

Chapter 17.23 HISTORIC PRESERVATION

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17.23.010 Short title.

This chapter shall be known as the "Historic Preservation Ordinance" of the City of Davenport, Iowa. (Ord. 91-737 § 1 (part).)

17.23.020 Purpose.

The purpose of this chapter is to promote the educational, cultural, aesthetic, economic and general welfare of the city of Davenport by:

A. Providing a mechanism for the community to identify, protect and enjoy the distinctive historical and architectural characteristics of Davenport which represent a visual legacy of the city's cultural, social, economic, political and architectural heritage; and

B. Fostering civic pride, through public education, by formally recognizing and honoring the notable accomplishments of past citizens as represented in the city's historic structures, sites, objects and districts; and

C. Stabilizing and/or increasing property values by encouraging the conservation, through sympathetic rehabilitation and/or reuse, of historically or architecturally significant properties; and

D. Preserving and enhancing the city's attractiveness to potential home buyers, tourists, businesses wanting to relocate and other visitors, thereby supporting and promoting commercial development and economic benefit to the city's economy; and lastly,

E. Encouraging the stabilization, rehabilitation and conservation of the existing building stock, including the prevention of needless demolition of structurally-sound buildings, in order to strengthen the city's neighborhoods and to prevent future urban blight.

(Ord. 91-737 § 1 (part)).

17.23.030 Definitions.

A. "Alteration" means any activity requiring a building, sign or demolition permit which materially or visually changes the exterior architectural features, elements and appearance of a structure. This includes, but is not limited to, construction, reconstruction, rehabilitation, relocation and demolition, in whole or in part.

B. "Appurtenant fixture" means something that belongs to or is attached to something else, either physically or legally.

C. "Architectural feature" means and includes the exterior elements of a structure or site and their arrangement which define a particular architectural style, character and/or uniqueness. These elements include,

but are not limited to, the following: facade materials, windows, doors, mill-work, roof-cresting, fences, gates, light fixtures, signs, and all other appurtenant fixtures.

D. "Architectural significance" means a structure possessing any of the following characteristics is said to have architectural significance:

1. The structure is the work of or is associated with a noted architect, builder, craftsman or architectural firm; and/or
2. The structure is an exceptional example of a particular architectural design or style (whether local or typical) in terms of detail, material and workmanship; and/or
3. The structure is one of the few remaining examples of a particular use or is an example which does not clearly represent a major style but has a high degree of integrity, as defined herein; and/or
4. The structure is one of a contiguous grouping that provide a sense of cohesiveness expressed through a similarity of design, style, time period or method of construction and adding to the unique character of the area; and/or
5. The detail, material and workmanship can be valued in and of themselves as reflective of or similar to those of the majority of the other visual elements in the area.

E. "Building" means a structure created to shelter any form of human activity, such as a house, garage (or carriage house), warehouse, factory, barn, church, hotel or similar structure. Buildings may refer to a historically-related grouping of structures such as a courthouse and jail or a house and barn. This term is a subset of "structure" as defined in this section.

F. "Certificate of appropriateness" means a document issued by the local historic preservation commission indicating its approval of work plans prior to a proposed change in the exterior architectural appearance, material or character of a designated landmark or a structure located within a designated historic district through alteration, rehabilitation, restoration, construction and reconstruction. It shall be required only for activities covered by the building and sign permit procedure.

G. "Certificate of economic hardship" means a certificate issued by the historic preservation commission, or by the city council upon appeal, based on financial and economic criteria, authorizing the demolition, in whole or in part, of a designated structure.

H. "Certificate of public hazard" means a certificate issued by the historic preservation commission for the partial or complete demolition of a structure because it poses an immediate, definite and serious threat to the life, health and safety of the general public.

I. "Commission" means the short term for the historic preservation commission created by this chapter in Section 17.23.040.

J. "Commission secretary" means the director of the community and economic development department or his/her designee. This person shall be responsible for all administrative and staff support for the activities of the historic preservation commission.

K. "Compatible" means to coexist with harmony and consistency.

L. "Construction" means building activity which physically attaches new floor space, walls and/or ceiling (s) to an existing structure or erects a new principal or accessory structure on a parcel of land.

M. "Demolition" means any act requiring a building or demolition permit which removes or destroys, in whole or in part, any exterior architectural feature of a local landmark or a structure within a designated historic district.

N. "Design criteria" means a standard of appropriate and permissible work that will retain and preserve the architectural and historic character of a designated structure and/or district.

O. "Designated" means the status officially assigned to a structure or district by the city council, based on a recommendation of the historic preservation commission, due to its architectural and/or historical significance, as defined herein.

P. "Designated property" means the short term for a designated landmark, a designated district or a

structure located within a designated district.

Q. "District" means an area of historical significance designated by ordinance of the city council, as provided in Chapter 303.34 of the Iowa State Code.

R. "Exterior architectural appearance" means and includes the architectural treatment and general arrangement of all exterior elements of a structure. This includes, but is not limited to, the color, texture and kind of materials, and the type and size of all windows, doors, roof details, light fixtures, signs and appurtenant fixtures.

S. "Historical significance" means structures or districts which possess any of the following traits are said to have historical significance:

1. Are significant in American history, architecture, archaeology and culture; and/or
2. Possess integrity of location, design, setting, materials, skill, feeling and association; and/or
3. Are associated with events that have been a significant contribution to the broad patterns of our history;

or

4. Are associated with the lives of persons significant in our past; or
5. Embody the distinctive characteristics of a type, period, method of construction, represent the work of a master, possess high artistic values, represent a significant and distinguishable entity whose components may lack individual distinction; and

6. Have yielded, or may be likely to yield, information important in prehistory and history.

T. "Improvement" means any structure, object, parking facility, fence, gate, wall, walkway, work of art, landscape feature or other item constituting a physical betterment of real property.

U. "Improvement parcel" means the unit of land, which may contain an improvement as defined in this section and which is treated as a single entity for the purpose of levying real estate taxes.

V. "Infill development" means new construction and/or other physical improvement of vacant land within a designated historic district.

W. "Integrity" taken as a whole, means the degree in which a structure, site, object or district retains its original design, materials, configuration or character.

X. "Local landmark" means a structure or district identified by the historic preservation commission and designated by the city council as satisfying the criteria as architecturally and/or historically significant, as defined herein. Structures and districts officially receiving local landmark status shall hereby be regulated by this chapter and shall be listed on the "Davenport Register of Historic Properties".

Y. "Local register" means the short term for the Davenport Register of Historic Properties.

Z. "Member" means the short term for a member of the historic preservation commission.

AA. "Nominated property" means a structure and/or district that is officially before the historic preservation commission and the city council for review of eligibility for designation.

BB. "Nuisance" means a building or structure found to be in substantial violation of city building, fire and/or housing codes.

CC. "Owner(s) of record" means the person(s), corporation or other legal entity listed as owner(s) of real property for taxation purposes in the records of the Scott County, Iowa, Recorder of Deeds.

DD. "Rehabilitation" means the act of returning a property to a state of utility which makes possible a contemporary use while preserving those portions or features of the property which are significant to its historical, architectural and cultural values. Rehabilitation activities require a building permit.

EE. "Relocation" means the removing of a structure, in whole or in part, from its original site to be situated or reconstructed on another site.

FF. "Repair" means any maintenance of a structure that does not require a building permit.

GG. "Replacement-in-kind" means the act of replacing an architectural feature of a designated structure so as not to alter its visual appearance and character. This is accomplished by using replacement materials that replicate the previous historic feature in design, size, texture and visual appearance.

HH. "Restoration" means the act or process of accurately recovering the form and details, using documentary evidence, of a structure and/or a district and its setting, as it appeared at a particular period of time, by means of the removal of later work, repair or by replacement-in-kind of missing historic architectural features.

II. "Scale" in a structure, is the relationship of vertical, horizontal and depth dimensions. With a district, it is the comparative relationship of the massing of the buildings, open spaces and landscape features.

JJ. "Structure" means anything constructed or erected, the use of which requires permanent or temporary location on or in the ground, including but not limited to: buildings, fences, bridges, gazebos, fountains, statuary, advertising signs, billboards, backstops for tennis courts, radio and television antennas (including supporting towers and satellite dishes) and swimming pools. (Ord. 95-453 § 1: Ord. 91-737 § 1 (part)).

17.23.040 Historic preservation commission.

The historic preservation commission of the city of Davenport is hereby established.

A. Residency. All members of the commission shall be legal residents of the city of Davenport.

B. Composition. The commission shall consist of nine members. They shall demonstrate a positive interest in historic preservation and/or cultural resource management issues and possess an interest, knowledge, competence or expertise in one or more of the following: architecture, history, archeology, historic preservation, urban planning, building rehabilitation, cultural resource conservation or real estate development. One position shall be reserved for an architect, one position shall be reserved for a person in real estate development, two positions shall be reserved for owner-occupants of property in officially designated districts and three positions shall be reserved for professionals representing the disciplines of architecture, archeology, history, urban planning, building rehabilitation, law, sociology, or cultural resource conservation. The remaining two positions shall be at-large appointments.

For the initial commission, two owner-occupants from one or more of the thirteen National Register of Historic Places historic districts shall be appointed. They shall serve until owners-occupants are appointed to represent local historic districts that have been designated by the city council.

C. Method of appointment. Members shall be appointed by the mayor, with the approval of the city council.

D. Terms. Members shall serve terms of three years, provided however that all members shall hold over until their successors are appointed and approved. The initial appointees shall serve the following terms: three members for three years; three members for two years and three members for one year.

E. Forfeiture of appointment. A member will forfeit his/her appointment to the commission if he/she fails to satisfy any of the following requirements:

1. The commission member changes his/her legal address to outside the city's corporate limits.

2. The commission member(s) representing the historic districts relinquishes residency in and/or all ownership rights to properties located within a designated historic district. The mayor shall appoint a new member(s) to represent that constituency. The length of the terms for the new appointees shall be treated as normal vacancies discussed in Section 17.23.040F.

3. Commission members must attend in person at least one-half of, or attend and have excused absences for at least two-thirds of, all regularly scheduled or specially-called meetings convened by the commission chairperson during the calendar year.

F. Vacancies. Vacancies occurring on the commission, other than those due to the normal expiration of term of office, shall be filled only for the unexpired portion of the former member's term. Vacancies shall be filled by a person(s) satisfying the same eligibility requirements as the former member. This includes the composition requirements contained in Section 17.23.040B. and the appointment procedure contained in Section 17.23.040C.

G. Meetings. Meetings shall be held at regularly scheduled times as determined by the commission. They shall be open to the public. A public record of the meetings shall contain the minutes, attendance records, voting results and summaries of all pertinent action of the commission. A copy shall be filed in the city clerk's office

and the department of community and economic development for public review.

Special meetings of the commission may be called by the chairperson and held at any time or place fixed in the call.

A special meeting of the commission may also be called at the request, in writing, of any three or more members of the commission and if the chairperson shall fail to comply with such request, said members so requesting shall call such meeting, all signing the notice.

H. Quorum. The presence of a majority of the official members of the commission shall constitute a quorum to legally transact commission business.

I. Officers. At its first meeting of each calendar year, the commission shall elect from its membership a chairperson and vice-chairperson who shall serve terms of one year and who shall be eligible for re-election. The chairperson shall preside over commission meetings. In the absence of the chairperson, the vice-chairperson shall perform the duties of the chairperson. If both are absent and a quorum is present, a temporary chairperson for that one meeting will be elected by those members in attendance. The chairperson shall be the spokesperson for the commission.

J. Commission secretary. The commission secretary shall be the director of community and economic development or his/her designee. The secretary's duties shall include:

1. The recording of the minutes of each commission meeting; and
2. The preparation and distribution of copies of the minutes, reports and decisions of the commission to its members and other interested parties; and
3. Satisfying all notice requirements established by city policy; and
4. Preparing and submitting to the mayor and city council a record of the commission's proceedings which involves city council action; and
5. Advising the mayor of vacancies on the commission and the expiring terms of its members; and
6. Providing all general administrative, technical and staff support to assist the commission in the performance of its duties.

K. Conflict of interest. No commission member shall participate in the discussion nor vote on any matter that appears to have a current or anticipated financial or material effect on his/her property or personal/business interests. The commission member shall be responsible for notifying the chairperson and commission secretary of such a situation prior to the commission taking any action on the issue.

L. Compensation. Members shall serve without compensation. (Ord. 93-321 §§ 1, 2; Ord. 91-737 § 1 (part)).

17.23.050 Powers and duties of the commission.

The historic preservation commission shall have the following powers and duties:

- A. To adopt its own administrative and procedural guidelines; and
- B. To maintain an ongoing survey designed to identify structures and districts potentially qualifying for local designation. The commission may initiate the nomination process and shall respond to a petition by the owner(s) of record for local landmark or historic district designation and placement onto the local register; and
- C. To maintain an ongoing survey designed to identify structures and districts potentially qualifying for the National Register of Historic Places. The commission may initiate the nomination process, and review and comment on a petition for nomination from any person, group or association for the National Register of Historic Places. This subsection is not to be interpreted as meaning that all structures, sites, objects and districts identified as eligible for the National Register of Historic Places shall be automatically approved by the city council and accepted onto the local register; and
- D. To recommend to the city council for consideration and adoption, ordinances designating architecturally and historically significant structures and areas as local landmarks and historic districts; and
- E. To maintain records of all studies and inventories for public use. This will include listings of all

structures and districts that have been listed on the National Register of Historic Places and all structures and districts that have been designated as local landmarks and historic districts by the city council. This latter list will be known as the Davenport Register of Historic Properties; and

- F. To hold public meetings to consider any action officially before the commission; and
- G. To review and take action on applications for a certificate of appropriateness, a certificate of economic hardship and a certificate of public hazard; and
- H. To call upon city staff and/or outside experts for technical advice; and
- I. To promote and conduct public education and interpretive programs on local history, including the city's inventory of architecturally and historically significant structures and districts; and
- J. To periodically review and make recommendations to the city council, in cooperation with the plan and zoning commission, proposed revisions to the Historic Preservation chapter of the city's comprehensive plan and to assist in the development of policies and procedures under the ordinance for Securing of Abandoned Buildings; and
- K. To testify before all boards and commissions on any matter involving a local landmark or designated historic district, such as but not limited to proposed zoning amendments, applications for special use permits or applications for zoning variances; and
- L. To develop and recommend to the city council for adoption, individual design guidelines for designated landmarks and historic districts in addition to the guidelines contained in this ordinance. This includes design guidelines appropriate for rehabilitation, reconstruction and infill development specific to each individual designated historic district; and
- M. To provide information upon request to the owners of local landmarks or to residents in designated historic districts pertaining to the appropriate preservation, rehabilitation and reuse options and the available financial assistance programs for the rehabilitation of designated property; and
- N. To make recommendations to the city council regarding the appropriate streetscape improvements, with adequate technical and public input, for designated historic districts. This also includes the system of signs used to announce the designated historic district and the plaques used to identify individual structures. (Ord. 99-562 § 1: Ord. 91-737 § 1 (part)).

17.23.060 Commission designation process.

A. Application process. The legal owner(s) of record or the commission, may nominate a single structure for designation as a local landmark or an area as a historic district. Upon application, the commission secretary shall inform the applicant of the information needed by the commission to adequately consider the nomination.

To nominate a district for designation by the legal owners of record, a petition requesting nomination must be signed and submitted by the owners of record representing at least fifty-one percent of the total area of the proposed district, excluding public rights-of-way. After the names on the petition are verified as legal real property owners within the proposed district, the commission secretary shall notify the applicant(s) that the nomination process may continue. A copy of the petition shall also be submitted to the State Historical Society of Iowa for its review and recommendation.

B. Designation criteria. The commission shall, after such investigation as it deems necessary, make a recommendation to the city council as to whether a nominated structure or district qualifies for the local register. To qualify, a property must satisfy one or more of the following criteria:

1. It is associated with events or persons that have made a significant contribution to the broad patterns of the history of the city, county, state and/or the nation; and/or
2. It embodies the distinctive characteristics of an architectural style valuable for the study of a type, period or method of construction; and/or
3. It represents the work of a master builder, craftsman, architect, engineer or landscape architect or

possesses high artistic values.

C. Notification of nomination. Upon receipt of a properly completed application for designation, the commission shall place the nomination on the agenda within sixty calendar days. A notice shall be placed in a newspaper of general circulation not less than four nor more than twenty calendar days prior to the scheduled meeting stating the commission's intent to consider an application for designation. It shall contain, at the minimum, the nominated property's address, legal description and the date, time and location of the public meeting. If a district is nominated, in addition to the published public notice, a letter explaining the proposed designation shall be sent by regular mail to the owner(s) of record of real property within the proposed historic district. The commission's meeting agenda shall also be posted on the first floor city hall bulletin board used for such purposes no less than one business day prior to the scheduled time of the meeting.

D. Designation - public meeting. Upon submittal of a complete application, the commission shall conduct a public meeting to consider the designation of the nominated structure and/or district. Any interested person, group of persons or organization may submit oral and/or written testimony concerning the significance of the nominated property. The commission may also consider staff reports, and request and/or hear expert testimony.

E. Burden of documentation. The nominator(s) shall have the burden of proof to provide sufficient evidence and documentation that the nominated structure and/or district is worthy of local landmark status.

F. Recommendation by the commission. To recommend the designation of local landmarks or historic districts, the commission must pass by a simple majority vote of the members present, a vote in the affirmative. In the case of a proposed historic district, when owners of more than thirty-three and one-third percent of the proposed district's area, excluding public rights-of-way and other publicly-owned property, state their disapproval in writing on an owner comment on designation form before or during the commission's first public meeting conducted to formally consider the nomination, a super-majority vote of three-fourths of the commission members present shall be required to recommend designation as a local historic district.

The commission's recommendation for approval of the designation shall be forwarded to the city council for final review and consideration. If the commission determines that the nominated property does not satisfy the criteria for designation, the nomination process shall cease. However, a property denied designation as part of a proposed historic district may seek individual local landmark status at any time following the commission's or city council's first denial. An individual structure denied designation as a local landmark may be considered for the Local Register as part of a nominated historic district at any time following its initial denial.

G. Documentation of recommendation. All commission recommendations shall be adopted by vote in a public meeting and shall be accompanied by a report stating the following information:

1. A map showing the location of the nominated structure and/or the boundaries of the proposed district; and
2. An explanation of the architectural and/or historical significance of the nominated structure and/or district as it relates to the designation criteria listed in Section 17.23.060B; and
3. An inventory of the significant exterior architectural features and property improvements that should be protected from inappropriate alterations; and
4. In the case of a designated district, a brief statement of the architectural and/or historical significance and character unique to the neighborhood that should be preserved for future generations. This statement may include design guidelines for new construction or infill development, signage, parking regulations and streetscape design or any other development issues affecting the physical appearance and use of the district.

H. Interim permit process. No building, sign or demolition permit for exterior work shall be issued for the alteration, construction, reconstruction, relocation or demolition of a nominated local landmark or for a property located within a nominated historic district from the date of filing an application for nomination with the commission until final disposition of said nomination by the commission and/or city council. The commission shall, however, establish and exercise procedures allowing for the review and approval of emergency repairs during this process. In no event shall this limitation on permits apply for more than one hundred twenty calendar

days without permission of the owner(s) of record of the property.

I. Nonapplicability. This section nor this chapter is in no way intended to and shall not prevent the demolition of a structure or object that the city housing, building, fire or legal department or the city council had identified as being an immediate threat to the life, health and safety of the general public pursuant to the Uniform Housing Code, is a fire hazard pursuant to Uniform Fire Code or is a nuisance under state or city law.

This section or this chapter shall have no effect on and shall not prevent demolition of any building already documented as being in substantial violation of the city's building, fire and/or housing codes before the date this chapter is adopted. (Ord. 99-562 §§ 2, 3; Ord. 97-318 §§ 1, 2; Ord. 95-453 § 2; Ord. 91-737 § 1 (part)).

17.23.070 Designation by city council.

A. Action by city council. The city council may vote to approve with modifications or deny the ordinance for a proposed landmark or historic district designation. If the city council denies local landmark status for the property and/or district, the same nominated property(s) may not be reconsidered by the commission for designation during the twenty-four month period following the date of denial by the city council, except pursuant to the exceptions stated in Section 17.23.060G.

B. Notification of decision. The commission secretary shall notify the nominator(s) by regular mail, of the city council's determination. The notification letter shall be postmarked no later than fifteen business days after the date of the city council's ruling on said designation.

If the property is designated, the commission shall pay for and cause said designation to be recorded on the property's chain of title by the Scott County, Iowa Recorder of Deeds.

C. Amendments or rescissions. The designation of any landmark or historic district may be amended or rescinded through the same procedure utilized for the original designation. (Ord. 99-562 § 4; Ord. 91-737 § 1 (part)).

17.23.080 Certificate of appropriateness review process.

A. Application for certificate of appropriateness. Upon application for a building or sign permit that involves a designated property, the office of construction code enforcement shall direct the applicant to the commission secretary to begin the certificate of appropriateness application process. A certificate of appropriateness must be obtained from the commission for any activity requiring a building or sign permit, except demolition, that would change the exterior architectural appearance of a structure designated as a local landmark or a structure located within a designated historic district. The activities covered shall include new construction, exterior alterations, relocations, reconstructions and infill development within designated historic districts. This approval must be obtained prior to the commencement of work and does not relieve the applicant from obtaining the other approvals required by the city.

B. Notification about application. The commission secretary shall inform the owner(s) of record of the date, time and location of the commission meeting at which the application will be considered.

The commission secretary shall also post the commission's agenda on the first floor city hall bulletin board used for such purposes no less than one business day prior to the scheduled time of the meeting.

C. Commission review process - Standards for review. In considering an application for a certificate of appropriateness, the commission shall be guided by the following general standards in addition to any other standards or guidelines established by ordinance for a local landmark or historic district. In all cases, these standards are to be applied in a reasonable manner, taking into full consideration the issue of economic feasibility and other technical considerations.

1. Every reasonable effort shall be made to make the minimal number of changes necessary to maintain a designated property in a good state of repair, thereby minimizing the impact of the proposed alteration; and

2. The removal, alteration or concealing of distinguishing exterior architectural features and historic material of a designated property should be avoided when possible; and

3. All designated property shall be recognized as a product and physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural architectural features shall be discouraged; and

4. Most properties change over time, and those changes that have acquired architectural and/or historical significance in their own right shall be recognized, respected and retained; and

5. Distinctive architectural features, construction techniques and/or examples of craftsmanship that characterize a designated property shall be treated with due consideration; and

6. Deteriorated architectural features should, where possible, be repaired rather than replaced. Where the severity of deterioration requires replacement, 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; and

7. Activities that cause deterioration of a designated property and its architectural features shall be discouraged. In those cases where the damage would be irreversible, such as sand-blasting and wetblasting fire-hardened bricks, the activities shall be prohibited. If cleaning is to be done, the gentlest means possible shall be encouraged; and

8. Known significant archeological resources possibly affected by a proposed activity shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be under-taken; and

9. New additions and related new construction shall not be discouraged when such improvements do not destroy historic material and such design is compatible with the size, massing, scale, color, materials and character of the property, neighborhood and district, if applicable.

D. Design criteria to implement review standards. When the commission is considering an application for a certificate of appropriateness, it shall consider the following architectural design criteria, or elements of design as they relate to the standards for review prescribed in Section 17.23.080C.

1. Height. The height of any proposed addition, construction or reconstruction should be compatible with the designated property and the surrounding structures, if located within a designated historic district; and

2. Proportions. The proportions (width versus height relationship) between doors and windows should be compatible, if not replicated, with the architectural design and character of the designated property; and

3. Scale. A proposed alteration, construction, reconstruction or addition should not negatively impact the scale of the designated property or district; and

4. Materials. Historic or original architectural features, or replacement elements which in all ways replicated the original, should be repaired whenever possible; and

5. Relationship of building masses and spaces. The relationship of a structure within a designated historic district to the rear, side and front yards between it and surrounding structures should be compatible; and

6. Roof shape. The roof design and shape should remain consistent with its original configuration and character; and

7. Site improvements. Landscaping and other site improvements, including off-street parking, should have as minimal of an impact as possible to the designated property's original plan/layout and its visual character.

E. Determination by the commission. The commission shall review a completed application for a certificate of appropriateness within sixty calendar days to determine if the proposed activity will change any exterior architectural features of the designated property. The commission shall accept, review and request additional evidence and testimony from the applicant during the public hearing. The commission shall work closely with the applicant and recognize the importance of finding an appropriate way to meet the current needs of the applicant. In addition, the commission shall recognize the importance of approving plans that will be reasonable for the applicant to carry out. The applicant may modify his/her plans as a result of the discussions with the commission and resubmit them for approval. If the commission finds, by a simple majority, that the proposed activity conforms to the standards for review, as defined herein, then a certificate of appropriateness shall be issued approving said activity. If the commission fails to decide on an application within the specified

time period, the application shall be deemed approved.

If the commission denies the certificate of appropriateness, the applicant shall have the right of appeal to the city council pursuant to Section 17.23.080(I).

F. Notification of determination. The commission secretary shall notify the owner(s) of record within fifteen business days of the commission's action. If the commission denies the certificate of appropriateness, the notification letter shall contain the reasons for denial and inform the applicant of his/her right to appeal.

The commission secretary shall also notify the office of construction code enforcement within three business days of the commission's action. If the commission issues the certificate of appropriateness, the commission secretary shall inform the chief building official of said approval and that the proposed work satisfies the intent of this chapter. However, if the commission denies the certificate of appropriateness, the commission secretary shall ask that the building or sign permit not be issued for said work unless an appeal to the city council results in a reversal of the commission's denial.

G. Appeal of commission determination. The owner(s) of record may appeal the commission's decision to the city council by filing a written appeal with the city clerk's office within thirty calendar days of the postmark date of the notification of determination.

If no written appeals are submitted with the city clerk's office within thirty calendar days, the commission's determination shall be the final action by the city.

H. Appeal fee. A fee of seventy-five dollars shall be paid by the petitioner at the time of filing a written appeal to said determination with the city clerk.

I. Appeal criteria. The city council, after hearing all of the evidence, shall review the commission's decision and base its ruling on the following criteria:

1. Whether the commission has exercised its powers and followed the guidelines established by law and ordinance; and

2. Whether the commission's actions were patently arbitrary and capricious.

J. Appeal — Public meeting. The city council shall, by simple majority of the members pre-sent, approve or disapprove the issuance of the certificate of appropriateness based upon the appeal criteria described in Section 17.23.080I.

(Ord. 91-737 § 1 (part)).

17.23.090 Commission's demolition review process.

The demolition of a designated local landmark or a property within a designated historic district shall be prohibited unless, upon application for and approval of, the commission issues a certificate of economic hardship allowing said demolition. The owner(s) of record or the city may apply for a demolition permit for designated properties.

A. Demolition application process. Demolition applications shall be made to the office of construction code enforcement. The office of construction code enforcement shall forward all demolition permit requests for local landmarks and properties within designated historic districts to the commission secretary within two business days of their receipt. No demolition permits shall be issued for local landmarks or properties within designated historic districts prior to the commission, or the city council upon appeal, issuing a certificate of economic hardship, excluding the circumstances described in Section 17.23.110 of this chapter.

B. Criteria for demolition request. The commission shall request and receive from the applicant all information it deems necessary to adequately consider the demolition of a designated property. This may include, but is not limited to, the following:

1. A report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of the building(s) on the property, their suitability for rehabilitation, and possible new uses for the property; and

2. The assessed value of the land and improvements thereon according to the two most recent assessments;

and

3. The real estate taxes paid during the previous two years; and
4. All appraisals obtained by the owner or applicant in connection with his purchase, financing or ownership of the property; and
5. Any listing of the property for sale or rent, price asked and offers received, if any; and
6. All building, fire and housing code violations which have been listed on the property for the past two years; and
7. Any federal, state or local citation(s) which have determined the building to be a nuisance under applicable law; and
8. Estimated market value of the property after completion of the proposed demolition and after renovation of the existing property for re-use; and
9. If the property is income-producing;
 - a. Annual gross income from the property for the previous two years; and
 - b. Itemized operating and maintenance expenses for the previous two years; and
 - c. Annual cash flow, if any, for the previous two years; and
 - d. Proof that efforts have been made by the owner to obtain a reasonable return on his investment.
- C. Notification of proposed demolition. The commission agenda shall be posted on the first floor city hall bulletin board used for such purposes no less than one business day prior to the scheduled time of the meeting and shall serve as notice to the general public of the pending meeting.
- D. Commission review process. The commission shall review all the evidence and information submitted by the applicant and receive testimony from other interested parties. If the commission finds that the building substantially violates the city building, fire and/or housing codes or the property owner cannot obtain a reasonable economic return therefrom, then the commission shall issue the demolition permit. The commission shall act on each application within sixty days after the receipt of a complete application.
- E. Notification of determination. The commission secretary shall notify the owner(s) of record by regular mail within fifteen business days of the commission's decision. The office of construction code enforcement shall be notified within two business days of the commission's action. If the certificate of economic hardship is issued, the commission secretary shall inform the chief building official of said approval. If the certificate of economic hardship is denied, the chief building official shall be instructed to withhold the demolition permit pending possible appeal of the commission's determination.

Notified parties will be informed of their right to appeal the commission's decision. (Ord. 91-737 § 1 (part)).

17.23.100 Appeal of commission's decision on demolition.

- A. Application to appeal. The owner may appeal the commission's determination regarding a proposed demolition of a local landmark. A writ-ten appeal must be submitted to the city clerk's office within thirty calendar days of the commission's decision.
- B. Appeal fee. A fee of seventy-five dollars shall be paid by the petitioner to the city clerk at the time of filing a written appeal.
- C. Notification of appeal. The city clerk shall notify the commission secretary within three business days of the filing of a written appeal. The commission secretary shall inform the office of construction code enforcement of the pending appeal and instruct the chief building official to withhold the demolition permit until the city council has ruled on same. The commission secretary shall also inform the owner(s) of record of the subject property of the date, time and location of the city council meeting scheduled to hear the appeal. The city council agenda shall serve as notice to the general public of the appeal and shall be posted on the first floor city hall bulletin board used for such purposes no less than one calendar day prior to the scheduled time of the meeting.
- D. Review process. The city council, within thirty calendar days of the filing of a written appeal or at a later

time at the request of the petitioner, shall either accept or reject the commission's de-termination. In considering the commission's determination, the city council may receive and review all relevant information, testimony and/or evidence submitted for its consideration, including that reviewed by the commission, and any additional material.

E. Notification of decision. The owner(s) of record shall be notified by regular mail of the city council's decision within fifteen business days. The office of construction code enforcement shall be notified within two business days of the city council's decision. The publishing of the city council meeting minutes shall serve as notice to the general public. The city council's decision shall be the final city action. (Ord. 91-737 § 1 (part)).

17.23.110 Exclusions.

A designated property may be altered, relocated, demolished or secured and maintained under the following circumstances and shall not be subject to any of the terms of this chapter.

A. Certificate of public hazard. If emergency circumstances affect a designated property which requires immediate relief, including demolition, the fire marshal and chief building official shall certify that such conditions exist and said conditions shall be eliminated as quickly as is practicable. Emergencies are defined as life or health-threatening conditions requiring immediate attention. A certificate of public hazard may be issued after the fact documenting the reasons for loss of the designated property. This section shall apply only in cases where it is impractical for the commission to consider a certificate of economic hardship prior to demolition.

B. Conflict with other regulations. The clauses and sections in other city council-adopted codes and regulations which address life-safety, fire safety and legal nuisances, shall be excluded from the standards and provisions herein. In the event the city's legal, fire, housing or building officials determine that a structure or portion there-of is a life-safety hazard, a fire safety hazard or a nuisance, the fire, housing and building codes shall supersede this chapter.

C. Ordinary repair and maintenance. This chapter is not meant to prevent ordinary repair and maintenance activities of private property not requiring a building or sign permit. (Ord. 91-737 § 1 (part)).

17.23.120 Historic structure demolition review process.

A. If the owner(s) of record or agent applies for a demolition permit to a building or structure listed on the National Register of Historic Places, which to date has not been designated as a local landmark, the office of construction code enforcement shall not issue the permit but instead shall direct the applicant to the commission secretary. Once the office of construction code enforcement refers the matter to the commission secretary, all demolition activity shall stop, if started, until after the commission or the city council acts on the matter. The commission secretary shall place the demolition request on the agenda for the commission's next meeting.

B. In making its determination on whether to recommend continuance of the demolition stoppage and consideration by the city council for designation as a local landmark, the commission shall consider the criteria as stated in Section 17.23.090 B. of this chapter. The commission, by a three-fourths vote of its members present may request the city council to review a proposed demolition permit for a structure listed on the National Register of Historic Places which has not, to date, been designated as a local landmark. In the event the commission votes to delay demolition, the commission shall have staff prepare an individual property nomination for designation as a local landmark as outlined in Section 17.23.060. Said nomination shall be considered by the commission in a timely manner.

In the event the commission vote to nominate the property as a local landmark fails, the demolition permit may be issued and the matter does not proceed to the city council.

In the event the commission votes first to delay demolition and then to nominate the property for designation as a local landmark, the commission shall submit written documentation to the city council that the building is presently on the National Register of Historic Places, that the criteria for designation as a local landmark as

listed in Section 17.23.060 have been met and that the provisions of Section 17.23.110 of the chapter are not applicable, as well as forward any application material submitted by the petitioner or prepared by staff relevant to either the demolition request or the landmark nomination.

C. The city council shall give appropriate notice that a public hearing will be held on the demolition application and nomination for landmark designation.

At the public hearing, the city council shall hear all written and oral statements of the interested parties. The city council shall base its decision on all relevant evidence presented at the public hearing, including whether Section 17.23.110 of the chapter is applicable.

The city council shall determine by a majority of the entire council either to allow the structure to be demolished or to approve the structure for local landmark status. If the local landmark status is approved the owner shall not be issued a demolition permit by the city.

Every effort shall be made by all parties to complete the designation process in the most timely fashion. The city council shall act either allowing the structure to be demolished or designating it a local landmark within one hundred twenty days from the date of the commission's first public hearing. (Ord. 97-318 § 3; Ord. 93-321 § 3; Ord. 91-737 § 1).

17.23.130 Penalty.

A. In the event work is being performed without the required certificate of appropriateness or the certificate of economic hardship, the commission or the commission secretary shall ask that a stop work order be issued. In the event work is being performed which is not in accordance with its certificate of appropriateness, the commission shall also ask that a stop work order be issued. In addition to other penalties and remedies, the city shall issue a stop work order, and all work shall cease on the designated property. No additional work shall be undertaken as long as such stop work order is in effect.

B. In the event work has been completed without the required certificate of appropriateness or certificate of economic hardship, the owner, the tenant, if a participating party to said work, and the person(s) performing such work shall be guilty of a misdemeanor or municipal infraction. Every day each such violation shall continue to exist shall constitute a separate violation.

C. Enforcement. The city's director of community and economic development department, or his/her designee, shall be responsible for the enforcement of the provisions of this chapter. (Ord. 91-737 § 1 (part)).