

## Model Ordinance for Historic Preservation

This provides a starting point for a community wishing to protect its architectural and cultural heritage, intended to assist local governments in creating or revising a historic preservation ordinance. Preservation ordinances attempt to balance the need for growth and development while also maintaining the unique community character of individual landmarks and historic districts. Any law adopted should be tailored to the specific needs of a community and reviewed by an attorney to ensure that it is consistent with the local statutory framework.

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### 1. TITLE

This Article shall be known as and may be cited as the "Preservation Ordinance."

### 2. PURPOSE

The purpose of this Article is to promote the public health, safety and general welfare by providing for the identification, designation, protection, enhancement, perpetuity and use of historic resources that reflect themes important in the **[LOCAL MUNICIPALITY'S]** heritage and to:

- a) Safeguard and enhance the **[LOCAL MUNICIPALITY'S]** architectural, cultural and historic heritage by recognizing that the **[LOCAL MUNICIPALITY'S]** historic landmarks and districts are an important part of both the past and future of the **[LOCAL MUNICIPALITY]**;



- b) Foster civic and neighborhood pride and a sense of identity based on the recognition of the **[LOCAL MUNICIPALITY'S]** past accomplishments as reflected through its districts, buildings, structures, objects, landscaping, natural features, infrastructure, and engineering;
- c) Promote participation in the rehabilitation, adaptive reuse, restoration, maintenance, and continued vitality of historic resources and districts, and to recognize their contribution to the unique fabric of the **[LOCAL MUNICIPALITY]**;
- d) Promote public education and awareness by preserving and encouraging interest in the **[LOCAL MUNICIPALITY'S]** architectural, cultural and social history;
- e) Protect historic resources, including landmarks and districts, as a means to enhance the **[LOCAL MUNICIPALITY'S]** attraction to residents, tourists and visitors, thus stimulating local business and industry;
- f) Enhance property values, stabilize neighborhoods and/or communities, and render property eligible for financial benefits;
- g) Acknowledge the critical role served by owners of landmarks and historic resources within districts, as stewards in furthering the goal of historic preservation;
- h) Balance the rights of owners of historic properties and owners of properties adjacent to landmarks and districts;
- i) Provide owners with early notification of Commission actions affecting their properties;
- j) Codify the procedures and criteria for designation of historic resources and districts, as well as the processes and standards for reviewing proposed demolitions, alterations, and additions to historic resources.
- k) Encourage preservation and adaptive reuse of historic resources by allowing changes to an historic building to accommodate new functions, and not to “freeze” historic buildings in time;
- l) Recognize that historic resources need to continue to be economically sustainable to reduce the threat of demolition;
- m) Identify financial and other incentives that are intended to encourage owners of historic resources to designate, maintain, reuse, rehabilitate and improve historic resources and districts;
- n) Encourage public awareness of the value of rehabilitation, adaptive reuse, restoration and maintenance, to conserve and sustain valuable material and energy resources through the ongoing use of the existing built environment; and
- o) Encourage the integration of historic preservation into the **[LOCAL MUNICIPALITY'S]** planning process, and provide technical assistance within the **[LOCAL MUNICIPALITY]** government.



- p) Fulfill the **[LOCAL MUNICIPALITY'S]** responsibilities as a Certified Local Government (CLG) under Federal preservation laws, if applicable, for Section 106 reviews, and ensure that all procedures comply with the California Environmental Quality Act (CEQA).

### 3. DEFINITIONS

- a) “California Environmental Quality Act” means the California Public Resources Code Section 21000 et seq. as it may be amended. The California Environmental Quality Act may also be referred to in this chapter as “CEQA.”
- b) “California Register” means the California Register of Historical Resources as defined in California Public Resources Code Section 5020.1 as it may be amended from time to time.
- c) “California Register resource” means any resource designated on the California Register as it may be amended from time to time.
- d) “Certificate of Appropriateness” shall mean the certificate required prior to undertaking work or improvements on a landmark, contributing resource or non-contributing resource within a historic district.
- e) “Certificate of Demolition” shall mean the certificate required prior to undertaking work to demolish a landmark, contributing resource or non-contributing resource within a historic district.
- f) “Certificate of Economic Hardship” shall mean the certificate required to establish a hardship exists for a specified landmark, contributing resource or resource within a historic district.
- g) “Certificate of No Effect” shall mean the certificate required prior to undertaking minor work or improvements on a landmark, contributing resource or non-contributing resource within a historic district that meets applicable standards and will not adversely affect a resource.
- h) “Certified local government” (CLG) means a local government that has been certified by the National Park Service to carry out the purposes of the National Historic Preservation Act of 1966
- i) “Contributing resource” means a resource designated as a contributing resource within a historic district by the Commission.
- j) “Demolition” means the complete or substantial removal of any building, structure, or site.
- k) “Historic district” means a geographic area designated as a historic district by the **[LOCAL LEGISLATIVE BODY]**.
- l) “Historic resource” means, for the purposes of environmental reviews related to CEQA and the **[LOCAL MUNICIPALITY'S]** compliance with CEQA, those landmarks, contributing resources and historic districts. “Historic resource” shall also include those properties specified as a historic resource by CEQA, by the CEQA guidelines, or by any other provision of California law.



- n) “Integrity” means the authenticity of a historical resource's physical identity as evidenced by the survival of characteristics or historic fabric that existed during the resource's period of significance.
- o) “Landmark” means any historic resource designated as a landmark by the **[LOCAL LEGISLATIVE BODY]**.
- p) “Mills Act” means California Government Sections 50280 et seq., as it may be amended from time to time.
- q) “National Environmental Protection Act” (NEPA) means 42 U.S.C. Secs.4321 et seq., as it may be amended from time to time.
- r) “National Historic Preservation Act” means 16 U.S. Secs. 470 et seq., as it may be amended from time to time.
- s) “National Register of Historic Places” means the official inventory of districts, sites, buildings, structures and objects significant in American history, architecture, archeology and culture which is maintained by the Secretary of the Interior under the authority of the Historic Sites Act of 1935 and the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq., 36 C.F.R. Sections 60, 63).
- t) “Nomination” means a nomination for designation and placement of a resource on the **[LOCAL MUNICIPALITY]** Register.
- u) “Non-contributing resources” means all resources within a historic district that are not identified as contributing resources.
- v) “Period of significance” means the date or span of time within which significant events transpired, or significant individuals made their important contributions.
- w) “Resource” means any building, structure, object, site, area, place, feature, characteristic, appurtenance, landscape, landscape plan or improvement.
- x) “Secretary of the Interior Standards” means the Secretary of the Interior Standards for Treatment of Historic Properties found at 36 C.F.R. 68.3, as it may be amended from time to time.
- y) “State Historical Building Code” means the State Historical Building Code as contained in Part 8 of Title 24 (California Building Standards Code) of the California Code of Regulations, as it may be amended from time to time.
- z) “Survey and Inventory” means a process by which resources are documented for landmark or historic district consideration.

#### 4. ESTABLISHMENT OF COMMISSION

A Preservation Commission **[OR OF SIMILAR NAME]**, herein referred to as the “Commission” is hereby established which shall consist of five (5) members appointed by the **[LOCAL LEGISLATIVE**



**BODY]**, all of whom shall be residents of the **[LOCAL MUNICIPALITY]** over eighteen (18) years of age, and adhere to the following:

- a) Composition: of the five (5) members, at least one shall be a registered architect; at least one shall be a person with demonstrated interest and knowledge, to the highest extent practicable, of local history; at least one shall have a higher-level degree in architectural history, preservation or planning, and have demonstrated interest, knowledge and practical or professional experience to the highest extent practicable of architectural history.
- b) Term: members shall serve for a term of three (3) years; however the initial terms of members shall be for one (1) year, two (2) years, and three (3) years in order for the terms to be staggered. A vacancy shall be filled within ninety (90) days for the duration of the term.
- c) Officers: the Commission shall elect by and from its members a Chairperson and a Vice-Chairperson for one (1) year and who may be reelected.
- d) Rules: the Commission shall adopt rules consistent with this title for the transaction of its business in accordance with California's Brown Act. The rules must include the time and place of regular meetings and a procedure for calling of special meetings.

## 5. POWERS AND DUTIES OF COMMISSION

The Commission shall have the power and it shall be its duty to perform the following acts:

- a) To consider and recommend to the **[LOCAL LEGISLATIVE BODY]** additions to the local register of historic resources through the designation of both individual landmarks and multiple-property historic districts;
- b) To promulgate rules, fees and regulations as necessary for the conduct of its business;
- c) To conduct studies and evaluations of applications requesting the designation of a landmark and/or historic district, and make determinations and recommendations as such appropriateness for consideration of such applications.
- d) To identify through survey and inventories potential and eligible historic resources;
- e) To keep current and make available a local register of historic resources;
- f) To develop and adopt preservation guidelines applicable to the **[LOCAL MUNICIPALITY]**.
- g) To make recommendations to the **[LOCAL LEGISLATIVE BODY]** on amendments regarding historic preservation and long-range planning goals;
- h) To grant or deny applications for permits for demolition, new construction, or major alterations of designated historic resources and properties within historic districts;
- i) To encourage public understanding of and involvement in the unique historical, architectural and cultural heritage of the **[LOCAL MUNICIPALITY]** through educational and interpretive programs;



- j) To provide for a suitable sign, plaque or other marker, at public or private expense, on or near a designated landmark and/or historic district, indicating that the landmark and historic district have been designated.
- k) To make recommendations to the **[LOCAL LEGISLATIVE BODY]** on applications for properties to be included in the Mills Act property tax incentive program which may be subject to historic property contracts.
- l) To recommend and encourage the protection, enhancement, appreciation and use of structures of historical, cultural, architectural, community or aesthetic value which have not been designated as historic resources but are deserving of recognition;
- m) To encourage the cooperation between public and private historic preservation organizations; and
- n) To advise the **[LOCAL LEGISLATIVE BODY]** and other **[LOCAL MUNICIPALITY]** boards and commissions as necessary on historic preservation issues and environmental reviews that may be pending.

## 6. LANDMARK OR HISTORIC DISTRICT DESIGNATION

Prior to recommending approval or modified approval, the Commission shall find that said proposed landmark or historic district has special aesthetic, architectural, cultural, engineering, or historical interest or value. In making its findings, the Commission may consider the following factors, among other relevant factors, with respect to the proposed landmark or historic district:

- a) Its character, interest or value as part of the local, regional, state or national history, heritage or culture;
- b) Its location as a site of a significant historic event;
- c) Its identification with a person or persons who significantly contributed to the local, regional, state or national culture and history;
- d) Its exemplification of the culture, economic, social or historic heritage of the **[LOCAL MUNICIPALITY]**;
- e) Its portrayal of the environment of a group of people in an era of history characterized by a distinctive architectural style;
- f) Its embodiment of distinguishing characteristics of an architectural type or specimen;
- g) Its identification as the work of an architect, master architect or builder whose individual work has influenced the development of the **[LOCAL MUNICIPALITY]**.
- h) Its embodiment of elements of architectural or engineering design, detail, materials or craftsmanship which represent a significant architectural innovation or which is unique.



Evaluating Integrity. In addition to having significance, a resource must have integrity for the time period in which it is significant. The period of significance is the date or span of time within which significant events transpired, or significant individuals made their important contributions. Integrity is the authenticity of a historical resource's physical identity as evidenced by the survival of characteristics or historic fabric that existed during the resource's period of significance. Only after significance has been established should the issue of integrity be addressed. The following factors should be considered when evaluating properties for integrity:

- a) Design: any alterations to the property should not have adversely affected the character-defining features of the property. Alterations to a resource or changes in its use over time may have historical, cultural, or architectural significance.
- b) Setting: changes in the immediate surroundings and context of the property (buildings, land use, topography, etc.) should not have adversely affected the character of the property.
- c) Materials and Workmanship: any original materials should be retained or, if they have been removed or altered, replacements have been made that are compatible with the original materials.
- d) Location: the relationship between the property and its location is an important part of integrity. The place where the property was built and where historic events occurred is often important to understanding why the property was created or why something happened. The location of an historic property, complemented by its setting, is particularly important in recapturing the sense of historic events and persons. Except in a few cases, the relationship between a structure and its historic associations is destroyed if the structure is moved.
- e) Feeling: feeling is a property's expression of the aesthetic or historic sense of a particular period of time. It results from the presence of physical features that, taken together, convey the property's historic character.
- f) Association: association is the direct link between an important historic event or person and a historic property. A property retains association if it is the place where the event or activity occurred and is sufficiently intact to convey that relationship to an observer. Like feeling, association requires the presence of physical features that convey a property's historic character. Historic resources must retain enough of their historic character or appearance to be recognizable as historic resources and to convey the reasons for their significance.

Designation Process. Historic resources, outstanding historic resources, and historic districts shall be designated by the **[LOCAL LEGISLATIVE BODY]** upon the recommendation by the Commission in the following manner:



- a) **Initiation of Designation:** designation of an individual historic resource or landmark, or an historic district may be initiated by the Commission, by any resident of the **[LOCAL MUNICIPALITY]**, or by the owner of the property that is proposed for designation. Applications for designation originating from outside the Commission must be accompanied by such architectural, cultural, and historic information as is required by the Commission to make an informed recommendation concerning the application.
- b) **List:** the Commission shall publish and transmit to all interested parties a list of proposed designations, and shall disseminate any relevant public information concerning the list or any site, structure, or area contained therein.
- c) **Review:** the Commission and its staff designee shall prepare a designation report, which shall establish how the proposed landmark or historic district meets the applicable criteria for designation.
- d) **Public Hearing:** the Commission shall schedule a public hearing on all proposed designations, whether originating with the Commission or with another party. If an application for designation originates from outside the Commission, the public hearing shall be held within ninety (90) days of the Commission's receipt of an application deemed complete.
- e) **Work Moratorium:** while the Commission's public hearing and the **[LOCAL LEGISLATIVE BODY'S]** decision on the Commission's recommendation is pending, a work moratorium is in place. During the moratorium, any work that would require an alteration permit if the improvement were already designated a historic resource or historic district shall not be carried out. The work moratorium will end upon the earlier of the **[LOCAL LEGISLATIVE BODY'S]** decision on the proposed designation, the moratorium termination date designated by the **[LOCAL LEGISLATIVE BODY]**, and not to exceed one hundred eighty (180) calendar days from the date of commencement of the moratorium.
- f) **Notice:** in the case of a proposed designation of an individual historic resource or landmark, notice of date, place, time, and purpose of the hearing shall be given by first class mail to the applicants, owners, and occupants of the property, and to property owners within three hundred (300) feet of the property, at least ten (10) days prior to the date of the public hearing, using the name and address of such owners as shown on the latest assessment rolls or in other ownership records, and shall be advertised once in a daily newspaper of general circulation at least ten (10) days in advance of the public hearing.

In the case of a proposed historic district, notice of the date, place, time, and purpose of the hearing shall be given by first class mail to the applicants, owners, and occupants of all properties within the proposed district, and to all property owners within three hundred (300) feet of the proposed





boundary, at least ten (10) days prior to the date of the public hearing, using the name and address of the owners as shown on the latest assessment rolls or in other ownership records, and shall be advertised five consecutive days in a daily newspaper of general circulation at least ten (10) days in advance of the public hearing.

- g) Commission Recommendations: after the public hearing, but in no event more than thirty (30) days from the date set for the public hearing, the Commission shall recommend approval in whole or in part or disapproval of the application for designation in writing to the **[LOCAL LEGISLATIVE BODY]**, setting forth the reasons for the decision.
- h) Approval of Commission Recommendations: the **[LOCAL LEGISLATIVE BODY]**, within sixty (60) days of receipt of the Commission's recommendations concerning proposed designations, shall by ordinance approve the recommendation in whole or in part, or shall by motion disapprove them in their entirety. If the **[LOCAL LEGISLATIVE BODY]** approves a proposed designation, notice of the **[LOCAL LEGISLATIVE BODY'S]** decision shall be sent to applicants and owners of a designated property. Notice shall also be sent to the **[BUILDING OFFICIAL]** and to the Commission.
- i) Failure to Send Notice: failure to send any notice by mail to any property owners where the address of such owner is not a matter of public record shall not invalidate any proceedings in connection with the proposed designation.
- j) Amendment or Rescission: the Commission and the **[LOCAL LEGISLATIVE BODY]** may amend or rescind any designation of an historic resource or historic district in the same manner and procedure as are followed for designation.

## 7. PERMIT PROCESS AND CRITERIA

No person shall demolish, remove, or make major alterations to any designated historic resource or historic district without first obtaining a permit, known as a Certificate of No Effect or Certificate of Appropriateness. An application for such permit shall be filed with the Commission, who may require that the application for permit be supplemented by such additional information or materials as may be necessary for a complete review by the Commission.

The provisions for the issuance of Certificates of No Effect or Certificate of Appropriateness shall not be construed to prevent ordinary maintenance or repair which does not change the design, materials or, architectural elements or site features of a designated property. Selected activities are exempt from the review procedures including exterior repainting and paint color selection, and the repair of exterior walls with materials and finishes to match the existing walls.



Certificate of No Effect. The Commission or staff designee shall issue a Certificate of No Effect if:

- a) It is determined that the work is minor and clearly meets the applicable standards and guidelines; and/or
- b) Modifications to the proposed work requested by the **[LOCAL MUNICIPALITY]** are agreed to by the applicant; and
- c) The proposed work will not diminish, eliminate or adversely affect the historic character of the subject historic resource or the district in which it is located.

No changes shall be made to the approved plans for which a Certificate of No Effect was issued without resubmittal to the Commission or staff designee for approval of the changes. If the Commission or staff designee determines that the proposed work is not eligible for a Certificate of No Effect, then the property owner must apply for and obtain a Certificate of Appropriateness.

Certificate of Appropriateness. The review and decision on the issuance of a Certificate of Appropriateness will be undertaken by the Commission. The Commission or staff designee shall first review the application and, if determined to be complete, schedule the item for a hearing on the next available meeting of the Commission. Notice of the public hearing will be in compliance with California's Brown Act.

Commission or staff designee will review the application materials and analyze how the proposed work conforms to the appropriate guidelines and standards and any other relevant codes, such as the California State Building Code, and make a recommendation for approval, denial or approval with conditions.

The Commissioner will review the application, any staff report, and evidence presented at the public hearing to make a decision to issue a Certificate of Appropriateness. The Commission shall approve, deny, approve with conditions or continue the application with specific direction as to what additional information is needed to make a decision to approve or deny the application.

If the application is approved, a Certificate of Appropriateness shall be issued. If the application is denied, the owner or applicant can appeal the decision in writing to the **[LOCAL LEGISLATIVE BODY]** within fourteen (14) days of the Commission's decision.

All applications for a Certificate of Appropriateness shall include the following:

- a) Completed **[LOCAL MUNICIPALITY]** application forms;



- b) Three (3) sets of site plan, floor plan and scaled elevations and drawings of the proposed work and its relationship to the designated historic property's buildings, structures, sites and features;
- c) Written scope of work and narrative description of how the work is in conformance with the applicable design guidelines and standards, and length of time estimated to complete the project;
- d) Accurate representation of all building materials and finishes to be used;
- e) Photographs and other exhibits as needed to clearly depict location, extent and design of proposed work;
- f) Applicable application fees.

Standards for Consideration of a Certificate of Appropriateness:

- a) For a designated historic district, whether or not the subject property is classified as a contributing or non-contributing resource.
- b) The proposed work will neither adversely affect the architectural features of the resource(s) nor adversely affect the character or historic, architectural, or aesthetic interest or value of such resource(s) and its site.
- c) The proposed work will be reviewed relative to the elements of placement, orientation, size, scale, massing, proportions, materials, textures, finishes, patterns, details, embellishments and the relationship of these elements to one another which contribute to the historic, architectural, cultural, technological and/or educational significance of the property;
- d) Conformance with the Secretary of the Interior's Standards and any Commission-adopted guidelines; and
- e) For the relocation of historic buildings and structures, the extent to which the new location and its siting re-create the setting and environment associated with the original period of significance for the historic property.

A Certificate of Appropriateness will expire one year from the date of issuance unless work is started within that time. No changes shall be made to the approved plans after the issuance of a Certificate of Appropriateness without resubmittal to the Commission and determination of the necessary approval process for the proposed changes.

Staff-Level Reviews. The Commission is hereby given the authority to delegate certain minor projects to the **[LOCAL MUNICIPALITY]** staff for review and approval or denial. The Commission shall establish guidelines for such projects to be reviewed by the **[LOCAL MUNICIPALITY]** staff. If, in the judgment



of the **[LOCAL MUNICIPALITY]** staff, the proposed work does not meet the standards and guidelines, the staff shall forward the application to the Commission for its review and determination.

Compliance with the California Environmental Quality Act (CEQA). If any action under this article is subject to the provisions of CEQA, the time in which such action must be taken shall be extended in order to allow time to comply with said Act, and no hearing shall be held by the Commission for applications or project proposals to demolish, remove or substantially alter the historic resource until such application or project proposal has undergone environmental review in accordance with CEQA.

## 8. MUNICIPAL-OWNED HISTORIC RESOURCES

The Commission shall review and provide recommendations to the **[LOCAL LEGISLATIVE BODY]** on all projects affecting **[LOCAL MUNICIPALITY]**-owned historic resources, including public and semi-public interior spaces. The Commission shall be notified of a project affecting **[LOCAL MUNICIPALITY]**-owned historic resources before any plans for it are approved or work commences.

## 9. DEMOLITION

Once a historic resource is demolished it is forever gone and cannot be replaced. Therefore, it is the intent of this section to preserve the architectural, cultural and historic resources that have a demonstrated significance to the **[LOCAL MUNICIPALITY]**. Consequently these provisions are structured to take reasonable measures to ensure that historic resources are not inadvertently or unnecessarily destroyed and explore all alternatives to their demolition.

No permit shall be issued by the **[BUILDING OFFICIAL]** or staff designee to demolish a property designated on the **[LOCAL MUNICIPALITY]** historic register without a Certificate of Demolition approval.

Certificate of Demolition. Upon receipt of an application for demolition the **[BUILDING OFFICIAL]** will refer it to the Commission. Within fourteen (14) days of the request the applicant will be provided a written response describing the specific submittal materials needed in addition to the general application information.

The general application for demolition approval will include:

- a) The demolition permit application;



- b) If the building has been determined an imminent hazard, written documentation from the **[BUILDING OFFICIAL]** of this determination;
- c) Narrative text, graphic illustration or other exhibits that the building, structure or object is of no architectural, cultural or historic value or importance.
- d) Upon receipt of an application for demolition approval, the staff to the Commission shall review that all requested material has been provided, and shall forward the request to the Commission. If the building, structure or object has been determined to be an imminent threat to public health, safety, and welfare by the **[BUILDING OFFICIAL]**, then the appropriate staff designee to the Commission may approve or deny the request.

The demolition request application shall be considered by the Commission in the following manner:

- a) Within forty-five (45) days of submittal of the application, the staff to the Commission shall prepare a report including the original submittal materials and a thorough analysis of the request.
- b) The Commission will review the application, staff report and hear evidence presented by the property owners, parties of interest and members of the general public to determine if the criteria for demolition approval have been met. The Commission shall approve, deny, delay the demolition for a specified period, approve with conditions, or continue the application to obtain additional information necessary to consider the demolition request.

If a demolition request is delayed it may be for up to one hundred eighty days (180) in an attempt to find an alternative to demolition, whereby the Commission and **[LOCAL MUNICIPALITY]** will work:

- a) With the property owner(s) to determine what types of assistance might be provided by the **[LOCAL MUNICIPALITY]** to retain the property and/or place it in productive use;
- b) To investigate methods of acquisition by a private, non-profit or public entity that will preserve the property;
- c) To make the larger community aware of the impending loss of the historic resources.

At the end of the specified period of time for the delay of demolition, a report will be made to the Commission and if substantial financial, development or technical assistance has been offered by the **[LOCAL MUNICIPALITY]** to the property owner or if an offer for purchase at fair market value of the property is refused by the property owner, the application for demolition may be denied.

If the demolition request is denied because it does meet the aforementioned criteria, the applicant may request demolition approval based upon a finding of Economic Hardship as set forth in this Article.



If the demolition request is denied, the owner or applicant may appeal the Commission's decision in writing to the **[LOCAL LEGISLATIVE BODY]** with fourteen (14) days of the Commission's decision.

If a Certificate of Demolition approval is granted on any basis other than that of imminent hazard to public safety or economic hardship, the staff to the Commission or designee will not issue a Certificate of Demolition approval and the **[BUILDING OFFICIAL]** will not issue a demolition permit until a replacement and reuse plan for the property has been approved by the Commission. The applicant shall demonstrate to the Commission the financial capability to initiate and complete the proposed project. Vacant land or non-use will not constitute a valid replacement and reuse plan. The Commission will review the replacement and reuse plan and report and make a decision to approve, deny, approve with conditions or continue the matter with specific instructions as to what information is needed to make a decision on the request. If the replacement and reuse plan is denied, the owner or applicant may appeal the decision of the Commission in writing to the **[LOCAL LEGISLATIVE BODY]** within fourteen (14) days of the Commission's decision

## 10. ECONOMIC HARDSHIP

The **[LOCAL MUNICIPALITY]** recognizes that there may be some circumstances in which the operation of this Article could create an undue economic hardship. This provision is created to provide property owners with a means of demonstrating that such a hardship exists, and that they should be allowed to demolish a designated historic resource because of the hardship.

Certificate of Economic Hardship. Separate standards are established for investment or income producing properties and non-income producing properties which shall consist of owner-occupied dwellings or properties owned by institutional, nonprofit organizations or public entities. The basis to establish economic hardship for an income producing property shall be that a reasonable rate of return cannot be obtained from the property in its present condition or if rehabilitated.

In considering an application for a Certificate of Economic Hardship, the Commission shall consider all relevant factors. In order to grant a Certificate of Economic Hardship, the Commission must make a finding that without approval of the proposed demolition or remodeling, all reasonable use of or return from a designated historic resource or property within a historic district will be denied a property owner. In the case of a proposed demolition, the Commission must make a finding that the historic resource



cannot be remodeled or rehabilitated in a manner which would allow a reasonable use of or return from such landmark or property to a property owner.

Upon a finding by the Commission that without approval of the proposed work, all reasonable use of or return from a historic resource or property within a historic district will be denied a property owner, then the application shall be delayed for a period not to exceed one hundred eighty (180) days. During this period of delay, the Commission shall investigate plans and make recommendations to the **[LOCAL LEGISLATIVE BODY]** to allow for a reasonable use of, or return from, the property, or to otherwise preserve the subject property. Such plans and recommendations may include, but are not limited to, provisions for relocating the structure, a relaxation of the provisions of the ordinance, a reduction in real property taxes, financial assistance, building code modifications and/or changes in zoning regulations.

If, by the end of this one hundred eighty (180) day period, the Commission has found that without approval of the proposed work, the property cannot be put to a reasonable use or the owner cannot obtain a reasonable economic return there from, then the Commission shall issue a Certificate of Economic Hardship approving the proposed work. If the Commission finds otherwise, it shall deny the application for a Certificate of Economic Hardship and notify the applicant by mail of the final denial. The owner or applicant may appeal the Commission's decision in writing to the **[LOCAL LEGISLATIVE BODY]** within fourteen (14) days of the Commission's decision.

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

- a) Willful or negligent acts by the owners;
- b) Purchase of the property for substantially more than market value;
- c) Failure to perform normal maintenance and repairs;
- d) Failure to diligently solicit and retain tenants;
- e) Failure to provide normal tenant improvements;
- f) Failure to accept an offer of purchase of the property at fair market value.

The Commission may solicit expert testimony or require that the applicant for a Certificate of Economic Hardship make submissions concerning any or all of the following information before it makes a determination on the application for a Certificate of Economic Hardship:

- a) Estimate of the cost of the proposed construction, alteration, demolition or removal, and an estimate of any additional cost that would be incurred to comply with the recommendations of the Commission



for changes necessary for the issuance of a Certificate of Economic Hardship. In connection with such estimate, rehabilitation costs which are the result of the property owner's intentional or negligent failure to maintain the designated historic resource in good repair shall not be considered by the Commission in its determination of whether the property may yield a reasonable return to the owner.

- b) A report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any structures on the property and their suitability for rehabilitation.
- c) Estimated market value of the property in its current condition; estimated market value after completion of the proposed construction, alteration, demolition or removal; estimated market value after any changes recommended by the Commission; and, in the case of a proposed demolition, estimated market value after rehabilitation of the existing property for continued use.
- d) In the case of a proposed demolition, an estimate from an architect, developer, real estate consultant, appraiser or other real estate professional experienced in rehabilitation as to the economic feasibility of rehabilitation or reuse of the existing structure on the property.
- e) Amount paid for the property, the date of purchase, and the party from whom purchased, including a description of the relationship, if any, between the owner of record or applicant and the person from whom the property was purchased, and any terms of financing between the seller and buyer.
- f) If the property is income-producing, the annual gross income from the property for the previous two (2) years; itemized operating and maintenance expenses for the previous two (2) years; and depreciation deduction and annual cash flow before and after debt service, if any, during the same period.
- g) If the property is not income-producing, projections of the annual gross income which could be obtained from the property in its current condition, in its rehabilitated condition, or under such conditions that the Commission may specify.
- h) Remaining balance on any mortgage or other financing secured by the property and annual debt service, if any, for the previous two (2) years.
- i) All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing or ownership of the property.
- j) Any listing of the property for sale or rent, price asked, and offers received, if any, within the previous two (2) years.
- k) Assessed value of the property according to the two most recent assessments.
- l) Real estate taxes for the previous two (2) years.
- m) Form of ownership or operation of the property, whether sole proprietorship, for profit or not-for-profit entity, limited partnership, joint venture or other.





- n) Any other information considered necessary by the Commission to a determination as to whether the property does yield or may yield a reasonable return to the owners.

## 11. MAINTENANCE

It is the intent of this Article to address the range of circumstances that affect the preservation of the **[LOCAL MUNICIPALITY'S]** significant architectural, cultural and historic resources including loss because of deterioration from lack of maintenance. Whether this occurs unintentionally or deliberately, the end result is the same. Historic resources shall be maintained against decay, deterioration and structural defects and receive reasonable care to meet the applicable requirements established under local and state statute so as to prevent the loss of historic material and the deterioration of important character defining details and features.

Nothing in this Article shall be construed so as to prevent the ordinary repairs and maintenance of any building, structure, or site, provided that such repairs or maintenance do not result in a conspicuous change in the design, form, proportion, mass, configuration, building material, texture, color, location, or visual appearance of any structure, or part thereof.

## 12. INCENTIVES

The **[LOCAL LEGISLATIVE BODY]** may by resolution or ordinance establish preservation incentives to encourage owners of historic resources to designate, maintain, preserve, rehabilitate, and improve landmarks through the following:

- a) State Historical Building Code: the **[BUILDING OFFICIAL]** is authorized to use and shall use the State Historical Building Code for projects involving designated historic resources. The Commission and staff designee are authorized to use and shall use the State Historical Building Code for preservation projects.
- b) Historical Property (Mills Act) Contracts: the **[LOCAL LEGISLATIVE BODY]** may establish a program providing for contractual agreement with the owner of an historic property. The terms of the Mills Act agreement allow the owner to receive a reduction in property taxes in exchange for the property owner's commitment to repair, restoration and/or rehabilitation improvements and satisfactory maintenance of the property. The agreement shall include, but not be limited to, the contract provisions as required under law. The applicant process, review procedures, and required contract provisions for Mills Act agreements are established by separate resolution of the **[LOCAL LEGISLATIVE BODY]** and shall be implemented by the Commission or its staff designee.



### 13. ENFORCEMENT

Demolition, including demolition by neglect, of any historic resource, without compliance with this Article is expressly declared to be a nuisance, and shall be abated by reconstructing or restoring the property to its condition prior to the performance of work in violation of this Article, or in the case of demolition by neglect, by completing such work as required to stabilize and arrest further deterioration of the property. The owner of the property, within seven (7) days of notice from the Commission or the Commission's staff designee that demolition has been performed or demolition by neglect has occurred, as determined by the **[BUILDING OFFICIAL]**, shall be stabilized and must be reconstructed or restored within six (6) months of the date of such notice.

Upon application to the Commission, the time may be extended by the Commission if the owner demonstrates the work cannot reasonably be performed within one year. If the owner refuses to perform the necessary work as described above, then the **[LOCAL MUNICIPALITY]** may, after a duly noticed public hearing before the Commission, because such stabilization, reconstruction or restoration to be done, and the owner shall reimburse the **[LOCAL MUNICIPALITY]** for all costs incurred in doing the work. The cost of the work performed by the **[LOCAL MUNICIPALITY]** shall constitute a lien against the property on which the work is performed. Restoration or reconstruction may only be required when plans or other evidence is available to effect the reconstruction or restoration to the satisfaction of the Commission and Commission's staff designee.

If a designated historic resource is demolished without a Certificate of Appropriateness or Certificate of Demolition, no building or construction-related permits shall be issued. Further, no permits or use of the property shall be allowed, from the date of demolition for a period of five (5) years. For purposes of this section, the demolition shall be presumed to have occurred on the date the **[LOCAL MUNICIPALITY]** has actual knowledge of the demolition. The owner shall have the burden of proving a different date if one is claimed.

The staff designee for the Commission shall provide notice by certified mail of the applicability of this section to the owner on the rolls of the Tax Assessor, and any other person known to have an interest in the property, as soon as practicable after having knowledge that the provisions of this section are applicable to the property. The date the **[LOCAL MUNICIPALITY]** first had actual knowledge of the demolition shall be stated in the notice.



Regulations and penalties for alteration of a historic resource without a required permit. The alteration of a historic resource without obtaining a Certificate of Appropriateness and required permits, is expressly declared to be a nuisance, and shall be abated by restoring the property to its appearance prior to the performance of the work without the required approval. The owner of the property shall stop and stabilize the work within seven (7) days of notice from the Commission that alteration has been performed in violation of this Article. Within six (6) months of the date of notice, the property shall be reconstructed or restored. Upon application to the Commission, the time may be extended. All restoration shall be performed in accordance with the Secretary of the Interior's Standards or applicable guidelines.

If the owner refuses to perform the restoration, then the **[LOCAL MUNICIPALITY]** may after a duly noticed public hearing, before the Commission cause such reconstruction or restoration to be done and the owner shall reimburse the **[LOCAL MUNICIPALITY]** for all costs incurred in doing such work. The cost of the work performed by the **[LOCAL MUNICIPALITY]** shall constitute a lien against the property on which the work is performed. Restoration or reconstruction may only be required when plans or other evidence is available to the **[LOCAL MUNICIPALITY]**, from which the prior appearance of the building or structure can be determined.

In the event the appearance of the building or structure prior to the unapproved work cannot be determined, the owner shall obtain permits after obtaining Commission approval. All work authorized by such permits shall comply with the Secretary of the Interior's Standards or applicable guidelines, and shall be reviewed by the Commission staff designee for compliance. Each day the alteration exists without approval or a valid building permit shall constitute a separate offense.

#### **14. SEVERABILITY**

If any section, subsection, sentence, clause, phrase or portion of this Article is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Article subsection. The City Council hereby declares that it would have adopted the ordinance codified in this Article and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases or portions be declared invalid or unconstitutional.

