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Sec. 146-97. - H Historic Preservation Overlay District.

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(a) Purpose and Intent. The City Council hereby declares that as a matter of public policy the protection, enhancement and perpetuation of districts and landmarks of historical and cultural importance and significance are necessary to promote the economic, cultural, educational and general welfare of the public. It is recognized that the historic districts and landmarks within the city represent the unique confluence of time and place that shaped the identity of generations of citizens, collectively and individually, and produced significant historic, architectural and cultural resources that constitute their heritage; therefore, the H Historic Preservation Overlay District is intended to:

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(1) Protect and enhance the district and landmarks, which represent distinctive elements of the city's historic, architectural and cultural heritage;

(2) Foster civic pride in the accomplishments of the past;

(3) Protect and enhance the city's attractiveness to home buyers, businesses, investors, tourists, visitors, and shoppers and the support and stimulus to the economy thereby provided;

(4) Ensure the harmonious, orderly and efficient growth and development of the city;

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(5) Promote the economic prosperity and welfare of the community by encouraging the most appropriate use of such property within the city;

(6) Ensure that the preservation, rehabilitation, restoration, and reconstruction of such properties are consistent with and contribute to the historic character of the community; and

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(7) Stabilize and improve the values of such properties.

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(b) Boundaries. The boundaries of the H Historic Preservation Overlay District are delineated on the official zoning map and the official boundary map, herein (see appendix C to this chapter). The regulations of the H Historic Preservation Overlay District set forth herein do not replace the regulations of the underlying zoning district. The regulations of the H Historic Preservation Overlay District are imposed in addition to the regulations of the underlying zoning district. In the event that the regulations of the H Historic Preservation Overlay District conflict with the regulations of the underlying zoning district, the more restrictive regulations shall control.

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(c) Definitions.

alteration: any act or process that changes one or more historic, architectural or physical features of a building, site, structure, or object, including, but not limited to, the construction, reconstruction, rehabilitation, or removal of any structure; and clearing, grading or other modification of an area, site, or landscape that changes its current condition.

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construction: the act or process of expanding an existing building, structure, or object or erecting a new building, structure, or object.

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building: anything constructed, the use of which requires permanent or temporary location on or in the ground, enclosing a space within walls, and usually covered by a roof, the purpose of which is, to provide shelter or housing, or to provide working, office, parking, display, storage or sales space.

demolition: the act or process of destroying in part or in whole a building, site, structure, or object.

demolition by neglect: the act or process of allowing a building, site, structure, or object to fall into a serious state of disrepair to the point that it may become necessary to demolish the building, site, structure, or object in order to protect the life and safety of the citizens of the city.

historic property: a building, site, structure, or object significant in history, architecture, engineering, archeology, or culture at the national, state, or local level.

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historic resource: generally is the same as a historic property. It includes architectural, historical, and archeological properties as well as landscape features.

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historic resources survey: the systematic gathering of information on the architectural, historic, scenic, and archaeological significance of buildings, sites, structures, objects, areas, or landscapes through visual assessment in the field and historical research for the purpose of identifying landmarks or districts worthy of preservation.

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integrity: the authenticity of a building, site, structure or object's historic identity, evidenced by survival of physical characteristics that existed during the building, site, structure or object's historic or prehistoric period.

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inventory: a list of historic resources that have been identified and evaluated as meeting specified criteria of significance.

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object: the term used to distinguish from buildings and structures those constructions that are primarily artistic in nature or are relatively small in scale and simply constructed. Although it may be, by nature or design, movable, an object is associated with a specific setting or environment, such as statuary in a designed landscape.

ordinary maintenance: the act or process of repairing any deterioration or decay of, or damage to, any exterior architectural feature of any building, site, structure or object and restoring the exterior architectural feature to its condition prior to the occurrence of such deterioration, decay or damage. Ordinary maintenance includes in-kind replacement. However, any change in exterior design, form, materials or appearance does not constitute ordinary maintenance.

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preservation: the act or process of applying measures to sustain the existing form, integrity, and material of a building, site, structure, or object. It may include initial stabilization work, where necessary, as well as ongoing maintenance of the historic building materials.

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reconstruction: the act or process of depicting, by means of new construction, the form, features, and detailing of a non-surviving building, site, structure, or object for the

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purpose of replicating its appearance at a specific period of time and in its historic location.

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rehabilitation: the act or process of returning a building, site, structure, or object to a state of utility through alteration which makes possible an efficient contemporary use while preserving those portions or features which are significant to its historical, architectural, and cultural values.

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relocation: the act or process of moving a building, structure, or object from its current location to another location.

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restoration: the act or process of accurately depicting the form, features and character of a building, site, structure, or object as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period.

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site: the traditional, documented or legendary location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historical, cultural, or archeological value regardless of the value of any existing structure. Sites include, but are not limited to, cemeteries, burial grounds, occupation and work areas, battlefields, settlements, estates, gardens, river crossings, routes and trails, quarries, mines or significant trees or plant life.

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stop work order: an order issued by the city's chief building official directing an owner, occupant, contractor or subcontractor to halt any action for which a certificate of appropriateness is required, and notifying the owner, occupant, contractor or subcontractor of the application process and procedures for a certificate of appropriateness.

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structure: the term used to distinguish from buildings those functional constructions made usually for purposes other than creating shelter. Structures include, but are not limited to, signs, fences, bridges, railroad trestles, gazebos, clock/bell towers, elevated water storage tanks and towers, and radio/television towers.

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(d) Certificate of Appropriateness.

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(1) Required. No person shall carry out any construction, reconstruction, alteration, restoration, expansion, rehabilitation, relocation or demolition of any exterior architectural feature of any building, site, structure, or object located within the H Historic Preservation Overlay District without first obtaining a Certificate of Appropriateness. A Certificate of Appropriateness must be obtained prior to the issuance of any building permit. The term "exterior architectural feature" shall include but not be limited to the kind and basic texture of all exterior building materials and the type, design and character of all exterior elements such as windows, doors, siding, roofs, porches, steps, stairs, stoops, balconies, railings, shutters, awnings, signs, lighting fixtures, columns, capitals, brackets, pediments, pilasters, cornices, parapets, finials, trims, chimneys, transoms, bulkheads, expression lines, dormers, paving (walkways and driveways), fences, gazebos, arbors, and secondary buildings (carriage houses, barns, sheds, and garages).

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public right-of-way ...historic
preservation ...overlay ...district
certificate ...appropriateness ...from
the historic preservation officer
(referred to hereafter as
HPO).....certificate
appropriateness ...features ...lights,
signs and other exterior fixtures ... [8]

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~~(2) Ordinary Maintenance. Ordinary maintenance of any exterior architectural feature of any building, site, structure, or object in the H Historic Preservation Overlay District does not require a Certificate of Appropriateness. The Historic Preservation Officer shall make the decision as to whether a proposed action falls within the definition of ordinary maintenance.~~

Deleted: (2) Guideline establishment. The HPO, with a recommendation by the HPAB and approval of the city council, may establish guidelines to issue a certificate of appropriateness for exterior restorations and renovations.

~~(3) Landscaping. Any alteration or change to landscape materials does not require a Certificate of Appropriateness. The Historic Preservation Officer shall provide review and comment as requested by the property owner regarding appropriate plant and landscape materials. Such review and comment, however, shall not be binding.~~

Deleted: 3...maintenance...Nothing in this section shall be construed to prevent the ordinary maintenance, replacement or repair of any exterior architectural feature of a landmark or property within the historic district. Ordinary maintenance shall be defined as any work that does not constitute a change in design, material, or outward appearance. Ordinary maintenance includes in-kind replacement or repair. ... [9]

~~(4) Exterior Painting, Staining or Coating.~~

~~a. Wood, cement fiber, metal, stucco, EIFS, architectural concrete masonry units (CMU) and concrete tilt wall. A Certificate of Appropriateness is not required for the application (or removal) of paint, stain, or coating to/from these exterior finishing materials. The Historic Preservation Officer shall provide review and comment as requested by the property owner regarding surface preparation, color scheme, and product selection. Such review and comment, however, shall not be binding.~~

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~~b. Masonry (brick or stone). A Certificate of Appropriateness is required for the application (or removal) of paint, stain, or coating to/from masonry (brick or stone) exterior finishing materials.~~

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~~(e) Criteria for Review of a Certificate of Appropriateness Application. In reviewing an application for a Certificate of Appropriateness, the following criteria shall be used:~~

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~~(1) The HPO shall follow the Secretary of the Interior's Standards for Rehabilitation (codified in 36 CFR 67) in the review of all applications for Certificates of Appropriateness. The Standards are as follows:~~

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~~1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.~~

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~~2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.~~

~~3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.~~

~~4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.~~

~~5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.~~

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6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

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7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

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8. Significant archaeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.

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9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

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10. New additions and adjacent or related new construction shall be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

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(2) The Secretary of the Interior's Guidelines for Rehabilitating Historic Buildings and the Secretary of the Interior's Illustrated Guidelines on Sustainability for Rehabilitating Historic Buildings shall be used by the Historic Preservation Officer to assist in interpreting and applying the Standards. The Secretary of the Interior's Guidelines for Rehabilitating Historic Buildings and the Secretary of the Interior's Illustrated Guidelines on Sustainability for Rehabilitating Historic Buildings shall be made available in the office of the Historic Preservation Officer.

Deleted: (2) The HPO shall utilize a checklist of design elements to be reviewed and considered by the HPO in reaching its determination. Such checklist shall be initially approved by the city council and thereafter modified by the HPO or the city council as deemed necessary.

(3) The preservation priority rating assigned to the property in question in the historic resources survey of the city, as amended, shall be used by the Historic Preservation Officer to assist in the review of all applications for Certificates of Appropriateness. The survey shall be made available in the office of the Historic Preservation Officer.

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(4) Any guidelines established by the Historic Preservation Officer, recommended by the Historic Preservation Board, and approved by the City Council.

(f) Certificate of Appropriateness Application Procedure.

Deleted: (e) Procedures for approval.

(1) Prior to the commencement of any work requiring a Certificate of Appropriateness, the applicant shall file an application with the Historic Preservation Officer for such certificate. The applicant should consult with the Historic Preservation Officer prior to submission of the application regarding applicable standards and guidelines pursuant to subsection (e).

(2) The application shall be made on a form provided by the Historic Preservation Officer and shall include:

- a. Current photograph(s) of the subject property (historical photographs may also be helpful);
- b. Letter of intent describing in detail the proposed work (including but not limited to details such as size, shape, color, texture, material, location, and method of construction/installation/removal)
- c. Site plan/plot plan/floor plan drawing(s) (dimensionally accurate and drawn to scale) showing the existing building, site, structure or object and the proposed work;
- d. Elevation drawing(s) (dimensionally accurate and drawn to scale) showing the existing exterior architectural features and the proposed work;
- e. Sample(s) and/or detailed specifications of proposed materials, as requested by the Historic Preservation Officer;
- f. If the proposed work includes the replacement or removal of historic exterior architectural features (such as wood windows or wood lap siding), the applicant shall submit a written evaluation of the existing condition of said historic exterior architectural features performed by an independent third party (i.e. a licensed architect, engineer, or contractor) with demonstrated experience and expertise in the preservation and rehabilitation of historic buildings and structures. The evaluation shall include a signed affidavit from the independent third party, certifying and attesting the level of deterioration of said exterior architectural features and providing an expert opinion of their suitability for repair.
- g. Any other information, which the Historic Preservation Officer may deem necessary to sufficiently complete the application and initiate the thirty (30) working day review period described below in subsection (f)(3).

(3) For an application to carry out construction, reconstruction, alteration, restoration, expansion, rehabilitation, or relocation of any exterior architectural feature of any building, site, structure, or object within the H Historic Preservation Overlay District, the Historic Preservation Officer shall within thirty (30) working days of receipt of the completed application approve, approve with conditions, or schedule the application for the next available meeting of the Historic Preservation Board. For an application to carry out demolition in part or in whole of any building, site, structure, or object within the H Historic Preservation Overlay District, the Historic Preservation Officer shall within thirty (30) working days from receipt of the completed application approve, approve with a 90-day delay, or schedule the application for the next available meeting of the Historic Preservation Board.

(4) All decisions of the Historic Preservation Officer shall be in writing. Within seven (7) working days of a decision, a copy of the written decision and/or Certificate of Appropriateness shall be sent to the applicant and kept on file in the office of the Historic Preservation Officer. The decision shall state the reasons for approving, approving with conditions, or approving with a 90-day delay.

(5) The Historic Preservation Officer shall not have the authority to disapprove an application and shall be required to refer any application which he is not able to approve to the Historic Preservation Board for review and action. The Historic Preservation Officer may, for any reason, elect to refer an application to the Historic Preservation Board for review and action. With the referral of said application, the Historic Preservation Officer shall forward a recommendation to the Historic Preservation Board,

accompanied by a written report containing an explanation of the reasons for the recommendation.

(6) If the Historic Preservation Officer does not take action as described in subsection (f)(3) within the period of thirty (30) working days of receipt of the completed application, the applicant may file a written request with the Historic Preservation Board, through the Director of Planning, for the application to be scheduled for review and action at the next available meeting of the Historic Preservation Board. The Historic Preservation Officer shall forward a recommendation to the Historic Preservation Board, accompanied by a written report containing an explanation of the reasons for the recommendation.

(7) If the applicant is not in agreement with the conditions of approval imposed by the Historic Preservation Officer or if the applicant is not in agreement with the 90-day delay, the applicant may, within ten (10) working days of receipt of the written decision, file a written request with the Historic Preservation Board, through the Director of Planning, for the application to be scheduled for review and action at the next available meeting of the Historic Preservation Board.

(8) At the next available meeting of the Historic Preservation Board, the Historic Preservation Board shall conduct a public hearing on the application, at which time an opportunity shall be provided for proponents and opponents of the application to present their views. After the public hearing is closed, the Historic Preservation Board shall take action on the application pursuant to subsection (e). For an application to carry out the construction, reconstruction, alteration, restoration, expansion, rehabilitation, or relocation of any exterior architectural feature of any building, site, structure, or object within the H Historic Preservation Overlay District, the Historic Preservation Board shall approve, approve with conditions, or disapprove. For an application to carry out the demolition in part or in whole of any building, site, structure, or object within the H Historic Preservation Overlay District, the Historic Preservation Board shall approve, approve with a 60-day delay, or disapprove. The application shall be deemed approved by the city if approved by a majority vote of the Historic Preservation Board.

(9) If the Historic Preservation Board does not take action within ninety (90) working days of receipt of the completed application, the application for the Certificate of Appropriateness shall be automatically approved.

(10) All decisions of the Historic Preservation Board shall be in writing. Within seven (7) working days of a decision, a copy of the written decision and/or Certificate of Appropriateness shall be sent to the applicant and kept on file in the office of the Historic Preservation Officer. The decision shall state the reasons for approving, approving with conditions, approving with a 60-day delay, or disapproving the application.

(11) No application which has been disapproved by the Historic Preservation Board shall be again considered either by the Historic Preservation Officer or by the Historic Preservation Board within one (1) year of the date of the disapproval unless said application is revised to specifically address and reflect the reasons for the Historic Preservation Board's original disapproval.

(12) Any applicant aggrieved by a decision of the Historic Preservation Board may, within ten (10) working days of receipt of the written decision, file a written request for appeal with the Board of Adjustment, through the Director of Planning. The Board of

Adjustment shall give notice, follow publication procedure, hold hearings, and make its decision in the same manner as provided in Section 146-165 Board of Adjustment. The decision by the Board of Adjustment shall be the final decision.

(13) No building permit shall be issued by the Chief Building Official for such proposed work until an application for a Certificate of Appropriateness has been approved by the Historic Preservation Officer pursuant to subsection (f)(3), by the Historic Preservation Board pursuant to subsection (f)(8) or, upon appeal, by the Board of Adjustment pursuant to subsection (f)(12). The Certificate of Appropriateness required by this section shall be in addition to and not in lieu of any building permit that may be required by another ordinance of the city.

(14) If an application for a Certificate of Appropriateness to carry out the demolition in part or in whole of any property has been approved with a delay, a demolition permit shall not be issued during that delay unless the Chief Building Official determines that the property poses an imminent threat to the life and safety of the citizens of the city.

(15) A Certificate of Appropriateness shall become void unless the approved work is commenced within twenty-four (24) months of the date of approval. The Historic Preservation Officer shall have authority to issue a renewal of a Certificate of Appropriateness for up to twelve (12) additional months only upon written request by an applicant. For demolition delays, the Historic Preservation Officer shall have authority to issue a renewal of a demolition delay for up to ninety (90) additional days only upon written request by an applicant.

(g) Certificate of Economic Hardship.

(1) For Certificate of Appropriateness to carry out construction, reconstruction, alteration, restoration, expansion, rehabilitation, or relocation.

An applicant whose application has been approved with conditions or disapproved by the Historic Preservation Board pursuant to subsection (f)(8) or by the Board of Adjustment pursuant to subsection (f)(12) may apply for relief on the ground of economic hardship. In order to prove the existence of economic hardship, the applicant shall have the burden to establish by a preponderance of the evidence that:

a. The property, as an income-producing property, is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible; or

b. The property, as a non-income-producing property, has no reasonable use as an owner-occupied residential dwelling or as a non-income-producing institutional use.

(2) For Certificates of Appropriateness to carry out demolition.

An applicant whose application has been disapproved by the Historic Preservation Board pursuant to subsection (f)(8) or by the Board of Adjustment pursuant to subsection (f)(12) may apply for relief on the ground of economic hardship. In order to prove the existence of economic hardship, the applicant shall have the burden to establish by a preponderance of the evidence that:

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(2) The application shall contain:¶
a. The name, address, and telephone number of the applicant;¶
b. The location and photographs of the property and adjacent properties (historical photographs may also be helpful);¶
c. A letter of intent describing in detail the work proposed;¶
d. The elevation drawings of the proposed changes;¶
e. Samples of materials to be used if requested by the historic preservation officer;¶
f. If the proposal includes signs or lettering, a scale drawing showing the type of lettering to be used, all dimensions and colors, a description of materials to be used, the method of illumination (if any) and a plan showing the sign's location on the property; ¶
g. Any other information, which the historic preservation officer may deem necessary in order to visualize the proposed work; and ¶
h. The priority rating of the property as indicated by the city's records.¶
(3) For COA applications, the HPO shall approve, approve with conditions or schedule the COA for the next available historic preservation advisory board (¶ ... [14])

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Deleted: (f) Demolition. A permit for the demolition of a historic landmark or property within the historic district, including secondary buildings. (... [15])

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a. The property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible; and

b. The property cannot be adapted for any other reasonable use, whether by the current owner or by a purchaser, which would result in a reasonable return; and

c. Efforts to find a purchaser interested in acquiring the property and rehabilitating it have failed; and

d. The building or structure cannot be feasibly moved or relocated.

(3) Conduct of Applicant Excluded.

Demonstration of economic hardship by the applicant shall not be based on self-imposed or self-created conditions resulting from:

a. Willful or negligent acts by the applicant; or

b. Purchase of the property by the applicant for substantially more than market value; or

c. Failure by the applicant to perform ordinary maintenance and repairs; or

d. Failure by the applicant to diligently solicit and retain tenants; or

e. Failure by the applicant to provide normal tenant improvements.

(i) Certificate of Economic Hardship Application Procedure.

(1) Within ten (10) working days of receipt of a written decision by the Historic Preservation Board or by the Board of Adjustment to approve with conditions or disapprove a Certificate of Appropriateness, the applicant may file an application for a Certificate of Economic Hardship with the Historic Preservation Board through the Director of Planning. Application for a Certificate of Economic Hardship shall be made only after a Certificate of Appropriateness has either been:

a. approved with specific conditions with which the applicant does not agree, or

b. disapproved.

(2) The application shall be made on a form provided by the Director of Planning and shall include:

a. Form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture, or other.

b. Amount paid for the property, the date of purchase and the party from which purchased, including a description of the relationship, if any, between the owner or applicant and the person from whom the property was purchased, and any terms of financing between the buyer and the seller.

c. Remaining balance on any mortgage or other financing secured by the property and annual debt service, if any, for the previous two years.

d. Any appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing, or ownership of the property.

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e. If the property is income-producing, the annual gross income from the property for the previous two years, itemized income revenue, operating and maintenance expenses for the previous two years, and depreciation deduction and annual cash flow before and after debt service, if any, during the same period.

f. Real estate taxes for the previous two years.

g. Assessed value of the property according to the two most recent assessments.

h. Any listing of the property within the past two years for sale or rent, price asked, and offers received, if any, including any relevant documents regarding any real estate broker or firm engaged to sell or rent the property, the reasonableness of price or rent sought by the applicant, and any advertisements placed for the sale or rent of the property.

i. An appraisal of the market value of the property in its current condition; estimate of market value of the property after completion of the work as proposed by the applicant; estimate of market value of the property after completion of the work as required for a Certificate of Appropriateness.

j. Cost estimates from two different contractors with demonstrated experience and expertise in the preservation and rehabilitation of historic buildings and structures to perform the work as proposed by the applicant and to perform the work as required for a Certificate of Appropriateness.

k. In the case of a proposed demolition, the applicant shall submit an expert opinion from a licensed architect, engineer, developer, or real estate consultant with demonstrated experience and expertise in the preservation and rehabilitation of historic buildings and structures, as to the economic feasibility of the rehabilitation or reuse of the historic building or structure.

l. Any other information which the Historic Preservation Officer or Historic Preservation Board may deem necessary to sufficiently complete the application for a Certificate of Economic Hardship.

(3) Within ten (10) working days of receipt of the completed application, the Director of Planning shall schedule the application for the next available meeting of the Historic Preservation Board. The Director of Planning shall forward a recommendation to the Historic Preservation Board, accompanied by a written report containing an explanation of the reasons for the recommendation.

(4) At the next available meeting of the Historic Preservation Board, the Historic Preservation Board shall conduct a public hearing on the application, at which time an opportunity shall be provided for proponents and opponents of the application to present their views. After the public hearing is closed, the Historic Preservation Board shall approve or disapprove the application. The application shall be deemed approved by the city if approved by a majority vote of the Historic Preservation Board.

(5) All decisions of the Historic Preservation Board shall be in writing. Within seven (7) working days of a decision, a copy of the written decision and/or Certificate of Economic Hardship shall be sent to the applicant and kept on file in the office of the Historic Preservation Officer. The decision shall state the reasons for approving or disapproving the application.

(6) Any applicant aggrieved by a decision of the Historic Preservation Board may, within ten (10) working days of receipt of the written decision, file a written request for appeal with the Board of Adjustment, through the Director of Planning. The Board of Adjustment shall give notice, follow publication procedure, hold hearings, and make its decision in

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Deleted: The HPAB shall hold a public hearing on the hardship application at which an opportunity will be provided for proponents and opponents of the application to present their views. ¶

Deleted: (3) The HPAB and the HPO, in consultation with local preservation groups and other interested parties, shall explore with the applicant, or his designated representative, alternatives for the performance of the proposed work that will preserve the structure or property to the greatest extent possible, while being economically feasible. ¶

Deleted: (4) If a deviation is granted, the certificate of appropriateness for the proposed work shall state the terms and conditions of the deviation. ¶
(5) All deviations shall be in compliance with other city codes and ordinances.

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the same manner as provided in Section 146-165 Board of Adjustment. The decision by the Board of Adjustment shall be the final decision.

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(j) Demolition by Neglect. No owner or person with legal custody and control of real property within the H Historic Preservation Overlay District shall allow a property to fall into a serious state of disrepair to the point that it may become necessary to demolish the property in order to protect the life and safety of the citizens of the city.

Deleted: (7) The hardship determination may be appealed in accordance with subsection (j)(3) of this section.¶

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The owner or person with legal custody and control of the property must repair the property if it is found by the city to have any of the following defects:

- (a) Defective or deteriorated exterior walls or other vertical supports that split, lean, list or buckle or are insufficient to carry the loads imposed;
- (b) Defective or deteriorated floor supports or floor supports that are insufficient to carry the loads imposed;
- (c) Defective or deteriorated ceilings, roofs, ceiling or roof supports or other horizontal members that sag, split, or buckle or are insufficient to carry the loads imposed;
- (d) Defective or deteriorated fireplaces and chimneys that list, bulge, or settle or are of insufficient size or strength to carry the loads imposed;
- (e) Defective, deteriorated or lack of weather protection for exterior wall coverings, including paint, stucco, mortar, or plaster;
- (f) Deteriorated or ineffective waterproofing of exterior walls, roofs, foundations or floors, including broken or open windows or doors;
- (g) Deterioration of any exterior feature so as to create or allow the creation of any hazardous condition, which could lead to the claim that demolition is necessary for public safety; and
- (h) Deterioration of any exterior architectural feature which would produce a detrimental effect upon the character of the H Historic Preservation Overlay District as a whole or the life and character of the property itself.

Deleted: Demolition by neglect. No owner or person with an interest in real property designated as a landmark or included within the historic district shall permit the property to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would, in the judgment of the HPO, produce a detrimental effect upon the character of the historic district as a whole or the life and character of the property itself. Examples of such deterioration include, but are not limited to: ¶
(1) Deterioration of exterior walls or other vertical supports;¶
(2) Deterioration of roofs or other horizontal members;¶
(3) Deterioration of exterior chimneys;¶
(4) Deterioration of crumbling of exterior stucco or mortar;¶
(5) Ineffective waterproofing of exterior walls, roofs or foundations, including broken windows or doors; and¶
(6) Deterioration of any feature so as to create a hazardous condition, which could lead to the claim that demolition is necessary for public safety.

(k) Administration.

(1) Penalties. Failure to comply with any of the provisions of this chapter shall be deemed a violation, and the violator shall be liable for a misdemeanor charge and be subject to a fine not to exceed \$2,000.00; and each day that such violation continues shall constitute a separate offense and shall be punishable accordingly. These penal provisions shall not prevent an action on behalf of the city to enjoin any violation of the terms of this section or an action for mandatory injunction to remove any previous violation hereof.

(2) Enforcement. Pursuant to subsection (d)(1), it shall be unlawful to carry out any construction, reconstruction, alteration, restoration, expansion, rehabilitation, relocation or demolition of any exterior architectural feature of any building, site, structure, or object located within the H Historic Preservation Overlay District without first obtaining a Certificate of Appropriateness.

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Pursuant to subsection (d)(4), it shall also be unlawful to carry out the application (or removal) of paint, stain, or coating to/from masonry (brick or stone) exterior finishing materials without first obtaining a Certificate of Appropriateness.

All work performed pursuant to a Certificate of Appropriateness issued under this section shall conform to any requirements included therein. It shall be the duty of the Code Enforcement Department to inspect periodically any such work to ensure compliance. In the event work is found that is not being performed in accordance with a Certificate of Appropriateness, or upon notification by the Historic Preservation Officer of such fact and verification by the Code Enforcement Department, the Code Enforcement Department shall issue a stop work order directing an owner, occupant, contractor or subcontractor to immediately cease all work. No further work shall be undertaken on the project as long as a stop work order is in effect.

Pursuant to subsection (j), it shall also be unlawful to allow any building, site, structure, or object located within the H Historic Preservation Overlay District to fall into a serious state of disrepair to the point that it may become necessary to demolish the property in order to protect the life and safety of the citizens of the city. The Historic Preservation Officer shall first coordinate with the owner or person with legal custody and control of the property in order to encourage and facilitate maintenance, repair, and stabilization of the property and identify resources. If the owner or person with legal custody and control of the property fails to start, make substantial progress toward completion of, or complete repairs by a reasonable deadline set by the Historic Preservation Officer, the Historic Preservation Officer may refer the Demolition by Neglect case to the Code Enforcement Department for appropriate enforcement action to prevent Demolition by Neglect.

(3) No vested interest. No developer or property owner shall acquire any vested interest in this section or specific regulations contained herein. This section and regulations may be amended or repealed by the city council in the manner provided by law.

(Code 1982, § 41-92; Ord. No. 2002-08-084, § 1.44, 8-20-2002; Ord. No. 2004-01-007, § 2, 1-6-2004; Ord. No. 2008-07-066, § 1, 7-14-2008)

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lights, signs and other exterior fixtures.

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Nothing in this section shall be construed to prevent the ordinary maintenance, replacement or repair of any exterior architectural feature of a landmark or property within the historic district. Ordinary maintenance shall be defined as any work that does not constitute a change in design, material, or outward appearance.

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Ordinary maintenance includes in-kind replacement or repair.

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Any person wishing to paint a structure within the historic district may do so without receiving a certificate of appropriateness from the HPO

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The following standards, guidelines and criteria should be used in a balanced evaluation of the property in question

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(1) Prior to the commencement of any work requiring a certificate of appropriateness, the applicant shall file an application for such certificate with the HPO. The applicant should consult with the HPO prior to submission of the application regarding applicable standards and guidelines for the property.

(2) The application shall contain:

- a. The name, address, and telephone number of the applicant;
- b. The location and photographs of the property and adjacent properties (historical photographs may also be helpful);
- c. A letter of intent describing in detail the work proposed;

- d. The elevation drawings of the proposed changes;
- e. Samples of materials to be used if requested by the historic preservation officer;
- f. If the proposal includes signs or lettering, a scale drawing showing the type of lettering to be used, all dimensions and colors, a description of materials to be used, the method of illumination (if any) and a plan showing the sign's location on the property;
- g. Any other information, which the historic preservation officer may deem necessary in order to visualize the proposed work; and
- h. The priority rating of the property as indicated by the city's records.

(3) For COA applications, the HPO shall approve, approve with conditions or schedule the COA for the next available historic preservation advisory board (HPAB) meeting within 30 days from receipt of the completed application. Should the HPO not take action as described above within the 30-day period, the certificate of appropriateness shall be automatically approved. The HPO may, for any reason, elect to present the COA application to the historic preservation advisory board for approval.

(4) If the applicant is not in agreement with the conditions of approval imposed by the HPO, the applicant may, within 21 days of HPO action, request in writing to the director of planning that the COA be reconsidered by the HPAB.

(5) The HPO shall not have the authority to disapprove the COA application and shall be required to refer any COA, which he is not able to approve to the historic preservation advisory board for consideration and action.

(6) Pursuant to subsection (j)(3) of this section, appeals of the historic preservation advisory board's decision may, within 21 days of receipt of the board's written decision, file a written application with the city council, through the director of planning, for review of the decision and the approval, denial, modification of, or deviation from, the HPO's and/or HPAB's decision. The appeal application shall be set before the city council at the first available city council meeting. The city council's decision shall be final.

(7) All decisions of the city shall be in writing. A copy of the decision shall be sent to the applicant and kept on file in the planning department along with the certificate of appropriateness. The decision shall state the reasons for modifying or denying any application.

(8) No building permit shall be issued for such proposed work until a certificate of appropriateness has been issued by the HPO or, upon appeal, to the historic preservation advisory board and/or city council pursuant to subsections (e)(3), (e)(4), (e)(5) and (j)(3) of this section. The certificate of appropriateness required by this section shall be in addition to and not in lieu of any building permit that may be required by another ordinance of the city.

(f) Demolition. A permit for the demolition of a historic landmark or property within the historic district, including secondary buildings, shall not be granted by the chief building official without the review of a completed application and issuance of a certificate of appropriateness for demolition by the historic preservation officer. The HPO shall approve or approve with a 90-day delay all demolitions in the historic district.

(1) Any COA for demolition that requires final consideration by the building and standards commission shall be forwarded to them with the recommendation of the HPO, prior to any action by the commission.

(2) The HPO shall not have the authority to disapprove the demolition application and shall be required to refer any demolition which he is not able to approve to the historic preservation advisory board for consideration. The HPO may, for any reason, elect to present the demolition application to the HPAB for consideration.

(3) If the applicant is not in agreement with the 90-day delay imposed by the HPO, the applicant may, within 21 days of HPO action, request in writing to the director of planning, that the demolition application be reconsidered by the HPAB.

(4) If demolition has been delayed for 90 days, a demolition permit shall not be issued during that 90 days unless the chief building official determines that the property poses a threat to the life and safety of the citizens of the city. In the event that the HPO does not act within 90 days of the receipt of the application, a permit for demolition may be granted.

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If the HPO is not able to issue the certificate of appropriateness on the ground that the proposed work will not comply with the criteria set forth in subsection (d) of this section, and any design guidelines for the property, the applicant shall have the right to seek deviations from the criteria design guidelines from the HPAB on the basis of economic hardship. In order to be entitled to a deviation from the guidelines, the applicant must prove by a preponderance of the evidence that he will have no reasonable opportunity to recover the cost of the proposed work if he is required to perform the work in accordance with the criteria and design guidelines.

b. If the HPAB finds that the applicant would have no reasonable opportunity to recover the cost of the proposed work if performed in accordance with the criteria and the design guidelines, the HPAB shall grant a deviation from the criteria and any applicable design guidelines and may issue a certificate of appropriateness for the required work, with or without conditions. If the HPAB finds that the applicant has failed to satisfy this burden of proof, the certificate of appropriateness will be denied.

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c. The following factors shall be considered by the HPAB in determining the extent of the deviation granted:

1. The cost to perform the work in compliance with the criteria and design guidelines;
2. The value of the property;
3. The extent to which a deviation is necessary to allow the owner a reasonable opportunity to recover the cost of the work;

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4. Whether granting the deviation will harm an existing or proposed historic or landmark district or structure or property designated with a high priority rating; and/or

5. Whether the proposed work is in harmony with the spirit and purposes of this section.

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demolition. An applicant who's certificate of appropriateness for a proposed demolition has been denied by the HPAB may apply for relief on the ground of hardship. In order to prove the existence of hardship, the applicant must prove by a preponderance of the evidence that:

- a. The property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;
- b. The property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return;
- c. Efforts to find a purchaser interested in acquiring the property and preserving it have failed; and/or
- d. The structure or property is in such a condition as to be irreparably damaged and, as such, poses a nuisance to the surrounding area and is a threat to the health, safety and general welfare of the community.

(hi) Economic hardship application procedure.

(1) After receiving written notification from the city of the denial of a certificate of appropriateness, an applicant may, within ten working days, commence the hardship process, unless the hardship application is filed simultaneously with the application for a certificate of appropriateness. No consideration or action may be taken on the hardship application unless a denial of the certificate of appropriateness has been issued. No building permit or demolition permit shall be issued unless a finding that a hardship exists has been made.

(3) Appeals. Any applicant or property owner aggrieved by a decision of the historic preservation officer or historic preservation advisory board relating to economic hardship, demolition, or a certificate of appropriateness may, within 21 days of receipt of the written decision, file a written application with the city council, through the director of planning, for review of the decision and the approval, denial, modification of, or deviation from, the HPO's and/or HPAB's decision. The appeal application shall be set before the city council at the first available city council meeting. The city council's decision shall be final.