line of such streets.
The front or corner front setback of structures on lots abutting interior streets within the historic area shall be not less than ten (10) feet from the street right-of-way line.
Side and rear yard setbacks shall be in keeping with setbacks typical of residential structures in Indianapolis in the period of approximately 1870--1910.

5. Signs: No signs shall be permitted except identification name plates when approved by Indianapolis Historic Preservation Commission as part of the site and development plan.

o. Retail sales and services, offices and other businesses.

1. Commercial uses may be in single- or multiunit structures.

2. Commercial structures shall not exceed three (3) stories in height, except:

(a) When combined with residential use, the height limitation shall be four (4) stories.

(b) If the commercial use is a hotel or in combination with a hotel, the height limitation shall be ten (10) stories.

3. Not less than fifty (50) percent of the total commercial structures within the historic area shall be one- to two-story buildings, of brick or wood frame.

4. Setback: The front setback (or side or rear setback, as applicable) of structures on lots abutting streets bounding the historic area (New York Street, College Avenue, Michigan Street and East Street) shall be not less than ten (10) feet from the right-of-way line of such street.

The front or corner front setback of structures on lots abutting interior streets within the historic area shall be not less than five (5) feet from the street right-of-way line.

Side and rear yard setbacks shall be in keeping with setbacks typical of commercial structures in Indianapolis in the period of approximately 1870--1910.

5. Signs: Business signs shall be permitted provided they are of a size, style, design, content, material and location upon the building or lot characteristic of signs used in association with business establishments in Indianapolis during the period of approximately 1870--1910.

6. Service courts: Refuse and service equipment may be located on individual or common service courts with accessibility for proper maintenance, but shall be fully screened from public view.

p. Institutional, public, and semi-public structures.

1. Institutional, public, and semi-public structures may be of unlimited height. Provided, however, the height of any such structure shall be in harmony and proportion to surrounding existing and planned structures and uses.

2. Setback: The front setback (or side or rear setback, as applicable) of structures on lots abutting streets bounding the historic area (New York Street, College Avenue, Michigan Street and East Street) shall not be less than fifteen (15) feet from the right-of-way line of such streets.

The front or corner front setback of structures on lots abutting interior streets within the historic area shall not be less than ten (10) feet from the street right-of-way line.

Side and rear yards shall be in keeping with setbacks typical of such institutional, public, or semi-public structures in Indianapolis in the period of approximately 1870--1910.

3. Signs: Identification signs for an institutional, public, or semi-public structures shall be appropriate and in keeping with signs typically used in association with such structures during the period of approximately 1870--1910.

q. Special structures. Structures such as, but not limited to, historic project area administration building, information building or booths, village green, bandstand and parking garage shall be permitted provided such structures are:

1. Designed in an architectural style to accomplish for any specific structure the maximum compatibility with the historic area as a whole and adjacent structures and uses.

2. Constructed of materials common to the period of approximately 1870--1910, except the parking garage may be constructed of other appropriate materials.

r. Landscaping of yards. Landscaping, including appurtenant features and fixtures of all yards, shall be in a style and fashion typical of the best standards of landscape

architecture in Indianapolis in the period of approximately 1870--1910. Materials used in yards shall be as follows:

1. Walls and fences shall be constructed of wood, brick, stone or wrought iron.
2. Walks, patios and similar surfaces shall be constructed of wood blocks, brick pavers, cobblestone or other appropriate natural material.
3. Trees, shrubbery and other plants used shall be those native to the Indianapolis area or imports available to the local area during the period of approximately 1870--1910.
4. Other appurtenant features and fixtures shall be of materials and design typically used in Indianapolis during the period of approximately 1870--1910.

(2) Conformance with architectural and site development standards; historic preservation area plan; site and development plan; Improvement Location Permit. All preservation, reconstruction, restoration, development, and use within the HP-1 District (including, but not limited to, the location and type of street, alleys, curbs, sidewalks and materials used in the construction thereof, the location and character of buildings, structures and uses, including the location, amount and character of public and semi-public structures and facilities, open spaces, plazas, gardens and pedestrian areas, and the location of vehicular access to and from the project area, including acceleration and deceleration lanes) shall be in accordance with all requirements of this article, including the architectural and site development standards of subsection (c) above, the applicable historic preservation area plan officially adopted as a part of the Metropolitan Plan Commission's Comprehensive Plan for Marion County, Indiana, the approved site and development plan and Improvement Location Permit issued therefor.

No building or structure shall be erected, located, relocated, structurally altered, reconstructed or restored, or use established or placed in operation without an Improvement Location Permit. Such permit shall not be issued until a site and development plan for such building, structure or use has been approved by the Indianapolis Historic Preservation Commission and a certificate of appropriateness issued therefor by such Historic Preservation Commission. Provided, however, the approval of the Historic Preservation Commission shall be subject to review by the Metropolitan Plan Commission as to its appropriateness in relation to the Comprehensive Plan of Marion County, Indiana. Applications for Improvement Location Permit shall be made upon Metropolitan Planning Department forms and shall include, in addition to copies of the site and development plan and certificate of appropriateness, all information required by applicable ordinances and specified by such form.

Sec. 735-503. HP-S Historic Preservation District - Secondary.

Note: The HP-S Historic Preservation District - Secondary is designed to assure that the area immediately peripheral to the primary historic district will not be developed in a character, style, scale, etc., that would be unharmonious or incompatible with the character or overall atmosphere of the historic area or with the character of individual structures and uses therein. The primary zoning district or districts applicable to land in the secondary district will specify the land uses permitted and regulate height, bulk, area, intensity, etc., of land uses. The secondary zoning district will provide only for an additional limited control of the design, massiveness, proportion and height of peripheral development.

(a) Permitted HP-S District uses. Uses permitted in the HP-S District shall be controlled by the regulations and requirements of the primary zoning district or districts applicable to land therein, subject to the additional regulations of subsection (b) below.

(b) HP-S district development standards.

(1) All uses established or placed into operation, or buildings or structures located, relocated, erected, structurally altered, reconstructed or restored after the effective date

of this article shall comply with all regulations and requirements of the applicable primary zoning district. Provided, however, the Indianapolis Historic Preservation Commission may impose, as conditions to its issuance of a certificate of appropriateness for any use, building or structure in the HP-S District, development standards, as follows:

a. Limitations upon the height of buildings and structures, including signs.
b. Limitations upon the total frontage or area of the face of a building or structure.
c. Specifications regarding architectural style and design.
d. Specifications regarding exterior construction materials.
e. Restrictions for display windows or permitted exterior use or display.
f. Specifications for type, size, style, design, character, amount or illumination, and construction materials of all signs.
g. Limitation or prohibition of surface or structural off-street parking, as a primary or accessory use; requirements for screening of off-street parking areas or structures, where permitted.

Provided further, however, in no instance shall the development standards required by the Historic Preservation Commission for any use be less restrictive than the regulations and requirements of the applicable primary zoning district.

(2) No building or structure shall be erected, located, relocated, structurally altered, reconstructed or restored, or use established or placed in operation without an Improvement Location Permit. Such permit shall not be issued until a site and development plan for such building, structure or use has been approved by the Indianapolis Historic Preservation Commission and a certificate of appropriateness issued therefor by such Historic Preservation Commission. Provided, however, the approval of the Historic Preservation Commission shall be subject to review by the Metropolitan Plan Commission as to its appropriateness in relation to the Comprehensive Plan of Marion County, Indiana. Applications for Improvement Location Permit shall be made upon Metropolitan Planning Department forms and shall include, in addition to copies of such site and development plan and certificate of appropriateness, all information required by applicable ordinances and specified by such form.

Sec. 735-504. Severability.

If any section, subsection, paragraph, subparagraph, clause, phrase, word, provision or portion of this article shall be held to be unconstitutional or invalid by any court of competent jurisdiction, such holding or decision shall not affect or impair the validity of this article as a whole or any part thereof, other than the section, subsection, paragraph, subparagraph, clause, phrase, word provision or portion so held to be unconstitutional or invalid.

ARTICLE III. LOWER DOWNTOWN HISTORIC DISTRICT

Sec. 30-45. Designation and legal description.

The Lower Downtown Historic District, as originally designated a district for preservation by Ordinance 109, series of 1988, is hereby continued as a district for preservation and shall include all of the property described as follows:

All of Blocks A and B, all of Blocks 12, 13 and 15 through 23, all of Blocks 38 through 44; Lots 1 through 16 of Blocks 45 through 50, East Denver; All of Blocks 240, 241 and 242, West Denver; and all subdivisions and resubdivisions thereof; and all vacated streets and alleys within or adjacent to the afore described areas; and including all dedicated streets and alleys within or adjacent to the afore described areas.

(Ord. No. 94-05, § 7, 2-14-05)

Sec. 30-46. Lower Downtown Design Review Board.

(a) There shall be and is hereby created a Lower Downtown Design Review Board ("board") which shall consist of seven (7) members. The seven (7) members shall be appointed by the mayor from nominations from the following persons and organizations or their successors:

(1) The city council representative, or representatives, of the Lower Downtown District for preservation ("district");

(2) The Denver chapter of the American Institute of Architects;

(3) Historic Denver, Inc.;

(4) The Colorado Historical Society;

(5) The National Trust for Historic Preservation, Mountain and Plains Region; and,

(6) Registered neighborhood organizations which represent all of the district.

(b) The seven (7) members of the board shall represent the following groups, interests or professions:

(1) A real estate developer. Nominees shall have experience in the rehabilitation of commercial or residential projects similar in scale to the buildings in lower downtown.

(2) A practicing architect.

(3) A historic preservationist.

(4) A preservation architect.

(5) A resident of the district.

(6) A property owner in the district.

(7) An owner or operator of a business in the district.

(c) Appointments shall be made by the mayor upon the certification by the Landmark preservation commission ("LPC") that the applicants meet the qualifications for the position.

(d) Two (2) of the four (4) members listed in subsection (b)(1) through (4) above shall not live in, own property in, own or operate a business in, maintain an office in or otherwise represent interests in the district. No member of the board shall be a member of the LPC.

(e) Each member of the board shall serve a term of three years. Members may be removed by the mayor only for cause upon written charges. The mayor shall appoint three (3) new members, one (1) who shall be a real estate developer, and shall sit for a term of one (1) year, one (1) who shall be a historic preservationist and shall sit for a term of two (2) years, and one (1) who shall be a preservation architect and shall sit for a term of three (3) years. As the board members' terms expire, their replacements shall be then appointed by the mayor for a term of three (3) years so as to attain and then maintain the representation set forth in (b) above. Members may be reappointed to

succeed themselves. After following the nomination and selection procedures set forth above in this section, vacancies shall be filled by the mayor for the unexpired term of any member whose term becomes vacant.
(f) A quorum shall be four (4) members. A concurring vote of a majority of the members present shall be required to pass general business matters of the board. To approve any design review or demolition application, other than for any project in a special review district, the concurrence of a majority of the board (four (4) members) shall be necessary. Five (5) of the seven (7) members must concur in order to approve a project in a special review district.
(Ord. No. 94-05, § 7, 2-14-05)

Sec. 30-47. Design guidelines.

The board shall adopt design guidelines in accordance with the Lower Downtown neighborhood plan and the design guidelines for landmark structures and districts. Such guidelines shall be approved by the LPC.
(Ord. No. 94-05, § 7, 2-14-05)

Sec. 30-48. Design and demolition review.

(a) The design and demolition review process shall be as follows:
(1) Demolition review shall be required and shall commence upon the request of the applicant to demolish a structure. Design review shall be required and shall commence upon a request by the applicant or upon a request by the applicant for a zoning permit or a building permit. Applicants for demolition review must also submit an application for design review of a replacement structure. Upon a determination that a building to be demolished is imminently dangerous to life, health or property by the building inspection division, the department of health, or the fire department and upon notification of such determination to the board an application for a demolition permit shall be issued without following the remaining provisions of this section and without the requirement for an application of a replacement structure.
(2) Applications which clearly meet the design guidelines may be administratively approved by the staff of the board. Staff may request additional information if the application is incomplete. Staff must make its decision within thirty (30) days after receiving all requested information.
(3) The applicant may request a decision on an entire project at a single meeting, or may ask for a two- or three-step review. If the applicant requests a step process, the first step is to review the request for demolition a structure, if any. The second step is review of the building envelope (the building's height, mass, form, stepbacks, site plan, and contextual fit), and the concept of the basic exterior facade appearances, including identification of major materials. The third step is review of the remainder of the project. If the applicant requests the step process, approval or denial of each step shall be considered a final decision and separately appealable to the LPC.
(4) At least fifteen (15) days before the board reviews a request for demolition of a contributing structure, the property shall be posted indicating the date, time and place of the review.
(5) At each step of the review process, at least ten (10) days before the board conducts its review, notification shall be sent to all registered neighborhood organizations within which the property being reviewed is located or whose boundaries are within two hundred (200) feet of the property being reviewed.
(6) The board shall review each step of the completed application within thirty (30) days of its receipt by community planning and development, provided that the board may

request additional information if the application is incomplete in which case the board shall make it's decision within thirty (30) days of receiving all requested information. The 30-day time period shall not include any period of required notification or posting. If no action is taken within the above specified 30-day time period, then the application shall be deemed to be approved unless the review period is extended by mutual agreement of the applicant and the board.

(7) The board may approve, approve with conditions or disapprove the application or any step in the application.

(8) Upon approval by the board of the complete project, including demolition, if any, the applicant may then apply for a zoning and/or building permit.

(9) Any person interested in or aggrieved by a decision or action of the board may appeal said decision or action to the LPC. Appeals must be received by community planning and development within fifteen (15) days of the date of the board's action or decision. The LPC shall consider only the record before the board, plus a written response of up to fifteen (15) pages by the appellant. There shall be no testimony or argument taken by the LPC on the appeal. If the appellant before the LPC is not the applicant, the applicant before the board may also submit a written response of up to fifteen (15) pages to the LPC. Any party to the appeal before the LPC may, at its own expense, have prepared and included in the record a transcript of the proceedings before the board. The LPC shall act on the appeal within sixty (60) days of its receipt by the community planning and development. The LPC shall uphold the decision of the board unless there is no evidence in the record to support the board's decision. The LPC may upholdor reverse the decision of the board, but may not modify it. The decision of the LPC shall be a final decision and relief may be obtained in the district court under the provisions of Colorado Rule of Civil Procedure 106(a)(4).

(b) The criteria for the design review process shall be as follows:

(1) The purpose of the review process is to protect, enhance, and perpetuate buildings, sites, and areas of the historic district reminiscent of past eras, events, and persons important in local, state, or national history; to encourage rehabilitation of contributing buildings and ensure new construction is compatible with contributing buildings; to provide significant examples of architectural styles of the past and to develop and maintain appropriate settings and environments for such buildings, sites, and areas to enhance property values, stabilize neighborhoods, promote economic development, job creation, tourist trade, and foster knowledge of the city's living heritage;

(2) The design review process is intended to draw a reasonable balance between private property rights and the public interest in preserving the cultural, historic, and architectural heritage of the historic district by providing property owners the opportunity to retain the benefits of property ownership through rehabilitation or alteration of existing buildings or the construction of new buildings which are architecturally compatible with the heritage of the district, ensuring that renovation, rehabilitation, or alteration of buildings and structures contributing to that heritage will be carefully weighted with other alternatives and the economic feasibility of renovation and re-use, and that alterations to such buildings and structures and new construction will respect the character of the district, not by imitating surrounding structures, but by being compatible with them to the extent economically feasible.

(3) The board will review the application for design review in accordance with the purposes of the district, the design guidelines for landmark structures and districts, the Lower Downtown design guidelines, the design review process, and the following guidelines:

a. If the proposed work is related to renovation or rehabilitation of a contributing building, the proposed work preserves, enhances or restores and does not damage, destroy or obscure the exterior architectural features of the building;
b. The proposed work does not adversely affect the special character or special historical or architectural features of the property, and/or the district;
c. The architectural style, massing, texture, scale, color, arrangement of color, and materials used on existing and proposed structures are compatible with the character of the district;
d. Height:
1. Fifty-five (55) feet, excluding cornices, heating, ventilating and air conditioning equipment, stair enclosures and elevator overruns, shall be considered the height by right in the district.
2. Buildings between fifty-five (55) and eighty-five (85) feet in height (excluding cornices, heating, ventilating and air conditioning equipment, stair enclosures and elevator overruns) may be allowed by the board if they are in context with any contributing buildings within three hundred (300) feet of any point on the property line of the proposed building, and if the structure includes residential uses anywhere in the building in a minimum amount equal to the floor area above the 55-foot limit;
3. Buildings between eighty-five (85) and one hundred (100) feet in height may be allowed, but only: if they are in context with any contributing building within three hundred (300) feet of any point on the property line of the proposed building; if the structure includes residential uses anywhere in the building in a minimum amount equal to the floor area above the 55-foot limit; and if the additional fifteen (15) feet above the 85-foot limit of 2. above, is a residential penthouse. Cornices, heating, ventilating and air conditioning equipment, stair enclosures and elevator overruns must be included in the total height of one hundred (100) feet. The residential penthouse shall be used exclusively for residential or residential support purposes and shall not cover in excess of one-third of the roof area at that level. All aspects of the penthouse shall comply with the design guidelines.
4. Buildings between one hundred (100) and one hundred thirty (130) feet in height, excluding cornices, heating, ventilating and air conditioning equipment, stair enclosures and elevator overruns, may be allowed by the board if they are in a special review district. The following three (3) areas are defined for purposes of this article as special review districts:
i. District 1 shall include:
Lots 1 to 16 inclusive, Block 49, East Denver; and Lots 17 to 32 inclusive, Block 39, East Denver.
ii. District 2 shall include:
Lots 12 to 16 inclusive, Block 47, East Denver; Lots 11 to 22, inclusive, including vacated alley between said lots, Block 41, East Denver; Lots 1 to 6 inclusive, Block 46, East Denver; Lots 1 to 6 inclusive, and lots 27 to 32 inclusive, including vacated alley between said lots, Block 42, East Denver; and Lots 27 to 32 inclusive, Block 19, East Denver.
iii. District 3 shall include:
Lots 1 to 15 and Lots 22 to 30, all in Block 12, East Denver, and Lots "A" to "G", Howard Resubdivision (being a resubdivision of part of block 12 East Denver, and parts of Cherry Creek as shown by Boyds Map of the City of Denver)
Together with a parcel of land designated in the Cherry Creek Commissioners report as "Tract No. 52" being more particularly described as follows:
Commencing at a point where the East line of Cherry Creek as shown by Boyds Map of the City of Denver intersects the produced Northwest line of the alley in Block 12, East

Denver; thence Southwest along said produced Northwest alley line to an intersection with Northeast line of the Channel of Cherry Creek as defined and described in Ordinance No. 86 Series of 1903; thence Northwest along said line as so defined to the produced Southeast line of Wewatta Street; thence Northeast along said produced line of Wewatta Street to the East line of Cherry Creek as shown on said Boyds map; thence Southerly along said East line of the Channel of Cherry Creek to the point of beginning, and

Together with the vacated alley extending Northeasterly and Southwesterly through Block 12, East Denver and with a parcel of land designated in the Cherry Creek Commissioners report as "Tract No. 51', all being more particularly described as follows:

Commencing at the point where the East line of Cherry Creek as shown by Boyds Map of the City of Denver intersects the produced Northwest line of the alley in Block 12, East Denver; thence Southwest, along said produced Northwest alley line to an intersection with the Northeast line of the Channel of Cherry Creek as defined and described in Ordinance No. 86 Series of 1903; thence Southeast, along said line as so defined to the produced Southeast line of the alley in Block 12, East Denver; thence Northeast, along said produced Southeast Alley line and along said Southeast alley line to the Southwest line of 15th Street; thence Northwest, along said Southwest line of 15th Street to the Northwest line of the alley in Block 12, East Denver; thence Southwest, along said Northwest alley line and along said northwest alley line produced, to the point of beginning.

5. Special review district 4, which shall also be known as the Historic Urban Edge District (HUED), is hereby created. It's boundaries shall be that portion of the Lower Downtown Historic District lying southwest of 14th Street and a line extending 14th Street northwest to Wewatta Street as defined by the southwest edge of the B-7 zone district. There shall be seven (7) sub-areas within the HUED with heights limited as follows:

i. Sub-area 1 shall consist of that portion of the HUED bounded by: the south ROW line of Walnut St. (North Boundary); the east ROW line of N. Speer Blvd (West Boundary); the north ROW line of Larimer St. (South Boundary); and the northwesterly line of the Official Channel of Cherry Creek as established by ordinance 86 Series of 1903 (East Boundary). Building height shall be limited to three hundred seventy-five (375) feet, plus up to twenty-five (25) feet for screened mechanical equipment, stair and elevator overruns and an exceptional architectural feature, such as a spire, provided however that if any portion of the building shall have a height in excess of eighty-five (85) feet, excluding up to fifteen (15) feet for screened mechanical equipment, stair and elevator overruns, the floorplate of said building shall not exceed seven thousand five hundred (7,500) square feet excluding balconies and terraces. If no portion of the building exceeds eighty-five (85) feet, excluding up to fifteen (15) feet for screened mechanical equipment, stair and elevator overruns, the floorplate limitation shall not apply.

ii. Sub-area 2 shall consist of that portion of the HUED bounded by: the south ROW line of Walnut St. (North Boundary); the northwesterly line of the Official Channel of Cherry Creek as established by ordinance 86 Series of 1903 (West Boundary); the north ROW line of Larimer St. (South Boundary); and the west ROW line of 14th St. (East Boundary). Building height shall be fifty-five (55) feet plus up to fifteen (15) feet for screened mechanical equipment, stair and elevator overruns.

iii. Sub-area 3 shall consist of that portion of the HUED bounded by: the south ROW line of Blake St. (North Boundary); the east ROW line of N. Speer Blvd. (West Boundary); the north ROW line of Walnut St. (South Boundary); and the northwesterly line of the Official Channel of Cherry Creek as established by ordinance 86 Series of 1903 (East Boundary). Between a line thirty (30) feet to the Walnut St. side of a line formed by

extending the center line of Blake St. as it is in the non-HUED portion of the Historic District through the HUED (Blake St. extended) and Walnut street, building height shall be limited to eighty-five (85) feet, plus up to fifteen (15) feet for screened mechanical equipment, stair and elevator overruns. Between a line thirty (30) feet to the Blake St. side of Blake St. extended and Blake St., building height shall be limited to sixty-four (64) feet, plus up to fifteen (15) feet for screened mechanical equipment, stair and elevator overruns. Any structure must have residential uses anywhere in the building in a minimum amount equal to the floor area above fifty-five (55) feet. For a distance of thirty (30) feet on either side of the line of Blake St. extended there shall be no habitable structures.

iv. Sub-area 4 shall consist of that portion of the HUED bounded by: a line parallel to and 44.72 northwesterly of the southeasterly line of Lot 8 Block 240, West Denver Subdivision, said parallel line being extended southwesterly to the northeasterly ROW line of Speer Boulevard and extended northwesterly from the southwesterly line of said Lot 8, north 59° 36' 28" East a distance of 85.48 feet, thence South 45° 26' 13" East a distance of 46.31 feet to a point on the northwesterly line of Lot 9, said Block 240extended northeasterly, thence continuing along the northeasterly extension of the northwesterly line of said Lot 9 to the southwesterly line of the Official Channel of Cherry Creek as established by ordinance 86 Series of 1903 (northwesterly boundary); the northeasterly ROW line of Speer Boulevard (southwesterly boundary); the southeasterly line of the Official Channel of Cherry Creek (northeasterly boundary); and the northwesterly line of Wazee Street (southeasterly boundary). The building height provisions generally applicable to contributing structures in the Lower Downtown Historic District shall apply.

v. Sub-area 5 shall consist of that portion of the HUED bounded by the northwesterly line of lot 7, Block 240, West Denver, lying southwesterly of the southwesterly line of the Official Channel of Cherry Creek as established by ordinance 86 Series of 1903 and extended southwesterly to the northeasterly ROW line of Speer Boulevard (northwesterly boundary); the southwesterly line of the Official Channel of Cherry Creek as established by ordinance 86 Series of 1903 (northeasterly boundary); the northeasterly ROW line of Speer Boulevard (southwesterly boundary); and a line lying 44.72' northwesterly of and parallel to the southeasterly line of Lot 8, Said Block 240, said line extended southeasterly to the northeasterly ROW line of Speer Boulevard and also extended to the northeast North 59° 36' 22" East from the southwesterly line of said Lot 8, a distance of 85.48 feet, thence South 45° 26' 13" East to a point on the northwesterly line of Lot 9, said Block 240, thence along said northwesterly line of Lot 9 extended North 59° 36' 22" East to the southwesterly line of the Official Channel of Cherry Creek as established by ordinance 86 Series of 1903 (southeasterly boundary). Building height shall be limited to eighty-six (86) feet plus up to fifteen (15) feet for screened mechanical equipment, stair and elevator overruns. Any structure must have residential uses anywhere in the building in a minimum amount equal to the floor area above fifty-five (55) feet.

vi. Sub-area 6 shall consist of that portion of the HUED bounded by: the northwesterly line of Lot 7, Block 240, West Denver, and said northwesterly line lying southwest of the southwesterly line of the Official Channel of Cherry Creek as established by ordinance 86 Series of 1903 and extended to the northeasterly ROW of Speer Boulevard (southeasterly boundary); the southwesterly line of the Official Channel of Cherry Creek as established by ordinance 86 Series of 1903 (northeasterly boundary); the northeasterly ROW line of Speer Boulevard (southwesterly boundary); and a line parallel with and sixty-five (65) feet southeasterly of the southeasterly ROW line of Wewatta St. as established by the northwesterly line of Block 12, East Denver, extended

southwesterly (northwesterly boundary). The building height provisions generally applicable in the Lower Downtown Historic District shall apply.
vii. Sub-area 7 shall consist of all portions of the HUED not included in any other sub-area. The building height provisions generally applicable in the Lower Downtown Historic District shall apply.
6. Buildings over one hundred thirty (130) feet in height, excluding cornices, heating, ventilating and air conditioning equipment, stair enclosures and elevator overruns, shall not be allowed in the district, except in sub-area 1 of the HUED.
e. For buildings greater than eighty-five (85) feet in height, that portion of the building over 85 feet must be set back at least twenty-five (25) feet along the front zone lot line which is part of the longer dimension of any block; and
f. Contemporary design for additions, alterations, and new construction is not discouraged, and is recognized as an important element in the evolution of individual buildings as well as the district as a whole.
g. The above building heights are maximums and the board may reduce the height of any proposed structure to comport with the design guidelines.
(c) The board shall consider the following factors in making a determination on a request for a demolition permit of a contributing structure:
(1) Significant economic hardship to the property based the following economic factors:
a. Structural condition of the building and practicality of rehabilitation and reuse;
b. Determination of economic hardship based on a comparison of 1. and 2. below:
1. Economic feasibility of rehabilitation and reuse of the structure.
2. Economic feasibility of the proposed redevelopment plans.
3. This comparison must establish as a base line the property as it is and what value the property contributes to either 1. or 2. above.
(2) Significant harm to the public interest based on the following preservation factors:
a. Age of building.
b. Architectural and historic significance of the building as related to the district.
c. Extent to which the structure maintains the continuity, scale and massing of adjacent contributing structures, and the prominence of the structure within the block.
(3) Extent to which reuse or proposed redevelopment implements the goals of the Lower Downtown neighborhood plan and the purposes of this district.
(4) Burden of proof and appeal.
a. The burden of proof as to whether the structure should be demolished is on the applicant.
b. The applicant may appeal the decision to the LPC under the provisions of section 30-48(a)(8), above.
(5) Applications for demolition review of contributing structures shall include, but are not limited to valuation of the property, estimates of the costs and income for rehabilitation of the building, estimates of the costs and income for new development, preliminary development plans, and reports as to the condition of the building prepared by professionals with experience in preservation and rehabilitation. The board in shall establish the submittal requirements for an application by rules and regulations. Such rules and regulations shall not be effective until approved by the LPC. Such application shall be filed with community planning and development upon forms prescribed by the board.
(Ord. No. 94-05, § 7, 2-14-05; Ord. No. 78-07, § 1, 2-20-07)

Sec. 30-49. Contributing buildings.

(a) Contributing buildings are hereby established as indicated on the map titled "Contributing Building Survey" ("survey") as filed with the office of the Denver city clerk and Recorder on March 20th, 2002, in Filing Number 02-242. Contributing buildings are those buildings shaded on the map. This map also reflects the boundaries of the district as originally designated in section 1 of Ordinance 109, series of 1988; which boundaries are still in effect.

(b) The owner of a property may petition the board to include said property on the survey as a contributing building. If the board determines that the property is a proper candidate for inclusion as a contributing building, the board shall forward its recommendation to the LPC. The LPC shall review the recommendation of the board and make its own recommendation to the city council, which may then by ordinance include said property as a contributing building in the district.

(c) A building cannot be deleted from the survey, unless it is approved for demolition according to the terms of this article, destroyed by fire, flood, or act of God, or major accidental damage not the fault of the owner.

(Ord. No. 94-05, § 7, 2-14-05)

Sec. 30-50. Parking.

(a) In the event an applicant for a project proposes to include parking in an amount greater than the minimum parking plus the additional parking allowed by section 59-239, the applicant shall specifically request permission from the board to include said excess parking.

(b) Said excess parking shall be considered as part of the design review process, however, any meeting at which excess parking is to be considered shall only be held after appropriate notice, as described in subsection (c) below.

(c) Notice of any meeting at which excess parking shall be considered shall be mailed to any owner of property within 100 feet of the proposed parking, and any affected registered neighborhood organizations no less than fourteen (14) days before the meeting, and the property where the excess parking is proposed shall be posted no less than ten (10) days prior to the meeting. Said mailing and posting shall include the date, time and place of the meeting, and the number of excess parking spaces requested.

(d) The board shall hold a public hearing on the excess parking.

(e) The board shall act within 30 days of receiving a request for excess parking, unless the time is extended with the consent of the applicant.

(f) The board may grant the request, grant it in part, or deny it.

(g) The decision of the board is a final decision and may be appealed to the LPC as provided in section 30-48(a)(8) above.

(h) The siting of excess parking within the district shall be carefully considered using the following criteria:

(1) Excess parking may be appropriate if there is minimal impact on the context and social fabric of the neighborhood.

(2) Excess parking may be appropriate in those areas that demonstrate a high parking demand combined with a scarce or fully utilized current parking inventory.

(3) Excess parking should be encouraged in special review districts.

(4) Excess parking should not disrupt street liveliness.

(5) Excess parking should not disrupt established traffic patterns.

(6) Excess parking should not create congestion.

(7) Excess parking should not create unacceptable levels of noise, air or light pollution.

(8) Excess parking should be related to the parking needs of Lower Downtown as discussed in the neighborhood plan.
(Ord. No. 94-05, § 7, 2-14-05)

APPENDIX II

Phone Survey Sheet

Date _____
Time _____

Name _____ Title _____
Organization _____
Address _____
Phone _____ Email _____

***** ***** ***** ***** ***** ***** ***** ***** ***** ***** ***** *****
***** *****

Item(s) Discussed:

[ ] Agricultural / farming
[ ] Archaeology / underwater arch.
[ ] Advocacy / education
[ ] Billboard / sign
[ ] Bridge / highway / canal
[ ] Building materials
[ ] Business districts / main street
[ ] Business types allowed
[ ] Cemetery / funerary objects
[ ] Change of use
[ ] COA
[ ] Condemnation
[ ] Conservation easement
[ ] Demolition / demo by neglect
[ ] Development / encroachment
[ ] Districts / overlay districts
[ ] Exemptions
[ ] Exterior paint color
[ ] Façade easement
[ ] Folklife resources
[ ] Foundation / roof / walls / windows
[ ] Funding / grants
[ ] Geology / topography
[ ] Grandfathering clauses
[ ] Highway / site markers
[ ] Historic commission
[ ] Interior easement
[ ] Interior paint color
[ ] Local register
[ ] Lot size / intensity of use
[ ] Massing
[ ] Moving historic property
[ ] Native areas / lands
[ ] Public spaces / civic
[ ] Regular maintenance
[ ] Revolving fund / purchase
[ ] Setbacks
[ ] Shutters / trim / doors / singles
[ ] State register
[ ] Street / sidewalk / alley
[ ] Surveys / resource ID
[ ] Tax credits
[ ] Traffic / parking
[ ] TDRs
[ ] Utilities
[ ] Violations / fines
[ ] Zoning / rezoning
[ ] Other _____
[ ] Other _____
[ ] Other _____
[ ] Other _____
[ ] Other _____

Ordinance Item: _____ Liked / Disliked
City, County or State

Specifics: _____

Specifics, cont'd: _____

Ideal Inclusion:

Ideal Exclusion:

Recommended follow-up (person, enabling legislation, etc.):

197.352 Compensation for loss of value due to land use regulation. The following provisions are added to and made a part of ORS chapter 197:
(1) If a public entity enacts or enforces a new land use regulation or enforces a land use regulation enacted prior to December 2, 2004, that restricts the use of private real property or any interest therein and has the effect of reducing the fair market value of the property, or any interest therein, then the owner of the property shall be paid just compensation.
(2) Just compensation shall be equal to the reduction in the fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation as of the date the owner makes written demand for compensation under this section.
(3) Subsection (1) of this section shall not apply to land use regulations:
(A) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. This subsection shall be construed narrowly in favor of a finding of compensation under this section;
(B) Restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;
(C) To the extent the land use regulation is required to comply with federal law;
(D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; or
(E) Enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.
(4) Just compensation under subsection (1) of this section shall be due the owner of the property if the land use regulation continues to be enforced against the property 180 days after the owner of the property makes written demand for compensation under this section to the public entity enacting or enforcing the land use regulation.
(5) For claims arising from land use regulations enacted prior to December 2, 2004, written demand for compensation under subsection (4) shall be made within two years of December 2, 2004, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner of the property, whichever is later. For claims arising from land use regulations enacted after December 2, 2004, written demand for compensation under subsection (4) shall be made within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.
(6) If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under this section, the present owner of the property, or any interest therein, shall have a cause of action for compensation under this section in the circuit court in which the real property is located, and the present owner of the real property shall be entitled to reasonable attorney fees, expenses, costs, and other disbursements reasonably incurred to
collect the compensation.
(7) A metropolitan service district, city, or county, or state agency may adopt or apply procedures for the processing of claims under this section, but in no event shall these procedures act as a prerequisite to the filing of a compensation claim under subsection (6)

of this section, nor shall the failure of an owner of property to file an application for a land use permit with the local government serve as grounds for dismissal, abatement, or delay of a compensation claim under subsection (6) of this section.
(8) Notwithstanding any other state statute or the availability of funds under subsection (10) of this section, in lieu of payment of just compensation under this section,
the governing body responsible for enacting the land use regulation may modify, remove,
or not to apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property.
(9) A decision by a governing body under this section shall not be considered a land use decision as defined in ORS 197.015 (10).
(10) Claims made under this section shall be paid from funds, if any, specifically allocated by the legislature, city, county, or metropolitan service district for payment of claims under this section. Notwithstanding the availability of funds under this subsection, a metropolitan service district, city, county, or state agency shall have discretion to use available funds to pay claims or to modify, remove, or not apply a land use regulation or land use regulations pursuant to subsection (6) of this section. If a claim has not been paid within two years from the date on which it accrues, the owner shall be allowed to use the property as permitted at the time the owner acquired the property.
(11) Definitions - for purposes of this section:
(A) “Family member” shall include the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.
(B) “Land use regulation” shall include:
(i) Any statute regulating the use of land or any interest therein;
(ii) Administrative rules and goals of the Land Conservation and Development Commission;
(iii) Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances;
(iv) Metropolitan service district regional framework plans, functional plans, planning goals and objectives; and
(v) Statutes and administrative rules regulating farming and forest practices.
(C) “Owner” is the present owner of the property, or any interest therein.
(D) “Public entity” shall include the state, a metropolitan service district, a city, or a county.
(12) The remedy created by this section is in addition to any other remedy under the Oregon or United States Constitutions, and is not intended to modify or replace any other
remedy.
(13) If any portion or portions of this section are declared invalid by a court of competent jurisdiction, the remaining portions of this section shall remain in full force and effect. [2005 c.1]

See also http://www.oregon.gov/LCD/docs/measure37/m37_assessment_taxation_advice_050506.pdf for information regarding the possible effects of Measure 37 on property tax administration and county appraisers, as determined by the Property Tax Division of the Oregon Department of Revenue. Document dated May 5, 2006 (22 pages).

HARDY MYERS
Attorney General

PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

February 24, 2005

Mr. Lane Shetterly, Director
Oregon Department of Land Conservation and Development
635 Capitol Street NE Suite 150
Salem, Oregon 97301-2540

Re: Oregon Ballot Measure 37

Dear Mr. Shetterly:

You have asked that we address two questions concerning 2004 Oregon Ballot Measure 37. Your first question concerns sections 8 and 10 of the measure, which provide that certain entities may elect to waive ("modify, remove, or not apply") a law as an alternative to paying compensation to a property owner. Generally, you want to know if a waiver under Measure 37 is personal to the current owner of the property or runs with the land. That is, does the waiver remain if the current owner conveys the property to a new owner?

The short answer to your first question is that when a public entity finds that there is a valid claim for compensation under Measure 37, but elects to provide relief by "not applying" the law, that relief is personal to the current owner of the real property. If the current owner conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost. We also consider the result where the public entity elects to "modify or remove" the law that was the basis for a valid claim. In general, where the law being modified or removed is a law that the public entity would otherwise be required to have in place (as a result of some other law or legal requirement), we believe that Measure 37 authorizes the public entity to modify or remove the law only to the extent required to provide relief to a current owner with a valid claim under the measure. This means that even where a public entity provides relief by modifying or repealing a law, in cases where the public entity is otherwise legally required to have that law in place, it may do so only so as to provide relief to the current owner.

Your second question is whether a public entity's decision to "modify, remove, or not apply" a law under section 8 of Ballot Measure 37 may be made on a "blanket" basis, that is whether a public entity may decide in advance that all claims that involve a particular law, or that involve owners who acquired their property after a particular date, or some other subset of the potential universe of claimants, will be granted relief. The short answer to this question is that Measure 37 authorizes public entities to "modify, remove, or not apply" the law only after the

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affected owner has established his entitlement to relief. In other words, before deciding to grant relief to a Measure 37 claimant, a public entity must determine at least that:

- the claimant acquired the affected property before the law in question was adopted;
- the law restricts the use of the property in question;
- the law reduces the fair market value of the property in question;
- the law is not one that regulates activities that are commonly and historically recognized as a public nuisance;
- the law is not one that protects public health and safety; and
- the law is not required to comply with federal law.

To determine if Measure 37 applies, the public entity will have to consider facts specific to the particular property at issue and its present owner. As a result, the short answer is that we do not believe public entities may adopt rules or ordinances or other laws that provide "blanket waivers" of laws under Ballot Measure 37.

Analysis

When interpreting a statutory provision adopted through the initiative process, the Oregon Supreme Court applies the same methodology that it applies to the construction of a statute. ***Stranahan v. Fred Meyer, Inc.,*** *331 Or 38, 61, 11 P3d 228 (2000);* ***PGE v. Bureau of Labor and Industries (PGE),*** *317 Or 606, 612 n 4, 859 P2d 1143 (1993).* The objective is to determine the intent of the voters who pass the measure. "The best evidence of the voters' intent is the text of the provision itself." ***Roseburg School Dist. V. City of Roseburg****, 316 Or 374, 378, 851 P2d 595 (1993).* In interpreting the text, we consider statutory and judicially developed rules of construction "that bear directly on how to read the text," such as "not to insert what has been omitted, or to omit what has been inserted," and to give words of common usage their plain, natural and ordinary meaning. ***PGE,*** *317 Or at 611; ORS 174.*010. However, the meaning of the terms in a measure cannot be assessed in isolation from the context in which the measure's drafters used those words. ***See PGE,*** *317 Or at 610-11.* The Oregon Supreme Court, however, is unlikely to conclude analysis of an initiated measure at the first level of review. ***Stranahan,*** *331 Or at 64.*

The second level of review is an examination of the history of the provision. The history of an initiated provision includes information available to the voters at the time the measure was adopted that discloses the public's understanding of the measure. ***Ecumenical Ministries v. Oregon State Lottery Comm.****, 318 Or 551,560 n 8 ,871 P2d 106 (1994).* Sources of such information include the ballot title, explanatory statement and arguments for and against the measure included in the Voters' Pamphlet as well as contemporaneous news reports and editorials on the measure. *Id.* The extent to which these sources of information will be considered depends on their objectivity, as well as their disclosure of public understanding of the measure. ***Stranahan****, 331 Or at 65 (*citing ***LaGrande/Astoria v. PERB****, 284 Or 173, 184 n 8, 586 P2d 765 (1978)).*

If, after considering the text, context and history of the measure, the intent of the voters remains unclear, we may resort to judicial rules of construction to resolve any remaining uncertainty. ***PGE**, 317 Or at 612 n 4.*

1. Transferability of Measure 37 Relief

Your first question concerns whether a public entity's decision to modify, remove or not apply a law is personal to the owner making the claim or whether the grant of non-monetary relief runs with the land. In other words, when a public entity provides non-monetary relief to the present owner of property by waiving a law to allow a use of the property, what happens if the owner conveys the property to a new owner? We conclude that the relief is personal to the owner making the claim. In reaching that conclusion, we consider three potential answers: (1) Measure 37 only authorizes waiver for the present owner making the claim; (2) Measure 37 only authorizes waiver that runs with the land; or (3) Measure 37 grants the public entity making the decision on waiver the discretion to determine its duration. Nothing in Measure 37 expressly answers these questions, so we must discern the voters' intent, beginning our analysis with the measure's text.

Sections (8) and (10) of the measure authorize certain public entities to grant a waiver from a law that would otherwise require the payment of compensation.[1] Subsection (8) provides that:

> "Notwithstanding any other state statute or the availability of funds under subsection (10) of this act, in lieu of payment of just compensation under this act, the governing body responsible for enacting the land use regulation may modify, remove, or not to apply [*sic*] the land use regulation or land use regulations ***to allow the owner to use the property for a use permitted at the time the owner acquired the property***." (emphasis added).

Section (10) provides that:

> "* * * Notwithstanding the availability of funds under this subsection, a metropolitan service district, city, county, or state agency shall have discretion to use available funds to pay claims or to modify, remove, or not apply a land use regulation or land use regulations pursuant to subsection (6) of this act. If a claim has not been paid within two years from the date on which it accrues, ***the owner shall be allowed to use the property as permitted at the time the owner acquired the property***." (emphasis added.)

Subsection (11)(C) defines "[o]wner" as "the ***present*** owner of the property, or any interest therein." (emphasis added.)

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[1] For every law, there is of course a public body that already has authority independent of Measure 37 to amend or repeal it, *e.g.*, the Legislative Assembly for statutes.

The highlighted language is the only text concerned with the nature of the non-monetary relief authorized by the measure. Standing alone, it only provides authority for a public entity to waive a law to the extent necessary to allow an otherwise prohibited use by the "present" owner, i.e., the owner at the time the exemption is granted. In other words, this language only authorizes a public entity to make exemptions personal to the owner making the claim.

We also consider the immediate context of this text. Sections (8) and (10) of the measure provide three means for a public entity to waive a law. An authorized public entity may (1) "modify," (2) "remove," or (3) "not apply" the law. The plain, natural and ordinary meaning of "modify" best suited to the circumstances is "lessen the severity of : MODERATE . . . <traffic rules were *modified* to let him pass - Van Wyck Brooks>." WEBSTER'S THIRD NEW INT'L DICTIONARY 982 (unabridged ed 1993)1452. None of the definitions of "remove" is ideally suited to the circumstances, but "eliminate" comes the closest. *Id.* at 1921. To "apply" a rule of law is "to put [it] in effect : IMPOSE." *Id.* at 105.

The first two means of providing non-monetary relief - modifying or removing the law - appear to entail making a change in the law itself. That is, the ordinary meaning of how a public entity would "modify" a law would be for the public entity to amend the law. Similarly, the ordinary meaning of how a public entity would "remove" a law would be for the public entity to repeal it. How the law was amended or repealed would seemingly determine whether that action was personal to the current owner or permanent. For example, one way to grant John Doe non-monetary relief for his property on Maple Drive would be to modify the law to provide that "this law shall not affect the real property at 111 Maple Drive, Anytown, Oregon." On its face, a modification taking that form would have the effect of making the law not apply to the property irrespective of its ownership.[2] Moreover, to make the law begin applying again once it was acquired by a new owner, the public entity would need to repeal or amend the decision to remove or modify the law, which would seemingly entitle the new owner to relief in his own right. And if that owner were then granted the same type of modification, the owner that followed him would likewise be entitled to relief, and so on.

By contrast, if a law were modified to provide that "this law shall not affect any real property at 111 Maple Drive, Anytown, Oregon *that is owned by John Doe*," the exemption would be limited to the owner making the request for compensation and the property would again be subject to the original law upon its acquisition by a new owner, absent independent grounds for an exemption. In sum, the first two means of modifying or removing the law so that it does not apply to a property could be accomplished either by actions that are personal to the current owner or by actions that run with the land. The fact that either is technically possible means that this context does not shed any light one way or the other on whether the voters intended non-monetary relief to be personal to the present owner or to run with the land.

The third means of non-monetary relief - to "not apply" the law - presumably has a different meaning than the first two. ORS 174.010. As noted above, the ordinary meaning of

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[2] Similarly, the law could be repealed in whole or in part (as to particular property or as to a particular person). As discussed below, we do not believe Measure 37 authorizes a public entity to repeal a law that it is required by other law to have in place (except, perhaps, with regard to a specific, valid, Measure 37 claim).

"apply" is to put something into effect or to impose or enforce it. Thus, it appears that the intended meaning of "not applying" a law in this context is to stop enforcing it in a way that does not involve repealing or amending the law. Instead, the relevant public entity is authorized simply to not give effect to an existing law, *i.e.*, to discontinue enforcing it. This construction also is consistent with the text of section (4), which entitles the present owner to compensation if a law "continues to be enforced against the property" 180 days after he submitted a claim. Therefore, if the third means were used, as long as the present owner continues to own the property, the public entity would stop enforcing or applying the law to the property. However, the law would otherwise continue unaltered, and if the present owner conveys the property to a new owner the public entity would have no lawful basis for not enforcing it if the conditions that created the right to relief under Measure 37 ceased to exist, *e.g.*, if the property were acquired by someone who was not entitled to an exemption in his own right. For that reason, to "not apply" a law would necessarily be personal to the owner submitting the claim.[3]

Although the text and context of the measure strongly suggest that the voters intended that non-monetary relief be personal to the present owner of the property, we also review the history of the measure to determine if it sheds any light on your question. We turn first to the Voters' Pamphlet, which is the primary source for Measure 37's history. The ballot title states that "Governments must pay owners, or forgo enforcement, when certain land use restrictions reduce property value." The explanatory statement declares that "government must pay owner reduction in fair market value of affected property interest, or forgo enforcement. Governments may repeal, change or not apply restrictions in lieu of payment; if compensation not timely paid, *owner* not subject to restrictions." (emphasis added.)

The arguments in favor include 40 submissions, although the last two are apparently ironic and intended to discourage "yes" votes. Slightly more than half of the arguments discuss the perceived adverse effects of land use laws in the abstract. Except as discussed below, none sheds any light on the question at hand. Slightly fewer than half are statements about how land use laws are preventing a specific owner from putting his or her property to some particular current use. All of those specific concerns could be remedied either by a decision that is personal to that owner or one that ran with the land, with the possible exception of several owners who expressed dissatisfaction with not being able to subdivide their property and give parcels to descendents, sell them to third parties, or both. Allowing an owner to subdivide property by not applying a prohibition would do him no good, of course, unless the subdivision remained lawful after its transfer to one or more new owners. Existing laws generally allow new owners to perpetuate non-conforming uses that were lawful when instituted, but it is not certain whether all would apply to a decision under Measure 37. *See, e.g.*, ORS 215.130.[4] None of the

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[3] Measure 37's context includes related statutes that were already on the books at the time of its approval by the voters. *See Stranahan v. Fred Meyer, Inc.*, 331 Or 38, 62 n15, 11 P3d 228 (2000). The breadth of Measure 37 results in a very large number of existing statutes that are related to Measure 37. We have not found anything in those statutes bearing directly on whether a Measure 37 exemption was intended by the voters to be personal or to run with the land.

[4] ORS 215.130 provides in relevant part:

arguments in favor addresses whether subsequent purchasers would acquire the rights, or step into the shoes, of owners covered by the measure. Likewise, no argument directly mentions the effect of laws on a property's resale value, although one argument states that they restrict the use of home equity to fund owners' retirements. The latter implies an adverse effect on resale value, which might be recognized by discerning voters as a problem that would only be remedied if the exemptions ran with the land. On the other hand, an argument in favor of the measure by the chief petitioners expressly states that if an owner entitled to Measure 37 compensation conveys her property, that will establish a new "date of acquisition" for purposes of determining what laws may give rise to a claim. This is a clear statement that the chief petitioners expected that the relief available under the measure depends on when the current owner acquired the property -- that the relief is personal to the current owner. If the current owner is eligible for relief, but sells the property, then only laws adopted after the new owner acquired the property create a right to relief.[5] The arguments in opposition include nothing that bears on this issue.

Measure 37 received considerable attention in the state's newspapers, but none of the articles or editorials we have seen discuss whether a decision to grant non-monetary relief would be personal or run with the land. Like the Voters' Pamphlet, the newspaper commentary we have reviewed does not address whether subsequent purchasers would acquire the rights, or step into the shoes, of owners covered by the measure. The same appears to be true of the television advertising on this measure.

> "(5) *The lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued.* Alteration of any such use may be permitted subject to subsection (9) of this section. Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use. Except as provided in ORS 215.215, a county shall not place conditions upon the continuation or alteration of a use described under this subsection when necessary to comply with state or local health or safety requirements, or to maintain in good repair the existing structures associated with the use. *A change of ownership or occupancy shall be permitted.*" (emphasis added.)

This statute allows the continuation of uses that have been made unlawful by a subsequent change in the law. But if a decision to grant non-monetary relief under Measure 37 is personal to the owner, uses covered by an decision would be made unlawful not by a change in the law but by a change in ownership, which does not come under ORS 215.130. Therefore, voters whose decision to support the measure was motivated by the arguments about subdivision restrictions presumably expected either that a decision to grant non-monetary relief would run with the land or that existing law would not require that a subdivision be undone upon the property's sale. Additional legislation may be needed to implement that intent.

[5] The argument in the Voters Pamphlet states:

> "If the current owner sells an interest in her property, so long as the current owner still has a current possessory interest, or a reversionary interest in the property, the provisions of Ballot Measure 37 apply using the date the current owner acquired the property. Only if a current owner sells all of her interest in a piece of property does the date of acquisition change for purposes of determining what regulations are subject to Ballot Measure 37 protections."

Voters' Pamphlet, Volume 1 - State Measures, Oregon Vote by Mail General Election, November 2, 2004, at page 113. Argument in Favor furnished by Dorothy English, Barbara Prete and Eugene Prete.

In conclusion, the phrases "to allow the owner to use the property for a use permitted at the time the owner acquired the property" and "the owner shall be allowed to use the property as permitted at the time the owner acquired the property," together with the definition of "owner" as "the present owner of the property, or any interest therein" are the only text that directly addresses whether a decision to grant non-monetary relief by "not applying" or modifying or removing a law applies to the present owner or to the property. Those phrases specify the minimum that a public body *must* do to avoid paying compensation, i.e. modify, remove or not apply the law to allow *present owner* to use the property as permitted at the time the *present owner* acquired it. Absent independent authority to amend, repeal or otherwise disregard the law at issue, *see* note 1 *supra*, we believe that those phrases also specify the maximum that a public body *may* do to avoid paying compensation. This interpretation is reinforced by other text, namely, the three means by which government may stop the law from applying, as the third means could never be used if all decisions to grant non-monetary relief were intended to run with the land. The measure's history is generally consistent with this interpretation as well and provides no justification for an interpretation at odds with the plain meaning of the measure's text.

Where a local government has discretion concerning whether or not to adopt the ordinance, local government may have authority to modify or repeal that ordinance with regard to both present and future property owners. However, where local government has adopted an ordinance to implement a requirement of state or federal law, Measure 37 authorizes that local government to waive the ordinance only as to the present owner of the property.[6] We therefore conclude that Measure 37 only authorizes government bodies to "modify, remove or not to [*sic*] apply" a law (as an alternative to compensation) that the government is otherwise required to apply where that decision is personal to the current owner of the property.

2. "Blanket Waivers"

Some local governments have expressed an intention to repeal laws in response to Ballot Measure 37, either on a wholesale basis (as applied to all persons and property) or on a more limited basis (for example, as applied to all owners of real property acquired before the effective date of the law in question). If a locally adopted law is required by state law, then subsections (8) and (10) permit a local body to *modify, remove or not apply* the law only with respect to a valid Measure 37 claim. That is, Measure 37 authorizes a public entity to modify, remove or not apply a local law that is required by state law only as to owners who have established valid claims under the measure. Cities or counties that repeal or amend local ordinances that are required by state law on a broader basis are, we believe, acting in violation of state law.

An owner establishes a valid Measure 37 claim only if the authorized public entity determines that a series of conditions are met, including:

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[6] ORS 197.646 generally requires a local government to amend its comprehensive plan and land use regulations to implement new land use statutes and land use goal and rules of the Land Conservation and Development Commission (LCDC).

- The public entity has enforced the law;
- The law restricts the use of private real property or any interest therein
- The law has the effect of reducing the fair market value of the claimant's property or any interest therein
- The owner of the property has made a written demand to the public entity
- The law was enacted after the date the claimant acquired the property
- The law does not restrict or prohibit activities commonly and historically recognized as public nuisances under common law;
- The law does not restrict or prohibit activities to protect public health and safety
- The law is not required to comply with federal law.

If any of those conditions is not satisfied, relief is not authorized by Ballot Measure 37. If the law or laws in question are ones that a city or county was required to adopt by state law, the city or county may not repeal or amend those laws except to the extent authorized by the measure. As a result, any ordinance that purports to waive otherwise applicable laws that are required by state law, without providing for the determinations set forth above to be made, is beyond the authority provided by Ballot Measure 37 and likely violates the state law that would otherwise require the local government to have the local law in question in place.

In the arena of land use, ORS 197.646 generally requires local governments to amend their comprehensive plans and land use regulations to implement new or amended statewide planning goals and rules, and land use statutes (such as ORS ch. 215). As a result, if a county were to "modify, remove or not apply" its own ordinance adopted to implement state law in response to a valid written demand made under Ballot Measure 37, it could do so only if it first determined that all of the conditions required for a claim to be valid and entitled to relief have been met.[7]

If you have any questions about this advice, please do not hesitate to contact me. The nature of this advice is necessarily general, and there may be aspects of existing state or local laws that require additional analysis as we work through questions arising from the implementation of this measure.

Very truly yours,

Stephanie Striffler
Special Counsel to the Attorney General

DNH:RMW:SLS:gvk/AG515162

[7] We expressly do not address whether such an action by a city or county would entitle a property owner to carry out a use. That question is beyond the scope of this advice.

_____ HISTORIC PRESERVATION ORDINANCE

SECTION 1. PURPOSE

The purpose of this ordinance is to provide for the identification, evaluation, designation, and protection of designated historic and prehistoric resources within the boundaries of _____ [LOCAL GOVERNMENT] and preserve and rehabilitate eligible historic properties within the _____ [LOCAL GOVERNMENT] for future generations through special valuation, a property tax incentive, as provided in Chapter 84.26 RCW in order to:

A. Safeguard the heritage of the _____ [CITY/COUNTY] as represented by those buildings, districts, objects, sites and structures which reflect significant elements of the _____ [LOCAL GOVERNMENT] history;

B. Foster civic and neighborhood pride in the beauty and accomplishments of the past, and a sense of identity based on the _____ [LOCAL GOVERNMENT] history;

C. Stabilize or improve the aesthetic and economic vitality and values of such sites, improvements and objects;

D. Assist, encourage and provide incentives to private owners for preservation, restoration, redevelopment and use of outstanding historic buildings, districts, objects, sites and structures;

E. Promote and facilitate the early identification and resolution of conflicts between preservation of historic resources and alternative land uses; and,

F. Conserve valuable material and energy resources by ongoing use and maintenance of the existing built environment.

SECTION 2. SHORT TITLE

The following sections shall be known and may be cited as the “historic preservation ordinance of _____ [LOCAL GOVERNMENT].”

SECTION 3. DEFINITIONS

The following words and terms when used in this ordinance shall mean as follows,

unless a different meaning clearly appears from the context:

A. "_____ [LOCAL GOVERNMENT] Historic Inventory" or "Inventory" means the comprehensive inventory of historic and prehistoric resources within the boundaries of the _____ [LOCAL GOVERNMENT].

B. "_____ [LOCAL GOVERNMENT] Historic Preservation Commission" or "Commission" means the commission created by Section ___ herein.

C. "_____ [LOCAL GOVERNMENT] Register of Historic Places", "Local Register", or "Register" means the listing of locally designated properties provided for in Section ___ herein.

D. "Actual Cost of Rehabilitation" means costs incurred within twenty-four months prior to the date of application and directly resulting from one or more of the following: a) improvements to an existing building located on or within the perimeters of the original structure; or b) improvements outside of but directly attached to the original structure which are necessary to make the building fully useable but shall not include rentable/habitable floor-space attributable to new construction; or c) architectural and engineering services attributable to the design of the improvements; or d) all costs defined as "qualified rehabilitation expenditures" for purposes of the federal historic preservation investment tax credit.

E. A "building" is a structure constructed by human beings. This includes both residential and nonresidential buildings, main and accessory buildings.

F. "Certificate of Appropriateness" means the document indicating that the commission has reviewed the proposed changes to a local register property or within a local register historic district and certified the changes as not adversely affecting the historic characteristics of the property which contribute to its designation.

G. "Certified Local Government" or "CLG" means the designation reflecting that the local government has been jointly certified by the State Historic Preservation Officer and the National Park Service as having established its own historic preservation commission and a program meeting Federal and State standards.

H. "Class of properties eligible to apply for Special Valuation in _____ [LOCAL GOVERNMENT]" means _____ [ALL/IDENTIFY SELECTED TYPES] properties listed on the National Register of Historic Places or certified as contributing to a National Register Historic District which have been substantially rehabilitated at a cost and within a time period which meets the requirements set forth in Chapter 84.26 RCW, until _____ [LOCAL GOVERNMENT] becomes a Certified Local Government (CLG). Once a CLG, the class of properties eligible to apply for Special Valuation in _____ [LOCAL GOVERNMENT] means only _____ [ALL/IDENTIFY SELECTED TYPES] properties listed on the _____ [LOCAL/LOCAL AND NATIONAL/NATIONAL] Register of Historic Places or properties certified as contributing to an _____ [LOCAL/LOCAL AND

NATIONAL/NATIONAL] Register Historic District which have been substantially rehabilitated at a cost and within a time period which meets the requirements set forth in Chapter 84.26 RCW.

I. "Cost" means the actual cost of rehabilitation, which cost shall be at least twenty-five percent of the assessed valuation of the historic property, exclusive of the assessed value attributable to the land, prior to rehabilitation.

J. A "district" is a geographically definable area urban or rural, small or large—possessing a significant concentration, linkage, or continuity of sites buildings, structures, and/or objects united by past events or aesthetically by plan or physical development.

K. "Emergency repair" means work necessary to prevent destruction or dilapidation to real property or structural appurtenances thereto immediately threatened or damaged by fire, flood, earthquake or other disaster.

L. "Historic property" means real property together with improvements thereon, except property listed in a register primarily for objects buried below ground, which is listed in a local register of a Certified Local Government or the National Register of Historic Places.

M. "Incentives" are such rights or privileges or combination thereof which the _____ [CITY/COUNTY] Council, or other local, state, or federal public body or agency, by virtue of applicable present or future legislation, may be authorized to grant or obtain for the owner(s) of Register properties. Examples of economic incentives include but are not limited to tax relief, conditional use permits, rezoning, street vacation, planned unit development, transfer of development rights, facade easements, gifts, preferential leasing policies, beneficial placement of public improvements or amenities, or the like.

N. "Local Review Board", or "Board" used in Chapter 84.26 RCW and Chapter 254-20 WAC for the special valuation of historic properties means the commission created in Section ___ herein.

O. "National Register of Historic Places" means the national listing of properties significant to our cultural history because of their documented importance to our history, architectural history, engineering, or cultural heritage.

P. An "object" is a thing of functional, aesthetic, cultural, historical, or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

Q. "Ordinary repair and maintenance" means work for which a permit issued by the _____ [LOCAL GOVERNMENT] is not required by law, and where the purpose and effect of such work is to correct any deterioration or decay of or damage to the real property or structure appurtenance therein and to restore the same, as nearly as may be practicable, to the condition prior to the occurrence of such deterioration, decay, or damage.

R. "Owner" of property is the fee simple owner of record as exists on the _____ [NAME OF COUNTY] County Assessor's records.

S. “Significance” or “significant” used in the context of historic significance means the following: a property with local, state, or national significance is one which helps in the understanding of the history or prehistory of the local area, state, or nation (whichever is applicable) by illuminating the local, statewide, or nationwide impact of the events or persons associated with the property, or its architectural type or style in information potential. The local area can include _____ [NAME OF CITY/TOWN], _____ [NAME OF COUNTY], or _____ [NAME OF REGION (e.g. southwest)] Washington, or a modest geographic or cultural area, such as a neighborhood. Local significance may apply to a property that illustrates a theme that is important to one or more localities; state significance to a theme important to the history of the state; and national significance to property of exceptional value in representing or illustrating an important theme in the history of the nation.

T. A “site” is a place where a significant event or pattern of events occurred. It may be the location of prehistoric or historic occupation or activities that may be marked by physical remains; or it may be the symbolic focus of a significant event or pattern of events that may not have been actively occupied. A site may be the location of ruined or now non-extant building or structure of the location itself possesses historic cultural or archaeological significance.

U. “Special Valuation for Historic Properties” or “Special Valuation” means the local option program which when implemented makes available to property owners a special tax valuation for rehabilitation of historic properties under which the assessed value of an eligible historic property is determined at a rate that excludes, for up to ten years, the actual cost of the rehabilitation. (Chapter 84.26 RCW).

V. “State Register of Historic Places” means the state listing of properties significant to the community, state, or nation but which may or may not meet the criteria of the National Register.

W. A “structure” is a work made up of interdependent and interrelated parts in a definite pattern of organization. Generally constructed by man, it is often an engineering project.

X. “Universal Transverse Macerator” or “UTM” means the grid zone in metric measurement providing for an exact point of numerical reference.

Y. “Waiver of a Certificate of Appropriateness” or “Waiver” means the document indicating that the commission has reviewed the proposed whole or partial demolition of a local register property or in a local register historic district and failing to find alternatives to demolition has issued a waiver of a Certificate of Appropriateness which allows the building or zoning official to issue a permit for demolition.

Z. “Washington State Advisory Council’s Standards for the Rehabilitation and Maintenance of Historic Properties” or “State Advisory’s Council’s Standards” means the rehabilitation and maintenance standards used by the _____ [LOCAL GOVERNMENT] Historic Preservation Commission as minimum requirements for determining whether or not an historic

property is eligible for special valuation and whether or not the property continues to be eligible for special valuation once it has been so classified.

SECTION 4. _____ HISTORIC COMMISSION

A. Creation and Size

There is hereby established a _____ [LOCAL GOVERNMENT] Historic Preservation Commission, consisting of _____ [5 - 15] members, as provided in subsection ___ below. Members of the _____ [LOCAL GOVERNMENT] Historic Preservation Commission shall be appointed by the _____ [TITLE OF CHIEF LOCAL ELECTED OFFICIAL] and approved by the _____ [CITY/COUNTY] Council and shall be residents of the _____ [CITY/COUNTY], except as provided in subsection ____ below.

B. Composition of the Commission

1. All members of the commission must have a demonstrated interest and competence in historic preservation and possess qualities of impartiality and broad judgement.
2. The commission shall always include at least _____ [INDICATE NUMBER] professionals who have experience in identifying, evaluating, and protecting historic resources and are selected from among the disciplines of architecture, history, architectural history, planning, prehistoric and historic archaeology, folklore, cultural anthropology, curation, conservation, and landscape architecture, or related disciplines [CHOOSE ONE, SEVERAL, OR ALL DISCIPLINES]. The commission action that would otherwise be valid shall not be rendered invalid by the temporary vacancy of one or all of the professional positions, unless the commission action is related to meeting Certified Local Government (CLG) responsibilities cited in the Certification Agreement between the _____ [TITLE OF CHIEF LOCAL ELECTED OFFICIAL] and the State Historic Preservation Officer on behalf of the State. Furthermore, exception to the residency requirement of commission members may be granted by the _____ [TITLE OF CHIEF LOCAL ELECTED OFFICIAL] and _____ [CITY/COUNTY] Council in order to obtain representatives from these disciplines.
3. In making appointments, the _____ [TITLE OF CHIEF LOCAL ELECTED OFFICIAL] may consider names submitted from any source, but the _____ [TITLE OF CHIEF LOCAL ELECTED OFFICIAL] shall notify history and _____ [CITY/COUNTY] development related organizations of vacancies so that names of interested and qualified individuals may be submitted by such organizations for consideration along with names from any other source.

C. Terms

The original appointment of members to the commission shall be as follows (this example is for a commission of seven): three (3) for two (2) years, two (2) for three (3) years; and two (2) for four (4) years. Thereafter, appointments shall be made for a three (3) year term. Vacancies shall be filled by the _____ [TITLE OF

CHIEF LOCAL ELECTED OFFICIAL] for the unexpired term in the same manner as the original appointment.

D. Powers and Duties

The major responsibility of the Historic Preservation Commission is to identify and actively encourage the conservation of the _____ [CITY'S/COUNTY'S] historic resources by initiating and maintaining a register of historic places and reviewing proposed changes to register properties; to raise community awareness of the _____ [CITY'S/COUNTY'S] history and historic resources; and to serve as the _____ [CITY'S/COUNTY'S] primary resource in matters of history, historic planning, and preservation.

In carrying out these responsibilities, the Historic Preservation Commission shall engage in the following:

1. Conduct and maintain a comprehensive inventory of historic resources within the boundaries of the _____ [LOCAL GOVERNMENT] and known as the _____ [LOCAL GOVERNMENT] Historic Inventory, and publicize and periodically update inventory results. Properties listed on the inventory shall be recorded on official zoning records with an "HI" (for historic inventory designation). This designation shall not change or modify the underlying zone classification.
2. Initiate and maintain the _____ [LOCAL GOVERNMENT] Register of Historic Places. This official register shall be compiled of buildings, structures, sites, objects, and districts identified by the commission as having historic significance worthy of recognition and protection by the _____ [LOCAL GOVERNMENT] and encouragement of efforts by owners to maintain, rehabilitate, and preserve properties.
3. Review nominations to the _____ [LOCAL GOVERNMENT] Register of Historic Places according to criteria in Section ____ of this ordinance and adopt standards in its rules to be used to guide this review.
4. Review proposals to construct, change, alter, modify, remodel, move, demolish, or significantly affect properties or districts on the register as provided in Section ____; and adopt standards in its rules to be used to guide this review and the issuance of a certificate of appropriateness or waiver.
5. Provide for the review either by the commission or its staff of all applications for approvals, permits, environmental assessments or impact statements, and other similar documents pertaining to identified historic resources or adjacent properties.
6. Conduct all commission meetings in compliance with Chapter 42.30 RCW, Open Public Meetings Act, to provide for adequate public participation and adopt standards in its rules to guide this action.
7. Participate in, promote and conduct public information, educational and interpretive programs pertaining to historic and prehistoric resources.
8. Establish liaison support, communication and cooperation with federal, state, and other local government entities which will further historic preservation objectives, including public education, within the _____ [LOCAL GOVERNMENT] area.
9. Review and comment to the _____ [CITY/COUNTY] Council on land use, housing and redevelopment, municipal improvement and other types of planning and programs undertaken by any agency of the _____

[LOCAL GOVERNMENT], other neighboring communities, the _____ [COUNTY], the state or federal governments, as they relate to historic resources of the _____ [LOCAL GOVERNMENT].

10. Advise the _____ [CITY/COUNTY] Council and the Chief Local Elected Official generally on matters of _____ [LOCAL GOVERNMENT] history and historic preservation.
11. Perform other related functions assigned to the Commission by the _____ [CITY/COUNTY] Council or the Chief Local Elected Official.
12. Provide information to the public on methods of maintaining and rehabilitating historic properties. This may take the form of pamphlets, newsletters, workshops, or similar activities.
13. Officially recognize excellence in the rehabilitation of historic buildings, structures, sites and districts, and new construction in historic areas; and encourage appropriate measures for such recognition.
14. Be informed about and provide information to the public and _____ [CITY/COUNTY] departments on incentives for preservation of historic resources including legislation, regulations and codes which encourage the use and adaptive reuse of historic properties.
15. Review nominations to the State and National Registers of Historic Places.
16. Investigate and report to the _____ [CITY/COUNTY] Council on the use of various federal, state, local or private funding sources available to promote historic resource preservation in the _____ [LOCAL GOVERNMENT].
17. Serve as the local review board for Special Valuation and:
    a) Make determination concerning the eligibility of historic properties for special valuation;
    b) Verify that the improvements are consistent with the Washington State Advisory Council's Standards for Rehabilitation and Maintenance:
    c) Enter into agreements with property owners for the duration of the special valuation period as required under WAC 254-20-070(2);
    d) Approve or deny applications for special valuation;
    e) Monitor the property for continued compliance with the agreement and statutory eligibility requirements during the 10 year special valuation period; and
    f) Adopt bylaws and/or administrative rules and comply with all other local review board responsibilities identified in Chapter 84.26 RCW.
18. The commission shall adopt rules of procedure to address items 3, 4, 6, and 18 inclusive.

E. Compensation

All members shall serve _____ [WITH/WITHOUT] compensation.

F. Rules and Officers

The commission shall establish and adopt its own rules of procedure, and shall select from among its membership a chairperson and such other officers as may be necessary to conduct the commission's business.

G. Commission Staff

Commission and professional staff assistance shall be provided by the _____ [TITLE OF LOCAL GOVERNMENT PERSONNEL OR INDICATE USE OF A QUALIFIED CONSULTANT] with additional assistance and information to be provided by other _____ [CITY/COUNTY] departments as may be necessary to aid the commission in carrying out its duties and responsibilities under this ordinance.

SECTION 5. _____ REGISTER OF HISTORIC PLACES

A. Criteria for Determining Designation in the Register

Any building, structure, site, object, or district may be designated for inclusion in the _____ [NAME OF LOCAL REGISTER] if it is significantly associated with the history, architecture, archaeology, engineering, or cultural heritage of the community; if it has integrity; is at least 50 years old, or is of lesser age and has exceptional importance; and if it falls in at least one of the following categories. [SELECT ANY OR ALL OF THE CATEGORIES AND INCLUDE ADDITIONAL CATEGORIES IF DESIRED]

1. Is associated with events that have made a significant contribution to the broad patterns of national, state, or local history.
2. Embodies the distinctive architectural characteristics of a type, period, style, or method of design or construction, or represents a significant and distinguishable entity whose components may lack individual distinction.
3. Is an outstanding work of a designer, builder, or architect who has made a substantial contribution to the art.
4. Exemplifies or reflects special elements of the _____ [CITY'S/COUNTY'S] cultural, special, economic, political, aesthetic, engineering, or architectural history.
5. Is associated with the lives of persons significant in national, state, or local history.
6. Has yielded or may be likely to yield important archaeological information related to history or prehistory.
7. Is a building or structure removed from its original location but which is significant primarily for architectural value, or which is the only surviving structure significantly associated with an historic person or event.
8. Is a birthplace or grave of an historical figure of outstanding importance and is the only surviving structure or site associated with that person.
9. Is a cemetery which derives its primary significance from age, from distinctive design features, or from association with historic events, or cultural patterns.
10. Is a reconstructed building that has been executed in an historically accurate manner on the original site.
11. Is a creative and unique example of folk architecture and design created by persons not formally trained in the architectural or design professions, and which does not fit into formal architectural or historical categories.

B. Process for Designating Properties or Districts to the _____ [NAME OF LOCAL REGISTER]

1. _____ [ONLY PROPERTY OWNERS/ COMMISSION MEMBERS/ANY PERSON] may nominate a building, structure, site, object, or district for inclusion in the _____ [NAME OF LOCAL REGISTER]. Members of the Historic Preservation Commission or the commission as a whole may generate nominations. In its designation decision, the commission shall consider the _____ [NAME OF INVENTORY] and the _____ [CITY/COUNTY] Comprehensive Plan.
2. In the case of individual properties, the designation shall include the UTM reference and all features—interior and exterior—and outbuildings that contribute to its designation.
3. In the case of districts, the designation shall include description of the boundaries of the district; the characteristics of the district justifying its designation; and a list of all properties including features, structures, sites, and objects contributing to the designation of the district.
4. The Historic Preservation Commission shall consider the merits of the nomination, according to the criteria in Section ____ and according to the nomination review standards established in rules, at a public meeting. Adequate notice will be given to the public, the owner(s) and the authors of the nomination, if different, and lessees, if any, of the subject property prior to the public meeting according to standards for public meetings established in rules and in compliance with Chapter 42.30 RCW, Open Public Meetings Act. Such notice shall include publication in a newspaper of general circulation in _____, [LOCAL GOVERNMENT] and any other form of notification deemed appropriate by ____ [LOCAL GOVERNMENT]. If the commission finds that the nominated property is eligible for the _____ [NAME OF LOCAL REGISTER], the commission _____ [SHALL LIST THE PROPERTY IN THE REGISTER/SHALL LIST THE PROPERTY IN THE REGISTER WITH OWNER'S CONSENT/MAKE RECOMMENDATION TO THE _____ (City/County) COUNCIL THAT THE PROPERTY BE LISTED IN THE REGISTER/MAKE RECOMMENDATION TO THE _____ (City/County) THAT THE PROPERTY BE LISTED IN THE REGISTER WITH OWNER'S CONSENT.] In the case of historic districts, the commission shall consider [A SIMPLE MAJORITY OF PROPERTY OWNERS/___PERCENTAGE OF PROPERTY OWNERS] to be adequate for owner consent. Owner consent and notification procedures in the case of districts shall be further defined in rules. The public, property owner(s) and the authors of the nomination, if different, and lessees, if any, shall be notified of the listing.
5. Properties listed on the _____ [NAME OF LOCAL REGISTER] shall be recorded on official zoning records with an "HR" (for Historic Register) designation. This designation shall not change or modify the underlying zone classification.

C. Removal of Properties from the Register

In the event that any property is no longer deemed appropriate for designation to the _____ [NAME OF LOCAL REGISTER], the commission may initiate removal from such designation by the same procedure as provided for in establishing the designation, Section ____. A property _____ [MAY/MAY NOT] be removed from the _____ [NAME OF THE LOCAL REGISTER] without the owner's consent.

D. Effects of Listing on the Register

1. Listing on the _____ [NAME OF LOCAL REGISTER] is an honorary designation denoting significant association with the historic, archaeological, engineering, or cultural heritage of the community. Properties are listed individually or as contributing properties to an historic district.
2. Prior to the commencement of any work on a register property, excluding ordinary repair and maintenance and emergency measures defined in Section ____, the owner must request and receive a Certificate of Appropriateness from the commission for the proposed work. Violation of this rule shall be grounds for the commission to review the property for removal from the register.
3. Prior to whole or partial demolition of a register property, the owner must request and receive a waiver of a Certificate of Appropriateness.
4. Once _____ [NAME OF THE LOCAL GOVERNMENT] is certified as a Certified Local Government (CLG), _____ [ALL/IDENTIFY SELECTED TYPES] properties listed on the _____ [NAME OF LOCAL REGISTER] may be eligible for Special Tax Valuation on their rehabilitation (Section ___).

SECTION 6. REVIEW OF CHANGES TO _____ REGISTER OF HISTORIC PLACES PROPERTIES

A. Review Required

No person shall change the use, construct any new building or structure, or reconstruct, alter, restore, remodel, repair, move, or demolish any existing property on the _____ [NAME OF LOCAL REGISTER] or within an historic district on the _____ [NAME OF LOCAL REGISTER] without review by the commission and without receipt of a Certificate of Appropriateness, or in the case of demolition, a waiver, as a result of the review.

The review shall apply to all features of the property, interior and exterior, that contribute to its designation and are listed on the nomination form. Information required by the commission to review the proposed changes are established in rules.

B. Exemptions

The following activities do not require a Certificate of Appropriateness or review by the commission: ordinary repair and maintenance—which includes painting—or

emergency measures defined in Section ___.

C. Review Process

1. **Requests for Review and Issuance of a Certificate of Appropriateness or Waiver**
   The building or zoning official shall report any application for a permit to work on a designated _____ [NAME OF LOCAL REGISTER] Register property or in a _____ [NAME OF LOCAL REGISTER] historic district to the commission. If the activity is not exempt from review, the commission or professional staff shall notify the applicant of the review requirements. The building or zoning official shall not issue any such permit until a Certificate of Appropriateness or a waiver is received from the commission but shall work with the commission in considering building and fire code requirements.

2. **Commission Review**
   The owner or his/her agent (architect, contractor, lessee, etc.) shall apply to the commission for a review of proposed changes on a _____ [NAME OF LOCAL REGISTER] property or within a _____ [NAME OF LOCAL REGISTER] historic district and request a Certificate of Appropriateness or, in the case of demolition, a waiver. Each application for review of proposed changes shall be accompanied by such information as is required by the commission established in its rules for the proper review of the proposed project.

   The commission shall meet with the applicant and review the proposed work according to the design review criteria established in rules. Unless legally required, there shall be no notice, posting, or publication requirements for action on the application, but all such actions shall be made at regular meetings of the commission. The commission shall complete its review and make its recommendations within thirty (30) calendar days of the date of receipt of the application. If the commission is unable to process the request, the commission may ask for an extension of time.

   The commission's recommendations shall be in writing and shall state the findings of fact and reasons relied upon in reaching its decision. Any conditions agreed to by the applicant in this review process shall become conditions of approval of the permits granted. If the owner agrees to the commission's recommendations, a Certificate of Appropriateness shall be awarded by the commission according to standards established in the commission's rules.

   The commission's recommendations and, if awarded, the Certificate of Appropriateness shall be transmitted to the building or zoning official. If a Certificate of Appropriateness is awarded, the building or zoning official may then issue the permit.

3. **Demolition**
   A waiver of the Certificate of Appropriateness is required before a permit may be issued to allow whole or partial demolition of a designated _____ [NAME OF LOCAL REGISTER] property or in a _____ [NAME OF LOCAL REGISTER] historic district. The owner or his/her agent shall apply to the commission for a review of the proposed demolition and request a waiver. The applicant shall meet with the commission in an attempt to find alternatives to demolition. These negotiations may last no longer than 45 calendar days from

the initial meeting of the commission, unless either party requests an extension. If no request for an extension is made and no alternative to demolition has been agreed to, the commission shall act and advise the official in charge of issuing a demolition permit of the approval or denial of the waiver of a Certificate of Appropriateness. Conditions in the case of granting a demolition permit may include allowing the commission up to 45 additional calendar days to develop alternatives to demolition. When issuing a waiver the board may require the owner to mitigate the loss of the _____ [NAME OF LOCAL REGISTER] property by means determined by the commission at the meeting. Any conditions agreed to by the applicant in this review process shall become conditions of approval of the permits granted. After the property is demolished, the commission shall initiate removal of the property from the register.

4. **Appeal of Approval or Denial of a Waiver of a Certificate of Appropriateness.**
   The commission's decision regarding a waiver of a Certificate of Appropriateness may be appealed to the _____ [CITY/COUNTY] Council within ten days. The appeal must state the grounds upon which the appeal is based.

   The appeal shall be reviewed by the council only on the records of the commission. Appeal of Council's decision regarding a waiver of a Certificate of Appropriateness may be appealed to Superior Court.

SECTION 7. REVIEW AND MONITORING OF PROPERTIES FOR SPECIAL PROPERTY TAX VALUATION

A. Time Lines

1. Applications shall be forwarded to the commission by the assessor within 10 calendar days of filing.
2. Applications shall be reviewed by the commission before December 31 of the calendar year in which the application is made.
3. Commission decisions regarding the applications shall be certified in writing and filed with the assessor within 10 calendar days of issuance.

B. Procedure

1. The assessor forwards the application(s) to the commission.
2. The commission reviews the application(s), consistent with its rules of procedure, and determines if the application(s) are complete and if the properties meet the criteria set forth in WAC 254-20-070(1) and listed in Section ___ of this ordinance.
   a. If the commission finds the properties meet all the criteria, then, on behalf of the _____ [LOCAL GOVERNMENT], it enters into an Historic Preservation Special Valuation Agreement (set forth in WAC 254-20-120 and in Section ___ of this ordinance) with the owner. Upon execution of the agreement between the owner and commission, the commission approves the application(s).
   b. If the commission determines the properties do not meet all the criteria, then it shall deny the application(s).
3. The commission certifies its decisions in writing and states the facts upon which

the approvals or denials are based and files copies of the certifications with the assessor.

4. For approved applications:
   a. The commission forwards copies of the agreements, applications, and supporting documentation (as required by WAC 254-20-090 (4) and identified in Section ___ of this ordinance) to the assessor,
   b. Notifies the state review board that the properties have been approved for special valuation, and
   c. Monitors the properties for continued compliance with the agreements throughout the 10-year special valuation period.
5. The commission determines, in a manner consistent with its rules of procedure, whether or not properties are disqualified from special valuation either because of
   a. The owner's failure to comply with the terms of the agreement or
   b. Because of a loss of historic value resulting from physical changes to the building or site.
6. For disqualified properties, in the event that the commission concludes that a property is no longer qualified for special valuation, the commission shall notify the owner, assessor, and state review board in writing and state the facts supporting its findings.

C. Criteria

1. **Historic Property Criteria:**
   The class of historic property eligible to apply for Special Valuation in _____ [LOCAL GOVERNMENT] means _____ [ALL/IDENTIFY SELECTED TYPES] properties listed on the National Register of Historic Places or certified as contributing to a National Register Historic District which have been substantially rehabilitated at a cost and within a time period which meets the requirements set forth in Chapter 84.26 RCW, until _____ [LOCAL GOVERNMENT] becomes a Certified Local Government (CLG). Once a CLG, the class of property eligible to apply for Special Valuation in _____ [LOCAL GOVERNMENT] means [ONLY] _____ [ALL/IDENTIFY SELECTED TYPES] properties listed on the _____ [LOCAL/LOCAL AND NATIONAL/NATIONAL] Register of Historic Places or properties certified as contributing to an _____ [LOCAL/LOCAL AND NATIONAL/NATIONAL] Register Historic District which have been substantially rehabilitated at a cost and within a time period which meets the requirements set forth in Chapter 84.26 RCW.

2. **Application Criteria:**
   Complete applications shall consist of the following documentation:
   a. A legal description of the historic property,
   b. Comprehensive exterior and interior photographs of the historic property before and after rehabilitation,
   c. Architectural plans or other legible drawings depicting the completed rehabilitation work, and
   d. A notarized affidavit attesting to the actual cost of the rehabilitation work completed prior to the date of application and the period of time during which the work was performed and documentation of both to be made

available to the commission upon request, and

e. For properties located within historic districts, in addition to the standard application documentation, a statement from the secretary of the interior or appropriate local official, as specified in local administrative rules or by the local government, indicating the property is a certified historic structure is required.

3. **Property Review Criteria:**
In its review the commission shall determine if the properties meet all the following criteria:

a. The property is historic property;
b. The property is included within a class of historic property determined eligible for Special Valuation by the _____ [LOCAL GOVERNMENT] under Section ___ of this ordinance;
c. The property has been rehabilitated at a cost which meets the definition set forth in RCW 84.26.020(2) (and identified in Section ___ of this ordinance) within twenty-four months prior to the date of application; and
d. The property has not been altered in any way which adversely affects those elements which qualify it as historically significant as determined by applying the Washington State Advisory Council's Standards for the Rehabilitation and Maintenance of Historic Properties (WAC 254-20-100(1) and listed in Section ___ of this ordinance).

4. **Rehabilitation and Maintenance Criteria:**

The Washington State Advisory Council's Standards for the Rehabilitation and Maintenance of Historic Properties in WAC 254-20-100 shall be used by the commission as minimum requirements for determining whether or not an historic property is eligible for special valuation and whether or not the property continues to be eligible for special valuation once it has been so classified.

D. Agreement:

The historic preservation special valuation agreement in WAC 254-20-120 shall be used by the commission as the minimum agreement necessary to comply with the requirements of RCW 84.26.050(2).

E. Appeals:

Any decision of the commission acting on any application for classification as historic property, eligible for special valuation, may be appealed to Superior Court under Chapter 34.05.510 -34.05.598 RCW in addition to any other remedy of law. Any decision on the disqualification of historic property eligible for special valuation, or any other dispute, may be appealed to the County Board of Equalization.

Date: Sun, 18 Feb 2007 13:54:45 -0500

To: <NAPC@uga.edu>

Here is some info on our neighborhood architectural conservation district project attached and below.

The Massachusetts Historical Commission has defined a Neighborhood Architectural Conservation District as a group of buildings and their settings that are architecturally and/or historically distinctive and worthy of protection based on their contribution to the architectural, cultural, political, economic or social history of the community.

A Neighborhood Architectural Conservation District bylaw protects the overall character of the neighborhood by regulating the demolition of significant buildings and making sure new construction respects the scale, massing, setback and materials of the historic structures.

A Neighborhood Architectural Conservation District is established through passage of a bylaw or ordinance by majority vote of town meeting or city council. The bylaw or ordinance establishing a neighborhood architectural conservation district seeks to encourage the protection of the built environment and its setting through a combination of binding and non-binding regulatory review.

The majority of proposed changes to exterior architectural features in a neighborhood architectural conservation district are anticipated to be either exempt from review or subject to non-binding advisory review. Only major alterations, additions, demolitions and new construction are expected to receive a binding regulatory review. Paint color is entirely exempt from review in a neighborhood architectural conservation district. Neighborhood architectural conservation district reviews are triggered by an application for a building (or demolition) permit. If a project does not require a building (or demolition) permit, then the project is exempt. The review is carried out by a locally-appointed neighborhood architectural conservation district commission (which may also be the local historical commission) and/or delegated to municipal staff.

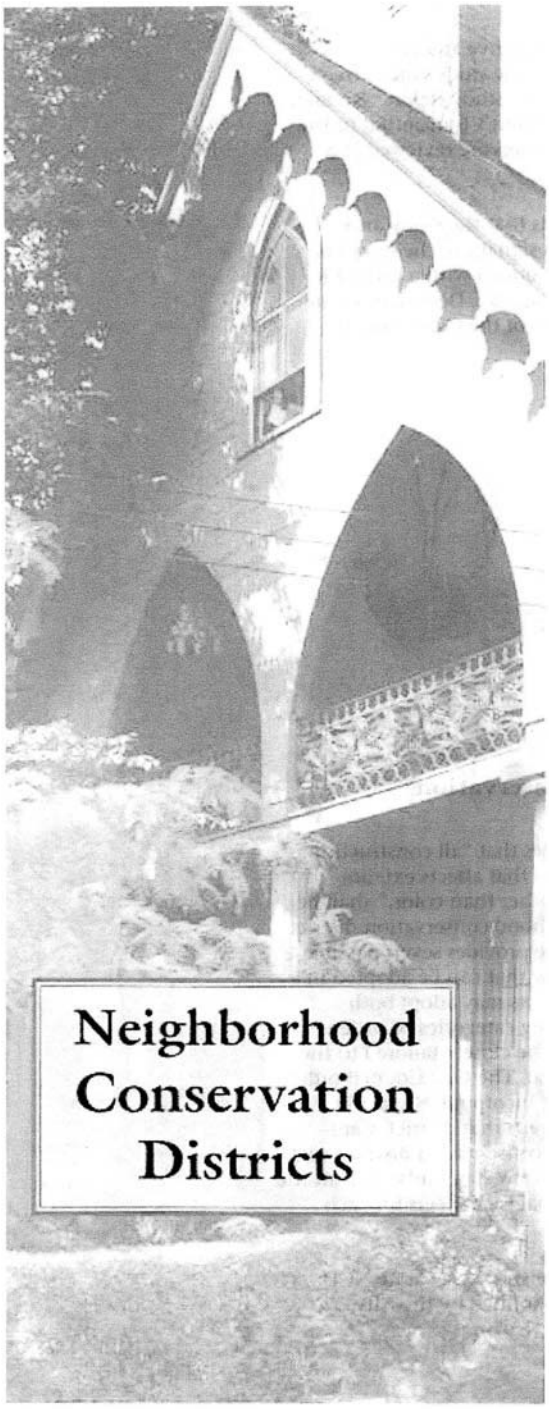
Through the advisory level review of minor projects, it is hoped that property owners will realize that changes such as replacement windows, removal of architectural trim and installation of artificial siding are incompatible with the district and change their mind.

A neighborhood architectural conservation district is initiated by residents of the neighborhood and established by town meeting or city council vote only after a study process by an appointed neighborhood architectural conservation district study committee that prepares a report detailing their findings and recommendations. Through neighborhood meetings and public input, the study committee determines whether neighborhood consensus has been reached on the boundaries, administrative procedures, bylaw or ordinance review authority, and design guidelines. The study committee then votes to forward the study report to town meeting or city council for their approval.

It is expected that the architectural resources in a neighborhood architectural conservation district have lost some integrity and that the additional protections afforded by a local historic district are unwarranted. A neighborhood architectural conservation district bylaw is distinguished from a local historic district bylaw or ordinance by numerous categorical exemptions and non-binding advisory reviews.

A Neighborhood Architectural conservation district is distinguished from a demolition delay bylaw or ordinance because it can permanently prevent major alterations, demolitions, additions and new construction that are incompatible with the district while a demolition delay bylaw or ordinance can only delay demolitions.

With its substantial exemptions, advisory reviews and streamlined review procedures, a neighborhood architectural conservation district should have broad appeal to residents, neighborhoods and local officials statewide.



Neighborhood Conservation Districts in Cambridge

Protecting Neighborhood Character

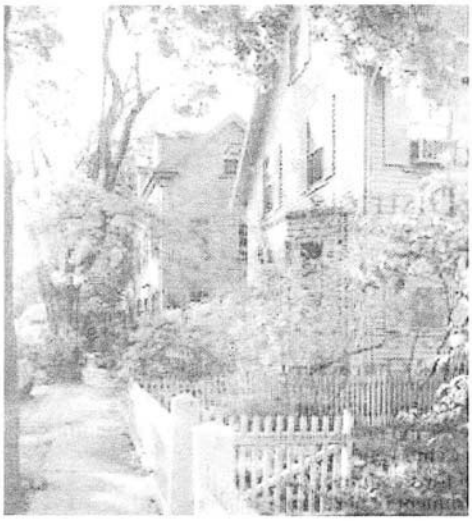
In 1983, the Cambridge City Council adopted legislation designed to preserve and protect areas and buildings significant in Cambridge's history. Article III of Chapter 2.78 of the Cambridge City Code allows for the "establishment of neighborhood conservation districts and protected landmarks."

Neighborhood conservation districts, or NCDs, are groups of buildings and their settings that are architecturally and historically distinctive; landmarks are individual buildings and structures whose design or history makes them worthy of preservation. Neighborhood conservation district designation recognizes the particular design qualities of distinctive neighborhoods and encourages their protection and maintenance for the benefit of the entire city.

Establishing Neighborhood Conservation Districts

According to Article III, the purpose of establishing a neighborhood conservation district is

> *to conserve and protect the beauty and heritage of the City of Cambridge and to improve the quality of its environment through . . . conservation and maintenance of neighborhoods . . . which constitute or reflect distinctive features of the architectural, cultural, political, economic or social history of the City; to resist and restrain environmental influences adverse to this purpose; to foster appropriate use and*



wider public knowledge and appreciation of such neighborhoods . . . and by furthering these purposes to promote the public welfare by making the City a more attractive and desirable place in which to live and work.

The district designation process is initiated when ten registered voters petition the Commission to study a neighborhood for that purpose. The Commission itself may begin the study of a district, but, in general, neighborhood conservation districts develop out of residents' concern over issues that threaten their neighborhood's character. If the Commission finds the proposed area eligible for study and votes to accept the petition, a year-long period of study commences during which the proposed district is protected as if it were already designated. This "interim protection" period requires that the Commission review and approve any proposed alterations to properties in the study area before a building permit is issued.

During the interim protection period, a study committee is appointed by the City Manager to report on the merits of the proposed district and to recommend the boundaries and type of regulatory authority needed to protect it. A staff member from the Historical Commission assists the committee. The study involves canvassing neighbors and holding meetings to arrive at a consensus on the district's regulation. The study committee's findings are presented in a study report. No later than 45 days after the report's transmittal to the Commission, those findings are reviewed at a public hearing.

If the Commission finds that the study area meets the criteria for designation, the report is forwarded to the City Council with a favorable recommendation to designate. Designations are made by a majority vote of the City Council.

Neighborhood Conservation District Controls

Article III generally states that "all construction, demolition or alteration that affects exterior architectural features, other than color," shall be reviewed in a neighborhood conservation district. However, the ordinance provides seven possible exemptions from review that can be adopted in a particular district. Districts may adopt both binding and non-binding categories of review, allowing regulations to be closely tailored to the needs of a neighborhood. The City Council order establishing the district incorporates specific review standards to govern that district. Cambridge's neighborhood conservation districts each incorporate different review standards; consult the web site or the individual Fact Sheets for each NCD's review standards.

When a district is established, a separate NCD commission may be appointed by the City

Manager or the district may be administered by the Historical Commission itself. Neighborhood conservation district commissions consist of five members and three alternates and include a mix of district residents and professionals in real estate, architecture, or historic preservation. A member of the Historical Commission serves on each NCD commission. The NCD commission (or the Historical Commission, if it is administering the district) is empowered to approve, before work begins, any new construction, demolition, or alteration that will be visible from any public way or place. No such work can be undertaken, nor can a building permit be obtained, until the commission has issued a Certificate of Appropriateness, Non-Applicability, or Hardship.

Questions and Answers for Property Owners

What is a Certificate of Appropriateness?

A Certificate of Appropriateness is a document issued by the NCD Commission or Historical Commission permitting alterations to the publicly-visible exterior architectural features (other than color) of properties in the NCD. It certifies that the alterations are not "incongruous to the historic aspects, architectural significance or the distinctive character of the . . . neighborhood conservation district."

The certificate incorporates plans and specifications submitted as evidence of the proposed work and forms the basis of the commission's agreement with the applicant on how changes can be made to the property. Certificates are valid for six months from the date of issue. They can be extended once for a further six months each, on the written approval of the Commission chair.

Do I need a certificate for interior work?

A certificate must be obtained from the Historical or NCD Commission before the Inspectional Services Department will issue a building permit. A Certificate of Non-Applicability will be issued for changes that affect interiors, color, exterior architectural features not visible from a public way, or other areas not under the commission's jurisdiction. This signifies that the commission's jurisdiction does not apply to the kind of work proposed.

If the work proposed in the application clearly lies in an area not regulated by the commission, Certificates of Non-Applicability can be issued by the Commission staff on receipt of an application and without a public hearing.

Are there other kinds of certificates?

Yes. A commission may issue a Certificate of Hardship for work that is otherwise inappropriate if it determines, at a public hearing, that failure to approve an application would entail a substantial hardship, financial or otherwise, and that the work would not be a significant detriment to the neighborhood conservation district.

Regardless of the type of certificate needed, no property in a neighborhood conservation district may undergo construction, alteration, or demolition unless the NCD commission, the Historical Commission, or the Commission staff has first issued a certificate for the work proposed. Once the proper certificate has been issued, a building permit can be obtained and the work can proceed.

How do I apply for a certificate?

Applications for certificates are available on the web site and at the Cambridge Historical Commission office. Instructions for completing the application and a list of required attachments are included on the form. Completed applications should be returned to the Historical Commission office. Deadlines for submitting applications may be obtained on the web site or by calling the Historical Commission office.

How does the commission conduct its review?

Applications for all changes within the commission's jurisdiction are brought to a public hearing, which provides an open forum for discussion. Abutters to the property, the City Clerk, and any others deemed to be affected are notified of the hearing. In addition, the commission is required to advertise its hearings in a newspaper of general circulation fourteen days in advance.

' there standards for the commission's review?

ticle III directs commissions conducting reviews consider "the historic and architectural value d significance of the site or structure, the neral design, arrangement, texture and material the features involved, and the relation of such itures to similar features of structures in the rrounding area." The commission can set 'icter standards for development than those owed by zoning. However, color, interiors, and pects of the property not visible from a public ay cannot be regulated by the commission.

ıe commission also relies on standards con- ined in the NCD order. These may be based on oader standards, such as the Secretary of the terior's Standards for Rehabilitation, but each eighborhood conservation district order incor- orates specific criteria tailored to the district. For rther information, consult the order for each CD. Additional information is also available on e web site, in Fact Sheets for the Avon Hill, Half rown, Marsh and Mid Cambridge NCDs, in the actical Guide to the Harvard Square Conser- ıtion District, and in application forms for ch district.

oes being in a neighborhood conservation district can that I can never change the appearance of my operty?

o. Properties in neighborhood conservation stricts are not frozen in time. District protection designed to ensure that a neighborhood's stinctive qualities are considered when changes cur. Many routine and minor changes are viewed administratively by the Historical ommission staff. Other changes may be viewed by an NCD commission in an advisory, on-binding capacity. Binding reviews may be served for major changes, such as demolition, ew construction, and major exterior alteration, for especially significant buildings, such as ıose on the National Register of Historic Places.

eighborhood conservation district commissions ork with applicants to develop design solutions ıat respect both the neighborhood's significant ıalities and the needs of the property owner. he Historical Commission staff is also available) discuss proposed alterations informally.

Sarah Colburn House, 7 Dana Street, 1841. Photo, 1964. (Jack Boucher, Historic American Buildings Survey)

Ash Street Place. Photo, 1978. (Richard Cheek, Cambridge Historical Commission)

Quincy Street from Broadway. Photo, ca. 1865. (Cambridge Historical Society)

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The formatted version of this document can be found on the Calvert County, Maryland website at: http://www.co.cal.md.us/references/documents/zoning/.

ARTICLE 7

SUBDIVISION REGULATIONS

SEE CUSTOMER ASSISTANCE GUIDE ENTITLED, "HOW TO SUBDIVIDE PROPERTY", AVAILABLE FROM THE DEPARTMENT OF PLANNING & ZONING, FOR ADDITIONAL INFORMATION.

7-1 SUBDIVISION REGULATIONS

Under the authority of Article 66B of the Annotated Code of Maryland, the following regulations governing the subdivision of land are hereby established for all areas of Calvert County except those within Incorporated Towns of the County.

7-1.01 Purpose

The purpose of these Regulations is to regulate and control the development of land within Calvert County, in order to promote the public health, safety and general welfare, and to assure sites suitable for building purposes and human habitation in a harmonious environment.

7-1.02 Effective Date

These Regulations shall take effect immediately upon adoption by the Calvert County Commissioners.

7-1.03 Controls and Application

A. Application. These Regulations shall apply to all new subdivisions and to extensions and revisions of recorded subdivisions, except for:

1 The division of land for purposes other than building development.

2. That portion of a divided tract which is not to be used for the purpose of building development.

Subdivision of land by court order.

B. Recording of Plats.

1. Minor Subdivision. The Secretary to the Planning Commission is responsible for submitting the approved Final Plat to the Clerk of the Circuit Court for recording in the Plat Records of the Clerk of the Circuit Court, or a copy of the Final Plat accompanied by a Recording of Plat Sheet may be recorded in the Land Records of the Clerk of the Circuit Court. Copies of the Final Plat shall be provided to the Department of Planning & Zoning by the developer for distribution to County and appropriate public agencies.

2. Major Subdivisions. The Secretary to the Planning Commission is responsible for submitting the approved Final Plat to the Clerk of The Circuit Court for recording in the Plat Records of the Clerk of the Circuit Court. Copies of the Final Plat shall be provided to the Department of Planning & Zoning by the developer for distribution to County and appropriate public agencies.

7-1.04 Transfer of Lots and Issuance of Building Permits

A. No lot or parcel in a subdivision subject to these regulations shall be transferred until:

1. a Public Works Agreement for the road improvements has been executed and

2. plat recording has been completed as per Section 7-1.03.B, and

3. the platted roads, sidewalks, and amenities (as required by final plat or preliminary approval letter) have been completed, or the base road construction has been completed and appropriate bond or acceptable guarantee has been provided and accepted by the County Commissioners for completion of roads, sidewalks, and amenities in the subdivision or that section of the subdivision in which the lot or parcel is located. The amount of the bond or guarantee shall be 125 percent of the estimated cost of completing construction, for the purpose of guaranteeing to the County that the developer will complete the construction within such time as may be proposed by the developer and approved by the County Commissioners. For County road specifications, see Calvert County Road Ordinance (Chapter 104 of the Code of Calvert County).

B. No building permits shall be issued for a structure improvement until a Public Works Agreement for the road has been executed and plat recording has been completed as per Section 7-1.03.B. In addition, no permit shall be issued until the base road has been completed and inspected by the County Engineer or, in lieu of this, an appropriate bond has been submitted to the County Engineer as per the Calvert County Road Ordinance (Chapter 104 of the Code of Calvert County).

7-1.05 Adequate Public Facilities Requirements

A. General

Before the Planning Commission can grant final approval of a residential subdivision or residential development of land subject to these regulations either in its entirety or by section, it must find that all identified roads and schools are adequate or that roads are programmed to be adequate within one year. Otherwise, approval shall be denied. In cases where facilities are not adequate, a residential subdivision or residential development shall receive final approval if the applicant provides improvements to render both the roads and schools adequate. The adequacy of schools shall be evaluated based on the rated capacity of the public schools.

B. Limitation on Applicability

1. If final approval of a residential subdivision is being delayed only because of inadequate facilities, the following limitation on applicability shall apply:

a. Any residential development (which includes subdivisions and site plans for townhouse, single-family attached, multi-family, and mixed residential developments) which has not been entitled to final approval for at least seven years from the date of preliminary approval, due solely to the lack of adequate school capacity, shall be entitled to final approval, regardless of the adequacy of school capacity, provided that all other conditions of final approval are satisfied.

2. Notwithstanding the above, the Planning Commission may grant final approval of one or more amended plats of a residential site development plan or a portion of a residential site development plan without finding that all identified roads and schools are adequate, provided that it finds that the pupil yield that would result from the residential development as amended is no

greater than that of the residential development without any amendment and that the amendment would not result in any adverse impact on the public health, safety and general welfare of the present and future inhabitants of the development.
3. The Planning Commission shall develop and publish policies and procedures as necessary for obtaining final approval for subdivisions which have been on hold pending adequacy of public facilities. See also Section 7-1.07.B.8.

C. Roads
1. The proposed residential subdivision or residential development must be served by access roads adequate to safely accommodate the vehicular traffic projected to be generated by the residential subdivision or residential development. At the applicant's expense, a traffic study conducted by a Registered Professional Engineer approved by the Department of Public Works may be required. The study shall be in accordance with written procedures and criteria established by the Department of Public Works and approved by the Board of County Commissioners.
2. The traffic impact study will be required to determine if the roadways and intersections are adequate to accommodate the proposed residential subdivision or residential development. To be determined "adequate" by the Planning Commission, the County road(s) must maintain a level "C" service rating, after full development of this and all other existing and proposed residential developments and subdivisions within the study area. The County intersections must maintain a level "C" service rating except for Town Centers where a level "D" service rating will be acceptable. State roads and intersections must maintain a minimum level "D" service rating, after full development of this and all other existing and proposed subdivisions and residential development within the study area. Detailed guidelines for the traffic study have been developed by the Department of Public Works. The Department of Public Works shall determine whether or not the traffic study has been completed according to the approved criteria. The traffic study may be waived under extenuating circumstances by the County Engineer or his designee.
3. The Department of Public Works shall provide recommendations to the Planning Commission as to whether all the roads are "adequate".

D. Schools
1. Adequacy
Schools are adequate when all public elementary and secondary schools which will serve the proposed residential subdivision or residential development will accommodate the pupil yield from that residential subdivision or residential development without exceeding 100 percent of the rated capacity of any of those schools.
2. If the enrollment exceeds 100 percent of rated capacity, the schools may still be deemed adequate if an adopted redistricting results in the enrollment projected by the Department of Planning & Zoning for the next school year not exceeding 100 percent of rated capacity in any of the schools serving the residential subdivision or residential development. The Department of Planning & Zoning is authorized to create criteria for enrollment projections.
3. Pupil Yields
4. Rated Capacity of Schools
a. Elementary Schools:
i. The rated capacity shall be the sum of the following:
(1) Pre-kindergarten equals number of classrooms multiplied by 20;
(2) Kindergarten equals number of classrooms multiplied by 22;
(3) Grades one through five equals number of classrooms multiplied by 23; and
(4) Special education (self-contained) equals number of classrooms multiplied by 10.
ii. The number of classrooms does not include such areas as libraries, media centers, cafeterias, physical education rooms, art rooms, music rooms, assembly rooms, science rooms, special reading rooms, and career education rooms, relocatable classrooms or rooms for other unique programs.
iii. Self-contained special education classrooms are rooms that are used by students receiving special education services outside the general education setting for more than 60 percent of the day.

b. Middle Schools and High Schools:

TABLE 7-1 PUPIL YIELDS			
Housing Type	Grade K-5	Grade 6-8	Grade 9-12
Single-family detached	.291	.130	.176
Single-family attached	.194	.084	.118
Low-rise apartments	.097	.043	.059
Manufactured Homes	.145	.065	.088

i. The rated capacity shall be determined by multiplying the number of teaching stations by 25, then multiplying the product by 85 percent, and then adding to that the product of the number of teaching stations for special education multiplied by 10. However, added to the high school rated capacities will be the lower number of students attending the morning or afternoon sessions of the Career Center for each respective high school at the beginning of the grading period.
ii. Teaching stations are to be defined as interchangeable classrooms, special purpose rooms, laboratories, vocational/industrial arts shops (excluding vocational resource classrooms), art rooms, mechanical drawing rooms, music rooms, and home economics rooms. A gymnasium shall be considered to be one teaching station except that a gymnasium with a standard inter-scholastic basketball court shall be counted as two teaching stations. This definition does not include relocatable classrooms.
5. The Department of Planning and Zoning shall publish a report annually listing 100 percent of the current rated capacity of each school in the County.
6. Exception: The determination of adequacy of schools is not required for subdivisions which are non-residential in nature or subdivisions or residential developments which are designated as Age-Restricted Housing Communities, provided that such communities comply with the requirements of Section 5-5.

E. Notification of Inadequate Capacity
If facilities are identified as having inadequate capacity, the Department of Planning and Zoning shall notify the Planning Commission and the County Commissioners.
F. Exemptions
1. Parcels eligible for more than five lots:
a. The first three lots to be created for residential purposes from any parcel on record as of the date of this amendment (February 23, 1988) shall be exempt from the Adequate Public Facilities Requirements. If the parcel already contains a residence, or if a building permit for a residence on the property has been issued, that residence may remain on the residue, and three additional lots may be created.
b. If the parcel contains an historic residence that is designated an Historic District during the subdivision process, then the lot on which the Historic District is designated may be recorded, regardless of whether the Adequate Public Facilities requirements are met.

2. Subdivisions containing five or fewer lots shall be exempt from the Adequate Public Facilities Requirements if:
a. the subject parcel was a parcel of record as of February 23, 1988 and it is determined that the maximum number of lots to which a parcel is entitled is five or fewer (including any existing residences), or
b. an owner voluntarily restricts the maximum number of lots to no more than five (including any existing residences).

7-1.06 Requirements for a Subdivision

A. General

The standards and requirements outlined herein shall be considered minimum for the promotion of the public health, safety and general welfare.

B. Standards

1. In laying out a subdivision, the requirements of the County Zoning Ordinance, the Maryland State Department of Health, the County Water and Sewerage Plan, and other applicable regulations shall be met.
2. Where there is a discrepancy between minimum standards or dimensions noted herein and other official regulations, the highest standard shall apply.
3. Where trees, groves, waterways, scenic points, or other officially designated County assets and landmarks are located within a proposed subdivision, all practical means shall be taken to preserve these features. Existing farm structures and historic structures shall be preserved on site as required by Section 5-2.01.D.4.

C. Subdivision Control of Unsuitable Land (Natural Resources Protection Areas as described in Section 8-2)

1. The Planning Commission may find land unsuitable for subdivision or development due to features which will reasonably be harmful to the safety, health and general welfare of the present and future inhabitants of the subdivision and/or its surrounding areas. Those features may include (but are not limited to) those areas described as Natural Resources Protection Areas in Section 8-2.
2. Development of designated Floodplain Districts shall be restricted to the uses specified in Section 8-2.03 and in accordance with erosion and sediment control plans approved by the Calvert Soil Conservation District. In addition, a minimum 10-foot setback shall be established adjacent to 100-year Floodplain areas.
3. Each lot shall contain sufficient contiguous land not in the Protection Areas for erection of a building or dwelling within the required setbacks of the Zoning Ordinance.
4. Minimum sufficient contiguous suitable land area, exclusive of steep slopes (greater than 25 percent), buffers, forest retention areas, septic recovery areas, and required setbacks, shall comprise not less than 5,000 square feet for lots having individual septic systems and 3,000 square feet for lots served by a public or community septic system.
5. All Protection Areas and all lots which have marginal amounts of suitable land for building purposes, as described in paragraph ‘4’ of this Section, shall be so noted on the recorded final plat. The Planning Commission or its designee may require a plot plan for review and approval prior to approval of the final plan. The plot plan shall show the location of the house footprint, driveway, well and septic, all required setbacks and buffer areas, required grading easements, as well as any other existing or proposed constraints to site development. See Section 4-4.02 for requirements for plot plans.

D. Roads, General

1. The arrangement, character, extent and location of all roads shall conform to the provisions of the Transportation Element of the County Comprehensive Plan, and shall be considered in their relation to the existing and planned roads, to topographical conditions, to public convenience and safety, and in their appropriate location to the proposed uses of the land to be served by such roads.
2. Proposed roads intersecting a State Road shall be approved for location and grade by the State Highway Administration.
3. Where a proposed road is not in the County Transportation Plan, it shall be contiguous and in alignment with existing, planned or platted roads with which it is to connect.
4. If a portion of a tract or an adjacent tract is not subdivided, suitable access to road openings for eventual extension of the roads shall be provided if:

a. either property is zoned Town Center (TC) or Residential District (RD); or
b. either property has access to an arterial road; or
c. such access is called for by the Calvert County Transportation Plan.

5. Where ends of roads abut unsubdivided acreage, temporary easements for turn-arounds shall be provided at the boundary lines.
6. Right-of-way widths for proposed subdivision roads shall be a minimum of 50 feet. This width may be reduced from 50 feet to 30 feet in the following:
a. The Farm and Forest District and Rural Community District if 10 or fewer lots will be fronting on the proposed subdivision road.
b. The Residential District and within clustered and Transfer Zone subdivisions of five or fewer lots of single-family detached homes with lots of 40,000 square feet and greater fronting on the proposed subdivision road.
7. The Planning Commission or its designee may require the incorporation of traffic-calming devices into proposed or existing roads within the subdivision as a means to reduce speed and increase safety. The traffic-calming devices shall be shown on road plans and submitted to the Department of Public Works for review and approval prior to approval of the final plats.
8. When a new road right-of-way that will access a new subdivision is proposed to be created within an existing subdivision that was recorded after June 29, 1967 and such right-of-way was not previously reserved, platted, or recorded within the existing subdivision, then the following criteria shall be met prior to approval by the Planning Commission:
a. Notice of the pending application and hearings shall be published in a County newspaper of general circulation once each week for two successive weeks, the first such publication appearing at least 30 days prior to the hearing; and at least 30 days prior to said public hearing notice shall be posted at all entrances to the existing subdivision. Additional notice shall be given by U.S. Mail, First Class Postage Prepaid, to all property owners who access their property by using the existing rights-of-way that will connect the entrance of the existing subdivision with the proposed new right-of-way.
b. The Planning Commission shall find and the applicant shall demonstrate that:,
i. the new right-of-way is in compliance with the Comprehensive Plan; and
ii. the new right-of-way will not be detrimental to the use and enjoyment of property owners in the existing subdivision; and
iii. the new right-of-way will not be detrimental to the health, safety or general welfare of the residents thereof.
c. The provisions of this Section shall not apply to new rights-of-way proposed and/or built by Calvert County or the Maryland State Highway Administration.
9. Road Standards - Roads shall be designed and constructed in accordance with the Calvert County Specifications and Design Standards for Roads and Streets.
10. The construction and grading plans for improvements required for site development shall be approved by the Department of Public Works prior to recording of the final plats for the subdivision.
11. Prior to approving a road right-of-way in a Town Center, the Planning Commission shall hold a public hearing and notify adjacent property owners. The public hearing notice and notice to adjacent property owners shall contain a description of the location of the proposed right-of-way and the date, time and place of the public hearing, and shall comply with the requirements of Article 66B, Section 4.05(c), as amended from time to time.

E. Road Intersections
1. Multiple intersections including the junction of more than two roads shall be avoided.
2. Roads shall be designed to intersect as nearly as possible at right angles. No road shall intersect a road at an angle of less than 60 degrees.
3. The number of intersecting roads along primary state highways and County Collector and Arterial Roads shall be held to a minimum. Whenever practical, intersections along such travel ways shall be at least 750 feet apart and lots shall be designed to front on an interior subdivision road or service road.
4. No road shall be approved which is so designed as to preclude adequate sight distance at road intersections.
5. Entrance features and signage shall not be located so as to adversely impact required sight distance.

F. Road Names, Signs and House Numbers

1. Road names shall be approved by the Planning Commission, by submission on the Preliminary Plan, to insure no confusing duplication within the County, in accordance with Article 10, Ordinance for the Naming and Renaming of Roads and the Assignment of Address Numbers.
2. Road signs shall be provided and erected in accordance with the Calvert County Specifications and Design Standards for Roads and Streets.
3. House numbers shall be assigned in accordance with Article 10, Ordinance for the Naming and Renaming of Roads and the Assignment of Premise Addresses.

G. Road Maintenance

1. For public roads, provisions shall be made, by guarantee acceptable to the County Commissioners or by recorded agreement between the developer and the lot owners of the subdivision until maintenance responsibility for the roads has been accepted by the County.
2. Private lanes shall be non-County owned and maintained and shall not be eligible for acceptance into the County road system for County ownership or for County maintenance. The developer shall be responsible for providing for the construction and the lot owners shall be responsible for maintenance including snow removal and repairs as well as other improvements and road service normally provided by the County.

H. Street Lighting

All street lighting shall comply with Section 6-6. In addition, for properties within Town Centers, street lighting shall comply with the Town Center Master Plan and Zoning Ordinance.

I. Road Frontage and Lots

1. All lots shall maintain a minimum 25 linear feet of frontage on an approved public road or private lane right-of-way.
2. In general, side lot lines shall be at right angles or radial to the road line.
3. Lots excessively deep in relation to width, or lots excessively irregular in shape are to be avoided. A proportion of three in depth to one in width shall be considered a proper maximum.
4. Where a lot is created fronting on an existing County road, the front lot line shall be established at least 25 feet from the center line of such road, and 30 feet from the center line of a designated County collector or arterial road. The widening strip, defined as the area between the front lot line and either the existing road right-of-way line, or tract line within the road right-of-way, shall be dedicated to the Board of County Commissioners for Calvert County in the form of a deed delivered and recorded prior to or simultaneous with recording the plat. For State roads, the front lot line setback will be in accordance with adopted State Highway Administration plans.
5. The Planning Commission may require sidewalks in a subdivision created in any residential, commercial or industrial district.

a. Sidewalks are required within Town Centers as designated by the Town Center Master Plans and Zoning Ordinances. Outside the Town Centers, sidewalks may be required in residential subdivisions under the following circumstances:

i. in subdivisions of 50 lots or more, in subdivisions that are part of a phased community, or in subdivisions that are linked to existing subdivisions by a road system that supports an existing sidewalk system;
ii. in subdivisions where the lot sizes average less than one acre;
iii. in subdivisions where RD-5 road construction is required; or
iv. in subdivisions that contain recreation or amenities that encourage pedestrian activities.

b. In cases where sidewalks are required, the following guidelines shall apply:

i. The preference is for sidewalks to be constructed with a closed section (curb and gutter) road design.
ii. Sidewalks within the County rights-of-way are preferable and acceptable to the Department of Public Works provided a maintenance agreement is recorded that specifies that the individual property owner (rather than a property owners' association) is responsible for the maintenance of the sidewalk in perpetuity.

iii. Trees should not be planted adjacent to the sidewalks (especially between the curb and sidewalks), but rather should be planted outside of the rights-of-way on the individual lots.

J. Approvals of Family Conveyance of Lots Served by Private Roads

The Planning Commission may approve family conveyance subdivisions of land provided it is demonstrated that compliance with the right-of-way width requirements herein is impractical because of acquisition constraints, and the following requirements are met:

1. The parcel of land to be conveyed shall only be conveyed to a family member of lineal descent or ascent, being mother, father, son, daughter, granddaughter, grandson, or grandparent of the grantor.
2. The number of lots conveyed shall be limited to one per family member. No more than three such lots may be created.
3. The minimum lot sizes shall be in accordance with Article 5 of the Zoning Ordinance.
4. An access easement (minimum 16 feet in width) shall be provided to a State, County, or private road meeting the standards of the Calvert County Road Ordinance (Chapter 104 of the Code of Calvert County) to the benefit of the new lot owners. A deed for the access easement shall be provided for recordation by the Department of Planning and Zoning with the final plat recording package.
5. The proposed private road access shall serve a maximum of 10 lots.
6. The sale or transfer of such lots shall be limited to the owners of record at the time of adoption of this Section (April 22, 1980). This right may not be transferred by deed or will.
7. The use of such lots shall be restricted to single-family dwellings or agricultural purposes as long as the road remains private.
8. The proposed road access shall be private, non-county owned and maintained and shall not be eligible for acceptance into the County road system for County ownership or for County maintenance. A notation of such restriction shall be placed on the plat and signed by the property owners. The lot owners shall be responsible for providing for road construction and maintenance including snow removal and repairs as well as other improvements and road services normally provided by the County. If and when there is a desire to make this right-of-way a County road, it shall be upgraded to County Road Standards as set forth in the Road Ordinance (Chapter 104 of the Code of Calvert County) and this Article in effect at the time of said upgrading. The cost of design, construction and bonding shall be borne by the lot owners abutting such roadway prior to acceptance by the County. If upgraded to County (non-private) road standards, such upgrading shall be for the entire limit of the road to the nearest County or State road.
9. After approval of the subdivision, the final plat for the new lot shall show that:

a. The grantee is of lineal descent or ascent and has not received any other lots pursuant to this Section.
b. The road will be private and the County will not maintain the road, nor assume any responsibility for future up-grading to County specifications if the road is to become public.

10. A private right-of-way of at least 16 feet in width shall be provided when access is served to one to five building sites. The 16-foot right-of-way shall be suitable for the provision of a 12-foot wide driveway with two-foot wide shoulders.
11. An easement or right-of-way of at least 24 feet in width shall be provided to the property being subdivided for family conveyances and improved to 16 feet in width with four inches of compacted gravel, and two-foot wide earth-compacted shoulders when serving six to 10 building sites.
12. Road rights-of-way created within a property being subdivided shall meet standards of the Calvert County Road Ordinance (Chapter 104 of the Code of Calvert County).
13. Unless a traffic hazard exists or the additional lots will create such, or unless the topography is such as to require drainage easements or other surface treatment requirements, no additional road improvements will be required as part of the subdivision approval.

K. Approvals of Private Roads for Non-Residential Subdivisions

When the Director of Planning and Zoning or his designee and the Director of the Department of Engineering or his designee find that the safety and welfare of the public is best served, they may approve privately owned roads in non-residential subdivisions in lieu of shared driveways or a

public road. The privately owned roads in non-residential subdivision must meet the following conditions:

1. They shall meet the standards on Plate RD-6 of the Calvert County Road Ordinance (Chapter 104 of the Code of Calvert County).
2. Access shall be provided to a State or County road meeting the standards of the Calvert County Road Ordinance (Chapter 104 of the Code of Calvert County).
3. The proposed privately owned road shall serve a maximum of five lots, including developed parcels and parcels eligible to obtain a building permit.
4. The proposed privately owned road shall be private, non-County owned and maintained and shall not be eligible for acceptance into the County road system for County ownership or for County maintenance. A notation of such restriction shall be placed on the plat and signed by the property owners. The right of ingress and egress extends to all lots created. The lot owners shall be responsible for providing for road construction and maintenance including snow removal and repairs as well as other improvements and road services normally provided by the County. If and when there is a desire to make this right-of-way a County road, it shall be upgraded to County Road Standards as set forth in the Road Ordinance (Chapter 104 of the Code of Calvert County) and this Article in effect at the time of said upgrading. The cost of design, construction and bonding shall be borne by the lot owners abutting such road way prior to acceptance by the County. If upgraded to County standards, such upgrading shall be for the entire limit of the road to the nearest County or State road.
5. After approval of the subdivision, the final plat for the new lot shall show that:
   a. The road will be private and the County will not maintain the road, nor assume any responsibility for future up-grading to County specifications if the road is to become public.
   b. The lot owner has an undivided ownership interest in the private access road.
6. No lot or parcel in a subdivision subject to these regulations shall be transferred until a Public Works Agreement for the road improvements has been recorded and plat recording has been completed as per Section 7-1.03.B, and the platted roads and sidewalks (as required by final plat or preliminary approval letter) have been completed and appropriate bond or acceptable guarantee has been provided and accepted by the County Commissioners for completion of roads and sidewalks in the subdivision or that section of the subdivision in which the lot or parcel is located. The amount of the bond or guarantee shall be 125 percent of the estimated cost of completing construction, for the purpose of guaranteeing to the County that the developer will complete the construction with such time as may be proposed by the developer and approved by the County Commissioners.

L. Approval of Private Lanes in Single-Family Residential Communities (Non-Family Conveyance Subdivisions)

When the Director of Planning & Zoning or his designee and the Director of the Department of Public Works or his designee find that the safety and welfare of the public is best served, they may approve private roads in single-family residential communities in lieu of a public road. Private roads in single-family residential communities are to be known as private lanes and must meet the following conditions:

1. They shall meet the standards on Plate RD-1 or applicable plate of the Calvert County Road Ordinance (Chapter 104 of the Code of Calvert County).
2. The proposed private lane shall serve no more than five lots, including developed lots or parcels or those parcels eligible to obtain a building permit.
3. The use of such lots shall be restricted to single-family dwellings or agricultural purposes as long as the private lane remains private.
4. The proposed private lane shall be private, non-County owned and maintained and shall not be eligible for acceptance into the County road system for County ownership or for County maintenance. A notation of such restriction shall be placed on the plat and signed by the property owners. The developer shall be responsible for providing for road construction and the lot owners for maintenance including snow removal and repairs as well as other improvements and road services normally provided by the County. The cost of design, construction and bonding shall be borne by the developer.

5. After approval of the subdivision, the final plat for the new lot shall show that:
a. The private lane will be private and the County will not maintain the road.
b. The lot owner has an undivided ownership interest in the private lane.
6. No lot or parcel in a subdivision subject to these regulations shall be transferred until a Public Works Agreement for the road improvements has been executed and plat recording has been completed as per Section 7-1.03.B, and the platted roads and sidewalks (as required by final plat or preliminary approval letter) have been completed and appropriate bond or acceptable guarantee has been provided and accepted by the County Commissioners for the completion of roads and sidewalks in the subdivision or that section of the subdivision in which the lot or parcel is located. The amount of the bond or guarantee shall be 125 percent of the estimated cost of completing construction, for the purpose of guaranteeing to the County that the developer will complete the construction within such time as may be proposed by the developer and approved by the County Commissioners for County road specifications, see Calvert County Road Ordinance (Chapter 104 of the Code of Calvert County).
7. When a private lane is proposed to access directly off of a County or State road (other than an existing or proposed internal subdivision road), then a common access drive shall be provided between the County Road and private lane. The common access drive shall meet all of the requirements for a private lane, except that it shall meet the standards on Plate RD-14A of the Calvert County Road Ordinance (Chapter 104 of the Code of Calvert County). The Department of Public Works may permit the use of only a common access drive (without the private lane) provided that it meets all other private lane requirements.

M. Storm Drainage Systems
1. Storm drainage systems shall be provided and constructed in accordance with the Calvert County Specifications and Design Standards for Roads and Streets.
2. Perpetual drainage easements shall be shown on the Preliminary Plan where a natural water course (stream) exists and where natural or road drainage is located or is proposed.

N. Water and Sewer Systems
1. Prior to submittal of the preliminary subdivision application, any proposed subdivision to be served by a water and sewer system shall be in the correct water and sewer allocation category for the type of system intended to serve the development.
2. All existing and/or proposed water and sewer infrastructure and easements required for site development shall be shown on the submitted preliminary plan. Any land intended to be conveyed to the County for the provision of public water and/or sewer infrastructure shall also be shown on the preliminary plan.
3. Water and sewer construction plans shall be submitted to the Department of Public Works, Bureau of Utilities for review and approval prior to approval of the final subdivision plats.
4. Deeds for any required land and/or easements required as part of the water and sewer plan approval shall be provided with the final plat for recording by the Department of Planning and Zoning.
5. Water and sewer systems shall be constructed in accordance with the Calvert County Standard Details of Water and Sewer Systems. A Public Works Agreement for the required water and sewer system shall be executed prior to the issuance of any grading or building permits.
6. No subdivision plat shall receive final approval unless the applicant demonstrates that Section 9-512 of the Environmental Article of the Annotated Code of Maryland has been met.

O. Non-Residential Subdivisions
1. Subdivisions which are non-residential in nature, such as commercial and industrial developments, shall conform to the standards established in the Calvert County Zoning Ordinance.
2. The developer shall demonstrate to the satisfaction of the Planning Commission that the road, parcel and block pattern is specifically adapted to the uses anticipated and takes into account existing and proposed uses in the vicinity.

3. Alleyways with a minimum width of 30 feet may be required at the rear of all lots designated for commercial or industrial use, so as to provide access for service and delivery and emergency vehicles.
4. A concept plan of the proposed subdivision shall be submitted in accordance with Section 7-1.07.A.
5. Non-residential parcels that were created by deed after the adoption of the Subdivision Regulations (April 4, 1972) must obtain final subdivision approval from the Planning Commission prior to the issuance of any building permits for site development.

P. On-Site Recreational Requirements
1. Subdivisions with 50 or more lots shall provide neighborhood recreation on site. A minimum of 800 square feet per dwelling unit of land suitable for active recreational development shall be provided for neighborhood recreation of which a minimum of 200 square feet per dwelling unit shall be developed as follows:
a. It shall not contain any sensitive environmental features, including but not limited to floodplains, steep slopes, wetlands, or wetland buffers, waters of the United States, erosive soils, or other types of environmental preservation areas such as forest retention afforestation, front roadway buffers, and conservation areas.
b. The finished parcel shall be no more than 25 percent of the required wooded area with slopes of no greater than 15 percent, with good drainage;
c. Playing fields shall be visible from some of the residential units they are intended to serve;
d. The land must be accessible to children without crossing arterials or collector roads;
e. The land shall not be adjacent to public roads unless physical barriers adequate to prevent children from running out into roads are provided.
2. Playing fields shall be provided in addition to the above requirements for recreation areas. Playing fields shall be graded at the time of base road construction and shall be installed when building permits have been issued for 50 percent of the houses within each phase of the subdivision.
a. Purpose:
to provide for play close to home designed for children ages seven to 15. May also serve as net games area, "village greens", and community house lawns.
b. Minimum standards:
i. 150 square feet per unit and in no case less than 10,000 square feet
ii. Dimensions: 100 feet by 100 feet
c. Method of calculating required number of fields:
i. Multiply total number of units by 150 square feet. Divide total by 10,000 square feet. The total number of required playing fields equals the whole number in the dividend. The remaining acreage is to be applied to other active recreation areas.
ii. Example: 100 units multiplied by 150 square feet equals 15,000 square feet. 15,000 square feet divided by 10,000 equals 1.5, which equates to one playing field. Remaining 5,000 square feet is to be applied to other active recreation areas.
d. Exceptions:
Variations in sizes and dimensions of playing fields may be approved provided they meet the purpose and criteria listed above.
3. Paved area containing 50 square feet per unit (minimum 2,500 square feet) shall be provided as part of the above requirements for recreation areas. Paved areas shall be graded at the time of base road construction and shall be installed when building permits have been issued for 50 percent of the houses within each phase of the subdivision.
a. Purpose:
To provide facilities and space for basketball practice, handball practice, shuffleboard, roller skating, outdoor dances, formal net games. All ages, primarily 10 years to adult.
b. Minimum standards:
i. half court: 50 feet by 42 feet (or 2,100 square feet); whole court: 50 feet by 84 feet (or 4,200 square feet)

ii. Construction and materials specifications to be approved by the Department of Planning and Zoning.
iii. Must be visible from residential units and/or public areas. Must have good drainage.
c. Equipment:
i. half court - one basketball backboard and net; post holes for net games, and permanent seating for a minimum of six persons.
ii. whole court - two basketball backboards and nets; post holes for net games, and permanent seating for a minimum of nine persons.
iii. north/south orientation is strongly encouraged.
d. Lighting: When more than three paved areas are required, one shall be lighted. Paved areas and lighting shall be included in the public works agreement and graded at the time of base road construction and completed with the final road surface pavement. All outdoor lighting shall comply with Section 6-6, Outdoor Lighting Ordinance.
e. Exceptions:
Variations in size and dimensions may be approved provided they meet the purpose and criteria listed above.
4. Other Recreation Areas The remaining required acreage may be utilized to provide a variety of recreational facilities including but not limited to: fishing piers, waterfront parts, outdoor theater/concert areas, gazebos, racquet courts, tennis courts, fitness trails, garden plots, playgrounds, handball courts, shuffle board, putting greens, or lap pools.
Approval will be based on appropriateness to the age groups and population to be served, location and construction and maintenance standards.
5. Maintenance
a. When lands or facilities are deeded to and accepted by the County, development, supervision and maintenance of such areas shall be the responsibility of the County.
b. When areas are reserved for common use by all property owners in the subdivision, covenants and Homeowners' Association documents shall be provided for recordation with the final plats that shall provide for construction (by the developer), supervision and maintenance of such areas.
6. Land dedicated as open space shall be shown on the final plat as provided in Section 7-1.07.C.3.n.
(12/09/06) Q. Buildable Residue
1. The buildable residue, if any, in a recorded subdivision shall be labeled as such on the subdivision plat and shall meet the following conditions in order to be labeled as buildable residue:
a. the residue is of sufficient size to be subdivided into two or more lots meeting the requirements of the Zoning Ordinance and
b. the original parcel qualified as a buildable lot prior to the subdivision.
Parcels which do not meet the above conditions shall be labeled as non-buildable residue on the subdivision plat.
2. The designation of a property as a buildable residue shall not be construed as a guarantee that the future subdivision of the buildable residue will be approved. Subdivision of the buildable residue shall be subject to the regulations in effect at the time it is subdivided.

7-1.07 Subdivision Review Procedures
There are three levels of subdivision review procedures, as described in the Sections that follow. They are: Concept Plan Review; Preliminary Plan Review; and Final Plat Review
A. Concept Plan Review
1. Prior to submittal of an official subdivision application, a concept plan shall be submitted showing existing features and all ultimate development with respect to lots, roads, and other site improvements located in accordance with the provisions of this Ordinance. The purpose of this approach is to resolve problems before extensive engineering begins. In the event that any of the individual provisions of this Ordinance, relating to the placement of lots and roads (Section 5-2.01), conflict with each other as applied to a given site, these conflicts shall be noted in writing by the applicant as part of the concept plan submittal. The Planning Commission or its designee

may waive or reduce the requirement for a concept plan of the entire parent tract for certain minor subdivisions. Such waivers or reductions shall be granted on a case by case basis and limited to minor subdivisions where the proposal does not significantly impact the future layout and development of the parent tract (such as the creation of a lot containing an existing house or creation of a single lot on a large parent tract).

2. The concept plan submittal shall be accompanied by the following maps, each showing the boundaries of the proposed lots, the boundaries of the parent tract and the locations and boundaries of any lots created from the parent tract since June 29, 1967.

a. a soils map at a scale of one inch equals 600 feet (1" = 600'),

b. an aerial photograph at a scale of one inch equals 600 feet (1" = 600'),

c. a tax map at a scale of one inch equals 600 feet (1" = 600'), and

d. a topographic map at a scale of one inch equals 600 feet (1" = 600'),

3. The plan shall also indicate:

a. all applicable zoning districts and district overlays with acreages for each,

b. gross tract acreage,

c. wetland acreage,

d. acreage in proposed rights-of-way,

e. net tract acreage (gross tract acreage minus wetlands and proposed rights-of-way acreage), and

f. areas of unsuitable land (Natural Resources Protection Areas as described in Section 8-2), and

g. Land uses of all adjoining properties.

4. The concept plan shall be reviewed at a Concept Review meeting by applicable County reviewing agencies and written comments shall be submitted to the applicant within 15 working days of the meeting.

5. The concept plan shall show existing land uses as identified below:

a. Forested area. Forested area shall be identified in accordance with the Calvert County Forest Conservation Program.

b. Cropland, pasture, meadow. All lands that have been cleared for use as cropland, pasture or meadow and which show up as such on the most recent aerial photographs.

c. Conservation Area. Tidal and non-tidal wetlands, floodplains, steep slopes, streams and their buffers shall be identified giving acreages for each.

d. Buildings, roads, overhead power lines and rights-of-way for gas, electric, telephone and cable lines, abandoned railroad rights-of-way, cemeteries, trails, trash dumps and hazardous waste dumps and fences shall be shown. Buildings older than 50 years shall be designated as such. If buildings exist on-site, they are to be identified by type and whether the buildings are to remain or be removed as a result of site development.

B. Preliminary Plan Review

1. Purpose

The purpose of the Preliminary Subdivision Plan is to provide a basis for Planning Commission to grant conditional approval of a proposed subdivision in order to minimize changes and revisions which might otherwise be necessary on the Final Plat.

2. General

a. The Preliminary Subdivision Plan and all information and procedures relating thereto shall in all respects be in compliance with the provisions of these regulations, except where variation therefrom has been specifically authorized in writing by the Planning Commission.

b. Approval of the Preliminary Plan by the Planning Commission shall constitute conditional approval of the subdivision as to character and intensity, but shall not constitute approval of the final plat or authorize sale of lots or construction of buildings.

3. Drafting Standard

a. The Plan shall be clearly and legibly drawn at one of the following scales:

i. One inch equals 20 feet (1" = 20'); one inch equals 40 feet (1" = 40'); one inch equals 100 feet (1" = 100'); one inch equals 30 feet (1" = 30'); or one inch equals 50 feet (1" = 50')

ii. Other scales may be accepted where deemed appropriate by the Planning Commission or its designated representative.

b. Dimensions shall be in feet and bearings in degrees and minutes. Lot sizes shall be shown in square feet where lot size is less than one acre, and in acres and decimal parts for larger lots.
c. Each sheet shall be numbered and shall show its relationship to the total number of sheets.
d. Where any revision is made, or when the Plan is a revision of a previously recorded plat, dotted lines shall be used to show features or locations to be abandoned and solid lines to show the presently proposed features. The title block of the Plan shall identify that the Plan is a revision and the previous Plan's name and deed reference.
e. The Plan shall be so prepared and bear an adequate legend to indicate clearly which features are existing and which are proposed.
f. The boundary line of the subdivision shall be shown as a heavy solid line.
4. Information to be Provided. The Preliminary Plan shall show or be accompanied by the following information:
a. The subdivision name shall be shown in the title block in the bottom right corner of the plat.
b. Owner and developer's name and mailing and e-mail address.
c. Name, mailing and e-mail address and seal of the Registered Engineer, Registered Landscape Architect or Registered Land Surveyor (in each case, registered in the State of Maryland) responsible for the Plan.
d. Date, north point, and scale.
e. A vicinity map indicating the location of the site with relation to the area road system. The vicinity map shall also indicate the scale, the tax map number, the block and parcel number of the site and shall be shown in the top right corner of the plat.
f. All applicable Zoning Districts and Overlay Districts with acreages for each as well as gross tract acreage, wetland acreage, acreage in proposed rights-of-way and net tract acreage (gross tract acreage minus wetlands and proposed rights-of-way).
g. Existing Features
i. Complete outline survey of the property to be subdivided showing all courses, distances, and area, and tie-ins to all adjacent road intersections.
ii. The location of property with respect to surrounding property and roads, the names of all adjoining property owners of record and their deed references or the names of adjoining developments; the names, widths, and centerline of adjoining roads; and/or other pertinent features being outside the property as determined by the Planning Commission or its designated representative.
iii. Location of all existing monuments or boundary markers.
iv. The location of existing buildings, structures, roads, driveways, easements, utility lines, bridges, cemeteries, water bodies, streams, swamps, marshes, areas within the 100-year floodplain and other areas listed in Section 8-2 and/or other pertinent features being within the property, as determined by the Planning Commission or its designated representative.
v. Topography on two- foot contours as appropriate to the slope of the land.
vi. All information required of the Calvert County Forest Conservation Program including the requirements listed in Section 8-3 of the Zoning Ordinance and in the Maryland Forest Conservation Technical Manual.
vii. Buildings, roads, overhead power lines and rights-of-way for gas, electric, telephone and cable lines, abandoned railroad rights-of-way, cemeteries, trails, trash dumps and hazardous waste dumps and fences shall be shown. Buildings older than 50 years shall be designated as such. If buildings exist on-site, they are to be identified by type and whether the buildings are to remain or be removed as a result of site development.
h. Proposed Layout
i. The layout of roads, including proposed names, widths and centerlines.

ii. The layout and appropriate dimensions of lots.
iii. A reference to any land offered for dedication or reservation for parks, schools, widening of roads, or other public uses.

iv. The average and minimum lot size.
v. Location and size of storm drains, sanitary sewers, culverts, water course and all appurtenances thereof, water mains and fire hydrants.
vi. Building Restriction Lines and minimum lot widths if used to determine front Building Restriction Lines.

vii. Rights-of-way and/or easements proposed to be created for all drainage purposes and utilities.

viii. Typical cross-sections and centerline profiles for each proposed road. This information may be submitted as separate plats.
ix. Types of road surfaces to be provided.
i. Community Water and Sewerage Facilities
i. The policies and requirements of the Water & Sewerage Plan shall be met.
ii. The Planning Commission may require the developer to prepare a feasibility study.
iii. The Planning Commission shall set as a condition of approval of the plat the extent to which water and sewerage and other utilities shall be installed.
j. Environmental Impact Statement
i. The Planning Commission may require submission of an Environmental Impact Statement, prepared by a Registered Professional Engineer, for subdivisions which create more than 30 lots, or consist of more than 50 acres, or contain land which has more than the average in sensitive or extremely sensitive land categories (the average for the County being 17 percent extremely sensitive and 28 percent sensitive).
ii. Environmental Impact Statements shall address both the long and short range impact of the following points and any other issues which are considered by the Planning Commission to be relevant to the particular property: proposed methods for handling run-off, drainage, and the siltation implications of the project; impact that the development will have on air and water quality; impact on transportation systems and facilities; implications of the development on the ambient quality of the wildlife habitats and vegetative species present on the property and on contiguous properties; proposed methods to preserve unusual physical features (both man-made and natural); proposed methods to remedy unstable landscape patterns (such as shoreline erosion, inland erosion areas, high water table soil areas, landslide areas, areas that have experienced plant or animal diseases, past mining extractions).
5. Health Department Approval
Perc tests must be performed and septic recovery areas approved by the Department of Environmental Health prior to preliminary approval of any lot regardless of size. If the lots are to be connected to a proposed sewer system, then the construction plans for the new system must be approved by the appropriate agencies prior to final plat approval of the lots. If the lots are to be connected to an existing sewer system, then the allocation for the lots must be approved prior to preliminary approval.
6. Preliminary Plan Procedures
a. The Director of Planning & Zoning shall establish appropriate procedures and application forms (electronic and/or paper form) necessary to ensure adequate review and processing of subdivision applications in a timely manner (including a submittal time-frame) consistent with these Regulations. Included shall be a checklist, which shall show all information required for subdivision application submittal. The checklist shall be available at the Department of Planning & Zoning. Procedures (other than those specified by these regulations) shall be approved by the Board of County Commissioners. Review fees shall be set by the Board of County Commissioners.
b. Upon receipt of a preliminary subdivision application, the Secretary to the Planning Commission, or the Secretary's designee, shall have 10 working days to certify that the application package is complete. If it is not complete, it shall be rejected. Prior to approval of any preliminary subdivision plan by either the Planning Commission or the Secretary to the Planning Commission (per paragraph 'e' of this Section), comments shall be requested from other agencies, including but not limited to: Department of Planning and Zoning; Engineering Bureau, Transportation Bureau, Bureau of Utilities1, (Bureaus of the Department of Public Works);

Department of Economic Development;2 State Highway Administration3; Health Department4; and the appropriate electric utility serving the area.

c. If the subdivision is located within the Critical Area, comments shall also be requested from the State Critical Area Commission, the State Department of Natural Resources and Maryland Department of the Environment.

d. If the Principal Environmental Planner determines the subdivision to have severe environmental impacts, the subdivision may be referred to the Environmental Commission for comments. Such comments shall be submitted in a timely manner, and shall at no time delay the review process beyond the time period required by paragraph 'f' of this Section.

e. By authority of the Planning Commission, proposed subdivisions of land containing five lots or less may be granted preliminary approval by the Chairman or Secretary to the Planning Commission in accordance with these Regulations.

f. In accordance with these Regulations, the Planning Commission shall take action within three months, following certification by the Secretary to the Planning Commission that the subdivision application is complete and proper, where a quorum is present to approve or disapprove the preliminary subdivision plan or approve it with modifications. A statement, in writing, shall be furnished to the subdivision applicant indicating the actions of the Planning Commission. An applicant, or his/her authorized agent, may waive this requirement or agree to an extension of this period for approval.

7. Space shall be provided on the Preliminary Subdivision Plan for signature and dates indicating approval by the following:

a. A Registered Engineer, a Registered Landscape Architect or a Registered Land Surveyor in the State of Maryland.

b. County Health Officer, or representative of State Health Department.

1234 Only if the subdivision is subject to Section 5-1.03.C.3.a of the Calvert County Zoning Ordinance and Only if the subdivision application indicates the use of a community water and/or sewerage system. Only if the application is for a commercial or mixed-use subdivision. Only if the application is located on an existing or proposed State road.

contains lots of less than one acre in size.

8. Period of Validity

a. Except as provided in paragraph 'b' of this Section, the approval and conditions of the Preliminary Subdivision Plan shall remain valid for three years from approval date unless an extension is granted by the Planning Commission. Final plat approval may be delayed if schools and/or roads are determined to be inadequate. See Section 7-1.05, Adequate Public Facilities, for specific regulations.

b. If final plat approval is delayed due to the inadequacy of schools and/or roads, preliminary approval shall automatically be extended to six months beyond the date that the schools and roads are deemed to be adequate or the seven-year waiting period described in Section 7-1.05, whichever occurs first.

9. If, subsequent to preliminary approval, the applicant proposes changes to the plan, the applicant shall submit a revised plan application package to the Department of Planning and Zoning. If the proposed revisions significantly change the alignment or use of an approved right-of-way or significantly alter the layout and design of the subdivision, including but not limited to the configuration of the open space, then the revised application package shall adhere to the review and approval process set forth in Section 7-1.07.B.1-7. Otherwise, the revised plan shall be marked accordingly and a copy of the plan sent to the review agencies.

10. Fees

Fees for submission of a Preliminary Subdivision Plan for approval shall be as adopted by the Calvert County Commissioners by resolution.

C. Final Plat Review

1. General

The Final Subdivision Plat shall consist of a drawing, intended for record, incorporating those changes or additions required by the Planning Commission in its approval of the Preliminary Subdivision Plan.

2. Drafting Standards

Drafting standards for Final Subdivision Plat shall be as described in Section 7-1.07.B.3.

3. Information to be Shown

a. The subdivision name shall be shown in the title block in the bottom right corner of the plat.

b. Owner and developer's name and address.

c. Name, address and seal of the registered surveyor responsible for the plat. The surveyor must be registered in the State of Maryland.

d. Date, north point, and scale.

e. A vicinity map as described in Section 7-1.07.B.4.e.

f. Names, intended ownership (public or private), and centerline of all proposed and adjoining roads with their rights-of-way widths.

g. Accurate distances and bearings of all boundary lines of the subdivision.

h. Lines of all lots, and a simple method of numbering to identify all lots and sections.

Building Restriction Lines, minimum lot widths if used to determine front Building Restriction Lines, and all easements provided for public and private service together with their dimensions and any limitations of the easements.

j. All dimensions necessary for accurate location of the boundaries of the site to be developed and of all roads, lots, easements, and dedicated areas. All other parcels created as a result of the subdivision shall be included on the final plat and labeled so as to indicate intended use or disposition. These dimensions shall be expressed in feet and decimals of a foot.

k. All radii, arcs, points of tangence, central angles, and lengths of curves.

l. All required and existing survey monuments benchmarks (i.e., concrete monuments, pipe, trees, fences, etc.), together with their description.

m. Private, self-imposed and previously existing covenants, restrictions and/or easements and their period of existence are to be shown or referred to on the recorded Final Subdivision Plat. This is not to preclude future recording of new or altered covenants, restrictions and/or easements.

n. The accurate outline, dimensions and purposes of all property which is offered for dedication or is to be reserved for acquisition for public uses or is to be reserved by deed covenant for the common use of the property owners in the subdivision.

o. Types of road surfaces to be provided.

p. Location of storm drains, culverts, water courses, and all appurtenances thereof.

q. Notes or conditions clarifying requirements of the Planning Commission.

4. Space shall be provided on the Final Subdivision Plat for signature and dates indicating certificate of approval by the following:

a. A Registered Surveyor (Signature and seal).

b. County Health Officer, or representative of State Health Department.

c. Chairman or Secretary to the Planning Commission.

d. Owner and all parties having proprietary interest in the property subdivided.

5. Preparation of Final Subdivision Plat

a. Final Plats for subdivisions of one to five lots shall be prepared on sheets of either 8 ½ inches by 13 ½ inches and recorded in the Land Records of the Clerk of the Circuit Court or sheets 18 inches by 24 inches and recorded in the Plat Records of the Clerk of the Circuit Court.

b. Final Plats for subdivisions of six or more lots shall be prepared on sheets of 18 inches by 24 inches and recorded in the Plat Records of the Clerk of the Circuit Court.

6. Approval of the Final Subdivision Plat

a. The Department of Planning and Zoning shall review the Final Plat and verify approval of other appropriate County agencies and compliance with all conditions of preliminary approval.

b. The Planning Commission shall approve or disapprove the final plat within 30 days of receipt of the original/mylar recording package, or, if a regular meeting is not scheduled within 30 days, the Planning Commission shall approve or disapprove the final plat at its next regular meeting following the 30-day period. If the Planning Commission does not approve or disapprove the final plat within the above-specified time frame, the plat shall be considered approved and the Planning Commission shall issue a certificate to that effect on demand. An applicant may waive this requirement and consent to an extension of the period for approval.
c. By the authority of the Planning Commission, proposed subdivisions of land containing five lots or less may be granted final approval and the Final Plat or Recording of Plat Sheet may be signed by the Chairman or Secretary to the Planning Commission.

7. Copies to be furnished
The developer or his agent shall submit an electronic version as per standards approved by the Board of County Commissioners, three originals, two reproducibles of archival quality and the number of paper copies specified in the preliminary approval letter for certification by County agencies and recording. The following materials fail to meet archival standards: sepia (black or brown) on transparent mylar, black-line xerox on transparent mylar, transparent mylar - black line diazo, opaque linen - black line diazo.
8. Recording of Final Plat
No Final Plat of a subdivision shall be recorded with the Court Clerk unless such plat has been approved by the Planning Commission under provisions of this regulation and signed by its Secretary or Chairman.
9. Statements and Certificates

The following statements by the responsible owner, partnership, corporation or developer, as appropriate and representing all parties having proprietary interest in the property, shall be provided on the plat: "The undersigned owners and all parties having proprietary interest in this property hereby adopt this plan of subdivision, establish the minimum building restriction lines, and dedicate the roads, alleys, walks and other areas as specified. The roads, open spaces and public sites shown herein and the mention thereof in deeds, are for the purpose of description only, and recording of the Final Plat shall not be deemed to constitute or effect an acceptance by the County Commissioners; acceptance by the County may be accomplished by a subsequent appropriate act. An easement is established 10 feet in width binding on all rights-of-way for the installation and maintenance of public utilities."
(Date) (Witness)
(Signature) (Name Printed)
10. Fees
Fees for submission of a Final Subdivision Plat for approval shall be as
adopted by the Calvert County Commissioners by resolution.
7-1.08 Improvement Plans
A. General
Plans for improvements and amenities, either proposed by the Developer or required by County or State regulations, shall be prepared by the Developer for approval by the appropriate public authorities and review agencies prior to approval of the final plat.
B. Bonding of Improvements and Amenities
No building permits shall be issued until an appropriate bond or acceptable guarantee has been provided and accepted by the County for completion of roads, sidewalks, lighting, recreational facilities, landscaping, and amenities in the subdivision or that section of the subdivision in which the lot is located, in accordance with Section 7-1.04.A.3.
C. If a separate site plan is required for development of the subdivision, then the requirements of the improvement plan may be addressed through site plan review and approval by the Planning Commission or its designee.
D. Construction
All construction work or improvements required by the subdivision approval and/or improvement plan shall be subject to inspection during construction, and to approval by appropriate public authorities upon completion of construction.

E. Permanent Reference Monuments

Permanent reference monuments of stone or concrete, shown thus, U, at least 36 inches in length and four inches square with suitable center point shall be set flush with the ground at finish grade as required by Article 17 of the Annotated Code of Maryland (1957) as amended. A metal pipe three-quarters of an inch in diameter and at least 24 inches in length, shown thus, U, shall be located in the ground, flush at finish grade, at all intersections of roads, intersections of roads and alleys with plat boundaries, and at all points on roads, alleys and boundary lines where there is a change in direction or curvature and at all lot corners.

7-1.09 Modifications

A. Modification of Requirements

Where in the case of a particular proposed subdivision, it can be shown that strict compliance with the requirements of this regulation would result in extraordinary hardship to the developer because of unusual topography or shape of the parcel, or other such non-self-inflicted condition, or that these conditions would result in inhibiting the achievement of the objectives of these regulations, the Planning Commission may, after consultation with appropriate agencies, vary, modify, or waive the requirements so that substantial justice may be done and the public interest secured; provided, that such variance, modification or waiver will not have the effect of nullifying the intent and purpose of this regulation or interfering with carrying out the Comprehensive Plan of Calvert County. In no case shall any variation or modification be more than a minimum easing of the requirements and in no instance shall it conflict with any zoning ordinance or zoning map. In granting variances and modifications, the Planning Commission may require such conditions as will, in its judgment, secure substantially the objectives of the requirements so varied or modified.

B. Revisions to Final Plats (Replattings)

1. If the applicant proposes changes to the approved final plat, an amended plat of subdivision shall be filed with the Secretary to the Planning Commission for review and approval, approval with conditions, or disapproval by the Planning Commission or its designee, and recorded. If the proposed amendment alters recreation area or common open space5 within a particular section or phase and lot owners of that section or phase possess a vested interest in the recreation area or common open space through a specific grant by deed, plat, or other document recorded among the land records, then the application to the Planning Commission shall be signed by all property owners in that section or phase. If the subdivision is not recorded in sections or phases, then all property owners having a vested interest in the recreation area or common open space shall sign the application.

5 As defined by Black's Law Dictionary, 1983, 5th Ed., Henry Campbell Black, St. Paul, Minnesota, West Publishing Co.

2. Replattings are required for any changes to the record plat that affect a lot or parcel including, but not limited to: lot line adjustments, easements, lateral line revisions, removal of a previously recorded condition and/or note, etc. Such revisions shall be drawn by a licensed surveyor and reviewed by the Department of Planning and Zoning and other County, State and Federal agencies. After all approvals, the plat may then be recorded in the Land Records of Calvert County.

3. The Department of Planning and Zoning shall maintain a policy for processing replattings, including a checklist of submittal requirements.

C. Fees

Fees for the review of revisions to final recorded plats shall be as set forth by the Board of County Commissioners by resolution.

7-1.10 Administration

A. Separability

It is hereby declared to be the legislative intent that if a court of competent jurisdiction declares any provision of these regulations to be invalid, or ineffective in whole or in part, the effect of such decision shall be limited to those provisions which are expressly stated in the court decision to be invalid or ineffective, and all other provisions of these regulations shall continue to be separately and fully effective.

B. Changes and Amendments

1. These regulations may from time to time be amended, supplemented, changed, modified or repealed by the County Commissioners.

2. Any person or officer, department, board, commission or bureau of the County may petition for such change or amendment; however, no such change or amendment shall be presented to the County Commissioners for approval until the Planning Commission has held a public hearing in relation thereto, at which parties of interest and citizens shall have an opportunity to be heard. At least 14 days notice of the time and place of such hearing shall be published in newspapers of general circulation in the County. After said public hearing, the Planning Commission shall forward to the County Commissioners its recommendation concerning such change and amendment.

3. Upon receipt and prior to taking action on such change or amendment, and accompanied by a recommendation from the Planning Commission, the County Commissioners shall schedule a public hearing in relation thereto; at least 14 days notice of the time and place of such hearing shall be published in newspapers of general circulation in the County.

4. The above-described hearings may be held jointly or separately by the respective Commissions at the discretion of the Board of County Commissioners.

7-1.11 Appeal

Unless otherwise specified herein, any person aggrieved by any decision pertaining to the provisions of Article 7 made by the Department of Planning and Zoning may appeal said decision to the Planning Commission. Appeals of decisions of the Planning Commission shall be noted with the Circuit Court of Calvert County. Appeals to Circuit Court shall be made in accordance with the Maryland Rules as set forth in Title 7, Chapter 200 within 30 days of the final decision of the Planning Commission.

7-1.12 Violations

A violation of any provision of Article 7 or a failure to comply with any requirement of Article 7 by any person, corporation, association, partnership, or the agent of any such person, may be processed as a Zoning Violation under the provisions of Section 1-7.

MODEL CERTIFIED LOCAL GOVERNMENT ORDINANCE

COMMISSION RESOLUTION No. _____

A RESOLUTION OF THE COUNCIL OF THE BOARD OF COMMISSIONERS OF _____COUNTY CREATING AND ESTABLISHING A COMMISSION TO BE KNOWN AS THE _____ HISTORIC PRESERVATION COMMISSION AND PROVIDING FOR APPOINTMENT AND QUALIFICATION OF MEMBERS, DUTIES AND RESPONSIBILITIES OF THE HISTORIC PRESERVATION COMMISSION, APPOINTMENT AND DUTIES OF THE LOCAL HISTORIC PRESERVATION OFFICER.

WHEREAS, the Board of Commissioners of _____ County find that it appears to be in the best interests of the citizens of the County of _____ to create and establish a Historic Preservation Commission:

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF _____:

Section 1. That the Board of Commissioners of _____ County, by this joint resolution, hereby create and establish the _____ Historic Preservation Commission pursuant to the following terms and conditions:

A. DEFINITIONS: _____
B. PURPOSE AND INTENT: To provide for an appointed board of citizens of _____ County to preserve and develop the unique historical, governmental and environmental qualities of _____ County by establishing a local historic preservation program, to integrate historic preservation into local planning and decision-making processes, to participate fully in state and federal planning, and to provide for identification, evaluation and protection of historic and prehistoric resources within _____ County.

This program is intended to promote the public interest and general welfare by:

(1.) Recognizing the uniqueness and visual character of the area by encouraging historic preservation activities;
(2.) Promoting public appreciation and education by encouraging greater knowledge, awareness and understanding of the area's cultural history;
(3.) Promoting heritage tourism, as a benefit to the local economy, by identifying and protecting the area's significant historical and cultural values;
(4.) Encouraging the integration of historic preservation into private, local, state and federal decision-making processes having the potential to affect prehistoric and historic properties within the jurisdiction of _____ County;
(5.) Recognizing the historical importance of _____ County and carrying that historical importance forward into the future;
(6.) Recognizing the cultural significance of _____ County as an area of human habitation and/or migration and the circumstances surrounding these historic and prehistoric activities,

This program is also intended to seek state and federal government recognition of ____ County's commitment to historic preservation by participating in the Certified Local Government Program, (established by Section 101(c) of the National Preservation Act, as amended, (16 USC 470 et seq.).

C. OBJECTIVE: The objective of _____ County Historic Preservation Resolution is to establish a local Historic Preservation Commission to promote the preservation of historic and prehistoric sites, structures, objects, buildings and districts by addressing historic preservation issues at the local level and integrating them into local planning, and state and federal decision-making processes. The historic preservation program will include the identification, evaluation and protection of historic and prehistoric resources within _____ County, as well as providing general information and education about these resources.

D. SCOPE: The _____ County Historic Preservation Commission shall serve in an advisory capacity to the _____ County Commissioners, _____ County Planning Board, _____ Zoning Board and other pertinent bodies or organizations.

E. COMMISSION MEMBERS: The _____ County Historic Preservation Commission shall consist of no fewer than five (5) members with a demonstrated interest, competence or knowledge in historic preservation. The County Commissioners shall jointly appoint if available three (3) Commission members with professional expertise in the disciplines of history, planning, archaeology, architecture, architectural history, historic archaeology or other historic preservation related disciplines such as cultural geography or cultural anthropology to the extent that such professional expertise is available in the community.

F. APPOINTMENT AND TERMS: Terms of office for the Historic Preservation Commission members shall be, upon enactment of this resolution, for two years. The original board shall be appointed in divided terms: the majority shall be appointed to one year terms and the minority shall be appointed for two year terms. The number of consecutive terms served by any one member will not be limited.

G. LOCAL HISTORIC PRESERVATION OFFICER: The _____ County Commission will appoint a local Historic Preservation Officer, who may be employed by the appropriate County department. The Preservation local Historic Preservation Officer must have a demonstrated interest, competence or knowledge in historic preservation with professional expertise in history, planning, archaeology, architecture, architectural history, historic archaeology or a closely related field to the extent that such professional expertise is available to the community.

(1.) Duties of the local Historic Preservation Officer include coordinating local historic preservation programs, helping in the development of local surveys, projects and historic preservation planning documents, advising and providing assistance to the local Historic Preservation Commission, government agencies and the public, and ensuring to the extent practicable, that the duties and responsibilities delegated by this ordinance are carried out.

H. MEETINGS: The Historic Preservation Commission shall conduct a minimum of one (1) regularly scheduled meetings each month, except that the chairperson may cancel

any meeting if there are no matters to be considered or schedule special meetings when such meetings are necessary to carry out the provisions of this resolution.

Special meetings of the Commission may be called by the chairperson or by two [2] members. All meetings shall be held in public and in accordance with the Montana State Open Meeting law. Notice of the meetings should be calculated to reach all interested and affected members of the community in sufficient time to enable them to participate meaningfully, through circulation, radio public service announcements, news releases to local news media or any other method deemed necessary and appropriate. All written or taped minutes, reports and case decisions shall be available to the public.

The Historic Preservation Commission shall establish by-laws conforming to the guidelines set forth in the Montana Certified Local Government Manual.

I. POWERS AND DUTIES: The _____ County Historic Preservation Commission shall:

(1.) Maintain a system for the survey and inventory of historic and prehistoric properties. This information shall be available to the public. The Commission shall withhold information about the location, character or ownership of historic or prehistoric resources if that disclosure may (a) cause a significant invasion of privacy, (b) risk harm to the resource, or (c) impede the use of a traditional religious site by practitioners (Section 304 of the National Preservation Act, as amended, 16 USC 470 et seq.);

(2.) Use the “National Register of Historic Places Criteria for Evaluation” for local designation of historic and prehistoric properties;

(3.) Review and participate in all proposed National Register nominations within _____ County according to Montana Certified Local Government Manual;

(4.) Encourage public participation while assisting with the enforcement of appropriate State and local Legislation concerning historic preservation having the potential to affect prehistoric and historic properties within the jurisdiction of _____ County;

(5.) Submit an annual report to the State Historic Preservation Office meeting the requirements established by the Montana Certified Local Government Manual;
(6.) At least one (1) member shall attend at least one (1) training session each year, and provide to all historic preservation Commission members for review any orientation materials provided by the State Historic Preservation Office;

(7.) Review and comment on land use proposals and planning programs related to historic and prehistoric resources;

(8.) Consult with the City, State and Federal agencies on all applications, environmental assessments, environmental impact statements and other similar documents pertaining to historic districts, landmark sites and landmark or neighboring properties within _____ County. Comments by the Historic Preservation Commission will be sent by the local Historic Preservation Officer to the _____ County Commissioners;

(9.) Review the local zoning regulations for their applicability to the characteristics of the proposed historic districts and make appropriate recommendations to the appropriate

Town and County Zoning Commissions or Councils concerning any changes or modifications to the zoning regulations or zoning district boundaries;

(10.) Assist with the preparation and adoption of Comprehensive Historic Preservation Plans and assist with the periodic updates of said plans;

(11.) Provide information, advice and guidance, upon request by property owners, as to the restoration, rehabilitation, landscaping or maintenance of potentially historic buildings, sites, objects or structures. The Historic Preservation Commission may recommend voluntary design guidelines based upon the Secretary of the Interiors Standards for Historic Preservation, which will be made available to the public for assistance in preservation projects.

(12.) Participate in, promote and conduct public information, educational and interpretive programs pertaining to historic preservation, including potential tax incentives and federal and/or state grants when available.

(13.) The Historic Preservation Office shall provide a copy of the annual report to the State Historic Preservation Office (provided for in Section 5 of this Resolution) to the _____ County Commissioners. The Historical Preservation Commission may in addition provide quarterly reports to the _____ County Commissioners to discuss their activity for the past quarter. Minutes of Commission meetings and any other information deemed necessary may be appended to the quarterly reports.

(14.) Undertake any actions necessary to assure compliance with federal and state guidelines regarding the Certified Local Government program.

J. SEVERABILITY CLAUSE: If any section, subsection, sentence, clause, phrase or word of the Resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Resolution, and the remainder of the Resolution will remain in force and effect.

Signed on this ____day of _____, _____

_____ County Commission:

Attest
Clerk and Recorder

§ 15.2-2306 Preservation of historical sites and architectural areas.

A. 1. Any locality may adopt an ordinance setting forth the historic landmarks within the locality as established by the Virginia Board of Historic Resources, and any other buildings or structures within the locality having an important historic, architectural, archaeological or cultural interest, any historic areas within the locality as defined by § 15.2-2201 , and areas of unique architectural value located within designated conservation, rehabilitation or redevelopment districts, amending the existing zoning ordinance and delineating one or more historic districts, adjacent to such landmarks, buildings and structures, or encompassing such areas, or encompassing parcels of land contiguous to arterial streets or highways (as designated pursuant to Title 33.1, including § 33.1-41.1 of that title) found by the governing body to be significant routes of tourist access to the locality or to designated historic landmarks, buildings, structures or districts therein or in a contiguous locality. An amendment of the zoning ordinance and the establishment of a district or districts shall be in accordance with the provisions of Article 7 (§ 15.2-2280 et seq.) of this chapter. The governing body may provide for a review board to administer the ordinance and may provide compensation to the board. The ordinance may include a provision that no building or structure, including signs, shall be erected, reconstructed, altered or restored within any such district unless approved by the review board or, on appeal, by the governing body of the locality as being architecturally compatible with the historic landmarks, buildings or structures therein.

2. Subject to the provisions of subdivision 3 of this subsection the governing body may provide in the ordinance that no historic landmark, building or structure within any district shall be razed, demolished or moved until the razing, demolition or moving thereof is approved by the review board, or, on appeal, by the governing body after consultation with the review board.

3. The governing body shall provide by ordinance for appeals to the circuit court for such locality from any final decision of the governing body pursuant to subdivisions 1 and 2 of this subsection and shall specify therein the parties entitled to appeal the decisions, which parties shall have the right to appeal to the circuit court for review by filing a petition at law, setting forth the alleged illegality of the action of the governing body, provided the petition is filed within thirty days after the final decision is rendered by the governing body. The filing of the petition shall stay the decision of the governing body pending the outcome of the appeal to the court, except that the filing of the petition shall not stay the decision of the governing body if the decision denies the right to raze or demolish a historic landmark, building or structure. The court may reverse or modify the decision of the governing body, in whole or in part, if it finds upon review that the decision of the governing body is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion, or it may affirm the decision of the governing body.

In addition to the right of appeal hereinabove set forth, the owner of a historic landmark, building or structure, the razing or demolition of which is subject to the provisions of subdivision 2 of this subsection, shall, as a matter of right, be entitled to raze or demolish such landmark, building or structure provided that: (i) he has applied to the governing body for such right, (ii) the owner has for the period of time set forth in the same schedule hereinafter contained and at a price reasonably related to its fair market value, made a bona fide offer to sell the landmark, building or structure, and the land pertaining thereto, to the locality or to any person, firm, corporation, government or agency thereof,

or political subdivision or agency thereof, which gives reasonable assurance that it is willing to preserve and restore the landmark, building or structure and the land pertaining thereto, and (iii) no bona fide contract, binding upon all parties thereto, shall have been executed for the sale of any such landmark, building or structure, and the land pertaining thereto, prior to the expiration of the applicable time period set forth in the time schedule hereinafter contained. Any appeal which may be taken to the court from the decision of the governing body, whether instituted by the owner or by any other proper party, notwithstanding the provisions heretofore stated relating to a stay of the decision appealed from shall not affect the right of the owner to make the bona fide offer to sell referred to above. No offer to sell shall be made more than one year after a final decision by the governing body, but thereafter the owner may renew his request to the governing body to approve the razing or demolition of the historic landmark, building or structure. The time schedule for offers to sell shall be as follows: three months when the offering price is less than $25,000; four months when the offering price is $25,000 or more but less than $40,000; five months when the offering price is $40,000 or more but less than $55,000; six months when the offering price is $55,000 or more but less than $75,000; seven months when the offering price is $75,000 or more but less than $90,000; and twelve months when the offering price is $90,000 or more.

4. The governing body is authorized to acquire in any legal manner any historic area, landmark, building or structure, land pertaining thereto, or any estate or interest therein which, in the opinion of the governing body should be acquired, preserved and maintained for the use, observation, education, pleasure and welfare of the people; provide for their renovation, preservation, maintenance, management and control as places of historic interest by a department of the locality or by a board, commission or agency specially established by ordinance for the purpose; charge or authorize the charging of compensation for the use thereof or admission thereto; lease, subject to such regulations as may be established by ordinance, any such area, property, lands or estate or interest therein so acquired upon the condition that the historic character of the area, landmark, building, structure or land shall be preserved and maintained; or to enter into contracts with any person, firm or corporation for the management, preservation, maintenance or operation of any such area, landmark, building, structure, land pertaining thereto or interest therein so acquired as a place of historic interest; however, the locality shall not use the right of condemnation under this subsection unless the historic value of such area, landmark, building, structure, land pertaining thereto, or estate or interest therein is about to be destroyed.

B. Notwithstanding any contrary provision of law, general or special, in the City of Portsmouth no approval of any governmental agency or review board shall be required for the construction of a ramp to serve the handicapped at any structure designated pursuant to the provisions of this section.

(1973, c. 270, § 15.1-503.2; 1974, c. 90; 1975, cc. 98, 574, 575, 641; 1977, c. 473; 1987, c. 563; 1988, c. 700; 1989, c. 174; 1993, c. 770; 1996, c. 424; 1997, cc. 587, 676.)

APPENDIX III

DIVISION 10. MIDTOWN OVERLAY DISTRICT

Sec. 36-385. Purpose and intent.
The purpose of the Midtown Overlay (district) is to create a quality vital atmosphere for businesses (commercial or office) and residents. Buildings, parking area, signage, landscaping and street furnishings should all be designed to complement and encourage pedestrian use both day and evening. Proper planning is necessary to ensure visual clutter is avoided.
Guidelines and strategies must be in place to protect the district from the negative impact of poorly planned or incompatible projects. Incompatible development has the potential to destroy the attributes that will attract people to the district.
(Ord. No. 19,004, § 1A, 12-2-03)

Sec. 26-386. Boundaries.
The district shall include all parcels within the area bounded by I-630 on the south and Father Tribou to the north from McKinley on the west to University Avenue on the east; as well as the area bounded by Lee Avenue on the north and Markham on the south from University Avenue east to Filmore on the east.
(Ord. No. 19,004, § 1B, 12-2-03)

Sec. 36-387. Application of regulations.
(a) The regulations of this district shall be in addition to and shall overlay all other zoning districts and other ordinance requirements regulating the development of land so that any parcel of land lying in the overlay district shall also lie within one (1) or more of the other underlying zoning districts. Therefore, all property within this overlay district shall have requirements of both the underlying and overlay zoning districts in addition to any other provisions regulating the development of land. In case of conflicting standards between this article and other city ordinances, the overlay requirements shall control.
(b) These regulations shall apply to new development, and redevelopment exceeding fifty (50) percent of the structure's current replacement value and expansion of existing development. The design guidelines shall be implemented when a permit is requested for exterior improvements on buildings or in the public right-of-way. Routine repairs, maintenance and interior alterations shall not require compliance with this section.
(c) Uses, structures or lots which existed on the effective date of this ordinance which do not conform to the standards and guidelines established in this ordinance, shall be treated as nonconforming according to the provisions of article III of this chapter. Nonconforming status shall not apply to construction of improvements in the public right-of-way required by the city, redevelopment or expansion of existing development.
(Ord. No. 19,004, § 1C, 12-2-03)

Sec. 36-388. Sidewalks.
All public and private streets and drives shall have five-foot sidewalks on both sides of the vehicular area.
(Ord. No. 19,004, § 1D, 12-2-03)

Sec. 36-389. Streets.
(a) Streets within the district, other than arterials, shall be built at a standard of thirty-one (31) feet back-to-back pavement and five-foot sidewalks on both sides of the roadway. Staff shall have additional requirements at major intersections for street width. On any road with parking allowed on both sides, the pavement width shall be thirty-six (36) feet back to back.

(b) Block lengths within the district shall be not more than four hundred (400) feet from centerline to centerline on internal nonarterial roadways.
(c) No more than one (1) curb cut per block-face shall be permitted. Driveways and parking lot entrance-exits shall be combined and where appropriate located in alleys.
(d) Alleys shall have a maximum width of eighteen (18) feet.
(e) A circulation plan shall be done for the district. As part of this plan, locations will be identified for transit pullouts. These pullouts shall be designed to maximize both the ease of vehicular flow and access to transit.
(Ord. No. 19,004, § 1D, 12-2-03)

Sec. 36-390. Parking.
(a) *Standard parking requirements.* Parking requirements within the district shall be fifty (50) percent of that required by article VIII of this chapter.
The maximum parking allowed shall be the minimum standard established in article VII of chapter 36.
(b) *Off-site parking.* On-street parking shall be allowed at a rate of one (1) space per ten (10) linear feet of street frontage. No on-street parking shall be allowed on University Avenue or Markham Street.
Parking spaces within a common parking facility may be counted toward the parking requirements of any development. The total number of parking spaces within the common parking facility shall not be less than the sum of requirements for the various individual uses utilizing the facility.
(c) *Parking facilities.* Surface parking shall be limited to the side and rear of structures. No parking shall be allowed in the "front-yard setback".
Parking structures shall have ground-level uses devoted to nonvehicular activities. Development of ground-level retail or office uses is encouraged.
(Ord. No. 19,004, § 1F, 12-2-03)

Sec. 36-391. Utilities and services.
(a) All new utilities for developments within the district shall be buried.
(b) Dumpster, delivery and waste removal areas shall be located in alleys where available or in common service areas for multiple developments.
(c) In all areas, service and waste removal areas shall be screened and located away from public outdoor spaces and pedestrian areas. Dumpster screening as per [section] 36-253.
(Ord. No. 19,004, § 1G, 12-2-03)

Sec. 36-392. Building form.
(a) *Ground-level facade.* For new construction at least, sixty (60) percent of the ground-floor level facing pedestrian public circulation areas shall be glass-windows and/or displays.
(b) *Building setbacks.* Front yard setbacks on streets classified as less than arterials shall be zero (0), but may not be more than twenty (20) feet. Developments on tracts (lots) adjacent to other developments shall be placed on the tracts so that the front facade shall be aligned with the existing neighboring structure.
Side yard setbacks shall be zero (0).
Rear yard setback shall be zero (0).
(c) *Large building requirement.* The following criteria shall apply to any building over seventy-five thousand (75,000) square feet or facade longer than two thousand (200) linear feet.

(1) *[Wall projections, recesses.]* Wall projections or recesses a minimum of three-foot depth and a minimum of twenty (20) contiguous feet not to extend over twenty (20) percent of the facade shall be required. Arcades, display windows, entry areas or awnings shall exist along at least sixty (60) percent of the facade.
(2) *[Roof lines.]* Roof lines shall be varied with a change in height every one hundred (100) linear feet in building length. Parapets, mansard roofs, gable roofs, high roofs shall be used to conceal flat roofs and roof top equipment.
(3) *[Exterior building materials, colors.]* Exterior building materials and colors shall be aesthetically pleasing and compatible with materials and colors used in adjoining neighborhoods.
a. Predominant exterior building materials shall be of high-quality materials; such as, but not limited to: brick, wood, stone, tinted, concreted masonry units. Facade colors shall be low reflectant, subtle, neutral or earth tone with trim and accents brighter primary colors.
b. Predominant exterior building materials shall not be smooth-faced concrete block, tilt-up concrete panels or prefabricated steel panels.
(4) *Entryway.*
a. Buildings shall have clearly defined and visible customer entrances featuring elements such as: overhangs, arcades, arches, canopies, peaked roof forms, display windows.
b. All sides of building that face abutting public or private rights-of-way, except alleys, shall feature at least one customer entrance.
(5) *Parking lot orientation.* Surface parking areas should be "broken up", distributed around larger structures so as to shorten the distance to other buildings and public sidewalks.
(Ord. No. 19,004, § 1H, 12-2-03)

Sec. 36-393. Landscaping.
(a) No street buffer, or landscaping, shall be required along streets classified less than an arterial.
(b) Land use buffers shall only be provided where single-family and duplex use or zoning is the abutting use. In those cases where a land use buffer is required, buffers shall be the same as those for multifamily uses in subsection 36-522(b)(1). In areas where terrain variation is great or other features result in the loss of privacy, alternative designs and massing shall be considered.
(c) Surface parking lots shall meet all current landscape requirements (chapter 15, article IV).
(d) Large public open space areas shall be maintained by a common authority. Attempts shall be made to maintain vegetation, trees, and bushes, in undisturbed conditions to serve the aesthetic, recreational and ecological needs of the district. Trees planted in these areas shall be a minimum of two (2) inches in caliper and ten (10) feet in height.
(e) Trees greater than fourteen (14) inches in diameter, measured at four and one-half (four 1/2) feet above the ground, shall be protected from removal and damages in future development of the district. Any development within fifty (50) feet of any such tree shall be reviewed prior to development to assure protective measures are included and in place.
(Ord. No. 19,004, § 1I, 12-2-03)

Sec. 36-394. Signage.
(a) No off-site advertising signs are permitted.

(b) No pole-mounted signs, except along Markham or University Avenue.
(c) No wood, painted signs or pan-face-style signs.
(Ord. No. 19,004, § 1J, 12-2-03)

Sec. 36-395. Lighting.
A lighting plan shall indicate the location, type, intensity, and height of luminaries including both building and ground-mounted fixtures. The plan shall include the description of the luminaries, including lamps, poles or other supports and shielding devices, which may be provided as catalogue illustrations from the manufacturer.
(a) Lighting shall be shielded so as to direct light below a horizontal plane running through the lowest point on the fixture where light is emitted.
(b) Outdoor lighting that is employed only between sunset and 11:00 p.m. by an automatic shutoff service is exempted from this requirement.
(c) Fixtures shall be high-intensity type such as high-pressure sodium.
(d) Maximum height for mounting lighting fixture shall be twenty (20) feet.
(Ord. No. 19,004, § 1J, 12-2-03)

Sec. 36-396. Exceptions.
Any request to vary, alter or modify specifications of this design overlay district shall be processed as another request for a variance as per article II division 2 of the chapter.
(Ord. No. 19,004, § 1L, 12-2-03)

Table 1: Code Requirements Tables for Shielding Wattage - See Section 1 Below

TABLE INSET:

Lamp Type	25	30	35	40	50	60	75	100	110 OR MORE
Low-pressure sodium	Unshielded	Directed shield	Directed shield	Directed shield	Directed shield	Directed shield	Directed shield	Directed shield	Directed shield
High-pressure sodium	Unshielded	Unshielded	Directed shield	Directed shield	Directed shield	Directed shield	Directed shield	Directed shield	Directed shield
Metal halide	Unshielded	Unshielded	Directed shield	Directed shield	Directed shield	Directed shield	Directed shield	Directed shield	Directed shield
Fluorescent	Unshielded	Unshielded	Unshielded	Directed shield	Directed shield	Directed shield	Directed shield	Directed shield	Directed shield
Quartz	Unshielded	Unshielded	Unshielded	Unshielded	Unshielded	Directed shield	Directed shield	Directed shield	Directed shield
Tungsten halogen	Unshielded	Unshielded	Unshielded	Unshielded	Unshielded	Directed shield	Directed shield	Directed shield	Directed shield
Mercury vapor	Unshielded	Unshielded	Unshielded	Unshielded	Unshielded	Directed shield	Directed shield	Directed shield	Directed shield
Incandescent	Unshielded	Unshielded	Unshielded	Unshielded	Unshielded	Unshielded	Unshielded	Unshielded	Directed shield

1. For the purpose of this section wattage ratings for lamp types will be for either a single lamp source or multiple lamp sources when installed in a cluster.
2. Lamp types not listed in the table may be approved for use by the building official providing installation of these lamps conforms to the lumen limits established in this section.
3. Glass tubes filled with argon, neon or krypton do not require shielding.

Table 2: Typical Lumen Values for Various Lamp Wattages**

TABLE INSET:

Wattage	Low-pressure sodium	High-pressure sodium	Metal halide	Fluorescent	Quartz	Mercury Vapor	Incandescent
9				600			
18	1,800						
35	4,725	2,250					
40		4,000		2,250			480
50					1,400	1,140	480
55	7,925						
60							870
70		5,800	5,500				
75						2,800	1,190
90	14,400						
100		9,500	8,000			4,300	1,750
110				6,600			
150		16,000					2,850
175			14,000			8,600	
200		22,000					4,010
250		27,600	20,500			12,100	
300							6,360
400		50,000	36,000			22,500	
500							10 ,850

** Taken from data supplied by Portland General Electric--Energy Resource Center

Secs. 36-397--36-410. Reserved.

Chapter 1437 URBAN DESIGN OVERLAY DISTRICT

§ 1437-01. Specific Purposes.

The specific purposes of the Urban Design Overlay District are to:

(a) Protect and enhance the physical character of selected business districts that have adopted Urban Design Plans;

(b) Prevent the deterioration of property and blighting conditions;

(c) Encourage private investment to improve and stimulate the economic vitality and social character of selected business districts; and

(d) Ensure that infill development does not adversely affect the physical character of the area.

(Ordained by Ord. No. 15-2004, eff. Feb. 13, 2004)

§ 1437-03. Applicability and Zoning Map Designator.

Except as otherwise provided in this chapter, all regulations of the underlying zone districts and other applicable overlay districts, apply to and control property in an Urban Design Overlay District; provided, however, that in the case of conflict between the provisions of an underlying zoning district and the Urban Design Overlay District, the provisions of the Urban Design Overlay District govern.

(Ordained by Ord. No. 15-2004, eff. Feb. 13, 2004)

§ 1437-05. Establishment of UD Overlay Districts.

Council may establish a UD Overlay District whenever both of the following conditions are satisfied:

(a) *Neighborhood Business Center.* Upon finding that an area comprising a concentration of retail and service-oriented commercial establishments serves as the principal business activity center for a socio-geographic community.

(b) *Urban Design Plan.* Upon adoption of an urban design plan for the area that includes: A textual and graphic description of the physical and environmental improvements necessary for the coordinated revitalization of the business district. The Urban Design Plan should include but is not limited to: the location of buildings, architectural character of the buildings, signage, pedestrian and vehicular circulations, parking, open space and landscaping.

(Ordained by Ord. No. 15-2004, eff. Feb. 13, 2004)

§ 1437-07. Applications Subject to Review.

(a) The Director of Buildings and Inspections has the duty to review the following permits in an established Urban Design Overlay District for compliance with the base requirements of the district.

(1) *Signs:* Permits for the installation of all signs.

(2) *Awnings:* Permits for the installation of all awnings.

(3) *Mechanical Equipment and Utilities:* Permits for the installation of all exterior mechanical equipment and utility service connections.

(4) *Replacement Windows:* Permits for the installation of replacement windows.

(5) *Exterior Renovation or Alterations of Existing Structures:* Permits for exterior renovations, alterations, or additions.
(6) *Eating and Drinking Establishments:* Permits for Restaurants, Limited.
(b) The Zoning Hearing Examiner shall approve, approve with conditions or disapprove an application for development in an established Urban Design Overlay District in accordance with the base requirements of the district.
(1) *New construction:* Permits for new construction.
(2) *Demolition:* Permits for demolition.
(Ordained by Ord. No. 15-2004, eff. Feb. 13, 2004)

§ 1437-09. Development Standards in UD Overlay Districts.

Development within individual UD Overlay Districts must comply with the standards prescribed below that the ordinance that establishes the UD Overlay District declares applicable to that district. These standards are intended to implement policies in adopted urban design plans. Whenever the standards conflict with the development regulations of the underlying district, these standards supercede those regulations. The following regulations will apply to some or all of the UD Overlay Districts as determined by the urban design plan prepared and adopted for each district. Refer to Schedule 1437-09 for applicability.

Urban Design District Standards
Schedule 1437-09

TABLE INSET:

	UD #1	UD #2	UD #3	UD #4	UD #5	UD #6	UD #7	UD #8	UD #9	UD #10	UD #11	UD #12	UD #13
S1		X		X	X	X	X	X	X	X	X		X
S2	X	X		X	X	X	X	X	X	X	X		X
S3	X	X		X	X	X	X	X	X	X	X		X
S4	X	X		X	X	X	X	X	X	X	X		X
S5	X	X		X	X	X	X	X	X	X	X		X
A1	X	X		X	X	X	X	X	X	X	X		X

M1	X	X		X	X	X	X	X	X	X	X		X
W1	X	X		X	X	X	X	X	X	X	X		X
R1	X	X		X	X	X	X	X	X	X	X		X
R2	X	X		X	X	X	X	X	X	X	X		X
E1		X		X	X		X				X		
F1		X											
N1	X	X		X	X	X	X	X	X	X	X		X
D1	X	X		X	X		X	X	X	X	X		X

TABLE INSET:

UD #1 - College Hill Business District	UD #8 - Mt. Washington Business District
UD #2 - Clifton Business District	UD #9 - Mt. Airy Business District
UD #3 - Hartwell Business District	UD #10 - Columbia-Tusculum Business District
UD #4 - Hyde Park Square Business District	UD #11 - Hyde Park East Business District
UD #5 - Oakley Square Business District	UD #12 - Mt. Lookout Square
UD #6 - University Village Business District	UD #13 - Pleasant Ridge Business District
UD #7 - North Avondale Along Reading Road	

(a) *Signs and Signage Standards:*

S1. Prohibited Signs:

• All blinking, flashing, rotating or moving signs, except barber poles and theater marquees;

• Neon signs;

• Banners, portable or temporary signs;

• Rooftop signs, signs or awnings extending above the roofline of the building, or signs or awnings that extend above the window sill line of the second floor of the building;
• Any advertising sign on or about an unoccupied building, except those related to the sale or rental of that building;
• All signs, handbills, or flyers on utility poles, except those installed by the city and state.
S2. Projecting Signs
• Projecting signs shall not be used except for small identification or trademark signs symbolic of the business identified.
• The copy of all signs should identify the predominant business on the premises or its principal product or service.
• Advertising signs are prohibited.
• Projecting signs shall not exceed six square feet per sign face and shall not exceed 12 square feet for all faces.
• Projecting signs should be located over entry doors or building columns or piers and shall be limited to one projecting sign per business.
• All sign supports shall be simple in nature, have no visible guy wires and be made less obtrusive with camouflaging color in harmony with the surrounding environment.
S3. In the case where buildings have multiple storefronts occupied by different tenants, the allowable signage area for each tenant will be calculated based upon the storefront street frontage in order to maintain a proportional distribution of signage area.
S4. For businesses located within an interior portion of a building, or on the second floor or higher story of a building and lacking an exterior wall or window area, a sign identifying the business no larger than six square feet may be affixed to the exterior of the building. This sign area shall be included in the maximum allowable area for all signs on the property.
S5. Ground signs: where permitted, ground signs shall meet the following standards:
• Ground signs shall be a maximum sign area of not more than one square foot of sign area per linear foot of street frontage per sign face, up to a maximum sign area of 30 square feet per face, or 60 square feet for all sign faces.
• Ground signs shall be limited to two sign faces and shall not exceed six feet in height.
• Ground signs shall be located at or near the primary street frontage.
• Ground signs shall be compatible with the design of the building in proportion, shape, scale, materials, colors, and lighting.
(b) *Awning Standards:*
A1. Awnings shall meet the following standards:
• Awnings shall project no more than two-thirds the width of the sidewalk or six feet, whichever is less.
• Awnings shall run parallel to the face of the building.
• Awnings shall be located within the existing building framework - between columns and below spandrel panels. Awning colors and design shall be compatible with the colors and design of the building.
• Structural supports for all awnings shall be contained within the awning covering.
• Each storefront bay shall have a similar awning to the other storefront bays on the same building.
• Awnings shall be designed to be harmonious with the architecture of the building that they are to be placed on. They shall relate in shape and proportion to the building's architectural elements such as window and opening shapes, facade articulation and general character of the building.
(c) *Mechanical Equipment and Utility Standards:*
M1. Mechanical equipment, including air conditioning, piping, ducts, and conduits external to the building shall be concealed from view from adjacent buildings or street

level by grills, screens or other enclosures. Electric and other utility service connections shall be underground for new construction and encouraged for all other changes.

(d) *Replacement Window Standards:*

W1. Replacement windows shall meet the following standards:

• Replacement windows shall fit the size and style of the original openings.

• Original window and door openings shall not be enclosed or bricked-in on the street elevation. Where openings on the sides or rear of the building are to be closed, the infill materials shall match that of the wall and be recessed a maximum of three inches within the opening.

(e) *Exterior Renovation or Alterations of Existing Structures:*

R1. Renovations, alterations or additions shall be designed and executed in a manner that is sympathetic to the particular architectural character of the structure being worked on. Architectural elements shall be sensitively designed to reflect the detailing and materials associated with the particular style of the building.

R2. Renovations and restorations of older buildings shall respect the original building design, including structure, use of materials and details. New materials or signs shall not cover original materials and detailing. Natural materials (brick, slate, glass, stone, etc.) shall be retained in their natural state and not covered with any other contemporary materials. Materials that are out of keeping with the historic character of the building shall be removed from the facade upon significant exterior renovationor restoration of the existing structure.

(f) *Eating and Drinking Establishments:*

E1. Restaurants, Limited shall meet the following standards:

• No more than 45 percent of their floor area may be devoted to food preparation, related activities and other space not accessible to the public;

• No more than 35 percent of the restaurant's sales by dollar volume are carry-out and the patrons are served with other than single-use utensils, plates and beverage containers.

• The consumption of food or beverage in automobiles parked upon the premises is prohibited.

(g) *Franchise Establishments:*

F1. New businesses should contribute to the desired mix of commercial activities; franchise type establishments are acceptable provided that they are primarily pedestrian and not automobile oriented.

(h) *New Construction:*

N1. New buildings shall be compatible with their surroundings. Architectural style, bulk, shape, massing, scale and form of new buildings and the space between and around buildings shall be consistent with the area, and should be in harmony with neighboring buildings.

• New buildings shall respond to the pattern of window placement in the district. The designs of new buildings shall avoid long unrelieved expanses of wall along the street by maintaining the rhythm of windows and structural bays in the district. The preferred pattern of ground floor windows is open show windows, with inset or recessed entryways; and landscaping, lighting and other amenities equivalent to those existing in the district.

• Buildings shall de-emphasize secondary rear or side door entrances to commercial space, unless the entrances are associated with public parking areas.

(i) *Demolition:*

D1. Demolition has been ordered by the Director of Buildings and Inspections for reasons of public health and safety:

• The structure does not contribute to the architectural quality of the district;

• The demolition is necessary to accomplish the construction of a building which would meet the guidelines contained in the urban design plan;
• The demolition is necessary to provide parking and/or other uses in a manner specified in the urban design plan;
• The owner has endeavored in good faith to find a use for the structure and is unable to obtain a reasonable rate of return on the property;
• Demolition has been ordered to remove blight.
(Ordained by Ord. No. 15-2004, eff. Feb. 13, 2004)

§ 1437-11. Approval.

(a) If the Director of Buildings and Inspections determines that an application conforms to the requirements of § 1437-09 and all other requirements of this Code, the Director has the duty to issue a building permit for the proposed work. The Director of Buildings and Inspections has the duty to notify all owners of property abutting the subject property and the community organization recognized by the Council as representing the area that includes the subject property.
(b) If the Director of Buildings and Inspections determines the application does not conform to the requirements of § 1437-09, a hearing and decision by the Zoning Hearing Examiner is required, pursuant to Chapter 1443, Zoning Hearing Examiner Procedures, prior to the issuance of a building permit.
(Ordained by Ord. No. 15-2004, eff. Feb. 13, 2004)

§ 1437-13. Appeal.

Any party with standing may, pursuant to Chapter 1449, Zoning Board of Appeals, appeal to the Zoning Board of Appeals within 30 days after the decision of the Zoning Hearing Examiner.
(Ordained by Ord. No. 15-2004, eff. Feb. 13, 2004)

ARTICLE VII. HISTORIC PRESERVATION PROPERTY TAX EXEMPTION*

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***Editor's note:** Ord. No. 95-20, adopted June 26, 1995, enacted provisions which have been included herein at the discretion of the editor as Art. VII, §§ 2-381--2-395.

Cross references: Signs in historic zones, § 3-46 et seq.; archaeological preservation, Ch. 6; planning and development, Ch. 21; historic preservation zoning districts, § 28-181 et seq.

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Sec. 2-381. Title.

This article[Ordinance No. 95-20] may be cited as the Historic Preservation Property Tax Exemption Ordinance of the City of St. Augustine, Florida.
(Ord. No. 95-20, § 1, 6-26-95)

Sec. 2-382. Intent.

The City of St. Augustine hereby finds that the adoption of an ad valorem tax exemption for qualifying improvements of historic properties will help accomplish the following purposes:
(1) Encourage restoration, rehabilitation and renovation of historic structures located in historic preservation districts in St. Augustine; historic structures listed on the National Register of Historic Places; and designated historical landmarks; and
(2) Encourage visible rehabilitation that will make blocks and neighborhoods more attractive, focus attention on them and improve property values on the rest of the block or in the neighborhood, therefore enhancing their appeal as places to live, to work or to visit.
(Ord. No. 95-20, § 2, 6-26-95)

Sec. 2-383. Definitions.

[As used in this article the following words and terms shall have the meanings respectively ascribed:]
(1) *Assessed value* shall mean the determination of the value of an improvement or property by the St. Johns County Property Appraiser in the manner provided by law.
(2) *Contributing property* shall mean a building, site, structure or object which adds to the historical architectural qualities, historic associations or archaeological values for which a district is significant because (a) it was present during the period of significance of the district and possesses historic integrity reflecting its character at that time; (b) is capable of yielding important information about the period; or (c) it independently meets the National Register of Historic Places criteria for evaluation.
(3) *Government or non profit use* shall mean that the occupant or user of at least sixty-five (65) percent of the usable space of a historic building or of the upland component of an archaeological site is an agency of the federal, state or local government, or a non-profit organization certified by the Department of State under F.S. § 627.013.
(4) *Historical landmark* shall mean a building, object, site or structure of the highest historical, architectural, cultural or archeological importance.
(5) *Historic property* shall mean a building, object, site or structure which is: (a) individually listed in the National Register of Historic Places; (b) a contributing property in a National Register-listed historic district; (c) designated as a historic property or landmark under the provisions of City Code Section 28-87(10); or (d) a contributing

property in a historic preservation district designated under the provision of City Code Chapter 28, Article III, Division 3, Historic Preservation Districts.
(6) *Historic architectural review board* (hereinafter referred to as "board") shall mean the board which is responsible for determining the historical significance of the property and the appropriateness of the proposed work as submitted by the applicant.
(7) *Improvements* shall mean changes in the condition of real property brought about by the expenditure of labor or money for the restoration, renovation or rehabilitation of such property. Improvements shall exclude additions and accessory structures unless necessary for historic reproduction purposes (i.e., recreating a building design that previously existed).
(8) *Local historic preservation office* shall mean the planning and building division which shall supervise and administer the rules and regulations pertaining to review of applications for property tax exemptions pursuant to F.S. §§ 196.1997 and 196.1998.
(9) *Regularly and frequently open to public* shall mean a property in which public access to the property is provided not less than fifty-two (52) days a year on an equitably spaced basis, and at other times by appointment. Owners of such property are not prohibited from charging a reasonable nondiscriminating admission fee.
(10) *National Register of Historic Places* shall mean the list of historic properties significant in American history, architecture, archaeology, engineering and culture, maintained by the Secretary of the Interior, as established by the National Historic Preservation Act of 1966, as amended.
(11) *Noncontributing property* shall mean a building, site, structure or object which does not add to the historic architectural qualities, historic associations or archaeological values for which a district is significant because (a) it was not present during the period of significance of the district; (b) due to alterations, disturbances, additions or other changes, it no longer possesses historic integrity reflecting its character at that time or is incapable of yielding important information about the period; or (c) it does not independently meet the National Register of Historic Places criteria for evaluation.
(12) *Renovation* or *rehabilitation* shall mean the act or process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the property which are significant to its historical, architectural, cultural and archaeological values. For historic properties or portions thereof which are of archeological significance or are severely deteriorated, "renovation" or "rehabilitation" means the act or process of applying measures designed to sustain and protect the existing form and integrity of a property, or reestablish the stability of an unsafe or deteriorated property while maintaining the essential form of the property as it presently exists.
(13) *Restoration* shall mean the act or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time by means of removal of later work or by the replacement of missing earlier work.
(14) *Substantial completion of improvement* shall mean that a request for review of completed work has been submitted by the property owner and approved by the historic preservation office.
(15) *Usable space* shall mean that portion of the space within a building which is available for assignment or rental to an occupant, including every type of space available for use of the occupant.
(16) *Qualifying property* shall mean any real property in the City of St. Augustine which, at the time the preconstruction application is submitted, (a) is individually listed in The National Register of Historic Places; (b) is a contributing property to a National Register District; or (c) is designated as a contributing property in a Historic Preservation District.

(Ord. No. 95-20, § 3, 6-26-95; Ord. No. 00-01, § 1, 2-14-00)
Cross references: Definitions and rules of construction generally, § 1-2.

Sec. 2-384. Exemption.

Qualifying properties will be eligible to receive an ad valorem tax exemption of one hundred (100) percent of the assessed value of the improvements, as defined in section 2-383(7) of this article, resulting from renovation, restoration or rehabilitation of the property. All qualifying projects must complete the review process outlined in this article. The exemption shall apply only to improvements to real property. All qualifying improvements must be commenced on or after the date of adoption of this article [Ordinance No. 95-20]. If the property is used for non-profit or governmental purposes, and is regularly and frequently open for the public's visitation, use and benefit, then one hundred (100) percent of the assessed value of the property, as improved, is exempt provided the assessed value of the improvement is at least fifty (50) percent of the total assessed value of the property, as improved, and the improvement is made by or for the use of the existing owner. The exemption shall apply only to ad valorem taxes levied by the City of St. Augustine.
(Ord. No. 95-20, § 4, 6-26-95; Ord. No. 00-01, § 2, 2-14-00)

Sec. 2-385. Exemption period.

The exemption period shall be five (5) years beginning on January 1 following substantial completion of the improvement.
(Ord. No. 95-20, § 5, 6-26-95)

Sec. 2-386. Procedures.

(a) *Application for exemption.* Application for the property tax exemption shall be made on the two-part Historic Preservation Property Tax Exemption Application, DOS Form No. HR3E101292, or its equivalent, as adopted by the State of Florida. Part 1, the Preconstruction Application, shall be submitted before improvements are initiated, and Part 2, the Request for Review of Completed Work, shall be submitted upon completion of the improvements. Said Application shall be completed in accordance with the instructions promulgated by the Department of State of the State of Florida.
(b) Upon receipt of the completed preconstruction application and all required supporting materials, the historic preservation office shall determine whether the property for which an exemption is requested is a qualifying property. The historic preservation office shall refer the application to the board, which shall determine whether the proposed improvements are consistent with the Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (latest edition), U.S. Department of the Interior, National Park Service.
(c) On completion of the review of a preconstruction application, the historic preservation office shall notify the applicant and the city commission in writing of the results of the review and shall make recommendations for correction of any planned work deemed to be inconsistent with the standards cited above.
(d) Each review of a preconstruction application or application for review of completed work conducted by the board shall be completed within sixty (60) days of the time that the complete application is submitted to the historic preservation office.
(e) Upon receipt of the request for review of completed work and all required supporting materials, the board shall conduct a review to determine whether or not the completed improvements are in compliance with the work described in the approved preconstruction application, subsequent approved amendments, if any, and the

Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. The board reserves the right to inspect the completed work to verify such compliance.
(f) On completion of the review of a request for review of completed work, the board shall recommend that the city commission grant or deny the exemption. The recommendation, and the reasons therefore, shall be provided in writing to the applicant and to the city commission. The recommendation shall advise the applicant of their right to a fair hearing pursuant to procedures set forth by the city.
(Ord. No. 95-20, § 6, 6-26-95)

Sec. 2-387. Evaluation of improvements.

(a) The board shall apply the recommended approaches to rehabilitation as set forth in the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings in evaluating the eligibility of improvements to the historic property.
(b) For improvements intended to protect or stabilize severely deteriorated historic properties or archaeological sites, the board shall apply the following additional standards:
(1) Before applying protective measures which are generally of a temporary nature and imply future historic preservation work, an analysis of the actual or anticipated threats to the property shall be made by the chief building official.
(2) Protective measures shall safeguard the physical condition or environment of a property or archaeological site from further deterioration or damage caused by weather or other natural, animal or human intrusions.
(3) If any historic material or architectural features are removed, they shall be properly recorded and, if possible, stored for future study or reuse.
(4) Stabilization shall reestablish the structural stability of a property through the reinforcement of loadbearing members or by arresting material deterioration leading to structural failure. Stabilization shall also reestablish weather resistant conditions for a property.
(5) Stabilization shall be accomplished in such a manner that it detracts as little as possible from the property's appearance. When reinforcement is required to reestablish structural stability, such work shall be concealed wherever possible so as not to intrude upon or detract from the aesthetic and historical quality of the property, except where concealment would result in the alteration or destruction of historically significant material or spaces.
(Ord. No. 95-20, § 7, 6-26-95)

Sec. 2-388. Appeals.

Appeals from decisions of the historic preservation office and/or the board related to whether a property is a qualifying property may be taken to the St. Augustine City Commission within fifteen (15) days of such decision in accordance with procedures established in section 28-29(d) of the City Code.
(Ord. No. 95-20, § 8, 6-26-95)

Sec. 2-389. Commencement of work.

Work must commence within one (1) year following the date of approval of a preconstruction application. The preconstruction application shall be considered to be in effect as long as a

Work must commence within one (1) year following the date of approval of a preconstruction application. The preconstruction application shall be considered to be in effect as long as a building permit is valid for the work specified on the property.
(Ord. No. 95-20, § 9, 6-26-95)

Sec. 2-390. Other permits and approvals.

Nothing in this article shall relieve the property owner or his agents from the responsibility of complying with all other local codes and ordinances relating to construction contracting or permitting, in or out of designated historic preservation districts.
(Ord. No. 95-20, § 10, 6-26-95)

Sec. 2-391. Covenant.

A property owner qualifying for an exemption pursuant to this article and the city commission shall execute the Historic Preservation Property Tax Exemption Covenant, DOS Form No. HR3E111292, or its equivalent, as adopted by the State of Florida. The historic preservation office, at the time the covenant is executed, shall forward a copy of the approved historic preservation property tax exemption application and historic preservation property tax exemption covenant to the St. Johns County Property Appraiser. On or before the effective date of the exemption, as established by the city commission, the owner of the property shall have the covenant recorded with the deed for the property in the Official Records of St. Johns County.
(Ord. No. 95-20, § 11, 6-26-95)

Sec. 2-392. Minimum thresholds for application.

In order to be eligible for the historic preservation tax exemption, (1) the value of the proposed improvements must be equal to at least fifty (50) percent of the total assessed value of the property, before the improvement, or twenty thousand dollars ($20,000.00), whichever is less; and (2) at least twenty-five (25) percent of the valuation of the proposed improvements must be for work to the exterior or foundation of the structure.
(Ord. No. 95-20, § 12, 6-26-95)

Sec. 2-393. Annual report.

The historic preservation office shall prepare an annual report to the city commission concerning the historic preservation property tax exemption program. The report shall be filed in January of each calendar year, and shall summarize activities of the board as related to the historic preservation tax exemption program during the previous calendar year and shall contain the following items: (a) a list of the properties for which preconstruction applications and applications for review of completed work were made during the preceding year; (b) explanation of the disposition of each application; (c) the total expenditure on each approved qualifying improvement project during the preceding year; (d) the total number of properties currently participating in the historic preservation property tax exemption program as of the end of the previous year; and (e) the total expenditure on all qualifying improvement projects currently participating in the program.
(Ord. No. 95-20, § 13, 6-26-95)

Sec. 2-394. Savings clause.

If any portion hereof shall be determined to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the remaining portions hereof.

If any portion hereof shall be determined to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the remaining portions hereof.
(Ord. No. 95-20, § 14, 6-26-95)

Sec. 2-395. Effective date.

This article shall take effect ten (10) days after its passage as provided by law.
(Ord. No. 95-20, § 15, 6-26-95)