

Nevada State Historic Preservation

Model Historic Preservation Ordinance

The drafted ordinance below is prepared as a recommendation for Cities and Counties in the State of Nevada that wish to establish historic preservation programs consistent with established state enabling legislation (NRS 278 and 384). Different local governments in the State of Nevada will have different needs and expectations for an historic preservation program and will likely need to adapt the recommended language below to suit individual needs. Local governments seeking to establish an historic preservation program for the purposes of becoming a Certified Local Government (CLG) should contact the CLG Coordinator at the Nevada SHPO to ensure any proposed or adopted historic preservation ordinance is consistent with the certification requirements of that program.

Key

Text Required for CLG Status (highlighted)

Text Recommended for Successful Operation (not highlighted)

Note: Although language below is oriented toward municipal governments, a county government could adopt such an ordinance with appropriate textual modifications.

Notes for Rural Cities or Counties

Rural areas, especially rural counties, may find that adopting some provisions included in this model ordinance are not feasible within their current administrative framework. Rural local governments wishing to become CLGs should consult with the CLG coordinator about developing a sustainable preservation ordinance that fits their area's needs. Local government representatives may want to consider the following:

- Current administrative framework for development permitting - Where a local government needs more flexibility in its development code, the adoption of a design review program overseen by its historic preservation commission may not be feasible. To become a CLG, a local government must, at minimum, adopt the highlighted provisions in this model ordinance. Variations on language may be acceptable – a local government should discuss variations with the Nevada SHPO's CLG Coordinator.
- Economic environment – In areas where there are large numbers of low-income residents residing in historic buildings, provisions such as minimum maintenance standards (see Section 9) may not be advisable. In this potential environment, a minimum maintenance standard, without the provision of alternative financial support, may have unintended adverse effects on area residents.

ORDINANCE NO. _____ AN ORDINANCE FOR THE CITY OF _____, IN THE STATE OF NEVADA, TO BE KNOWN AS CHAPTER _____, "HISTORIC PRESERVATION CODE"; PROVIDING FOR THE ESTABLISHMENT OF THE HISTORIC PRESERVATION Commission; PROVIDING FOR DUTIES AND FUNDING FOR THE SAID Commission; PROVIDING THAT THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT FROM AND AFTER ITS PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW.

WHEREAS, Chapters 278 and 384 of the Nevada Revised Statutes empowers cities and counties to make provisions for the identification and preservation of historic sites; and,

WHEREAS, the City Council of the City of _____ deems it in the best interest of the community to establish a historic preservation ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF _____ THAT A NEW CHAPTER BE, AND THE SAME HEREBY IS, ENACTED TO BE DESIGNATED AS CHAPTER _____, THE HISTORIC PRESERVATION CODE, OF THE ORDINANCES OF THE CITY OF _____, WHICH SHALL READ AS FOLLOWS:

SECTION 1 PURPOSE

The purpose of this article is to establish historic areas and landmarks for the educational, cultural, and economic benefit of city inhabitants. Due to the pressures resulting from population growth and development, which may result in the destruction, impairment, or alteration of historic resources that reflect elements of the city's cultural and architectural heritage, the following policies and responsibilities are established:

- (a) protect and enhance the landmarks and districts which represent distinctive elements of _____'s historic, architectural, and cultural heritage; Preserve, protect, enhance, regulate, and use buildings, structures, sites, and areas which are unique or irreplaceable assets to the city and its neighborhoods, which provide examples of the physical surroundings in which past generations lived, or which are archaeologically significant for present and future generations;
- (b) foster civic pride in the accomplishments of the past;
- (c) protect and enhance _____'s attractiveness to visitors and the support and stimulus to the economy thereby provided;
- (d) ensure the harmonious, orderly, and efficient growth and development of the city that is sensitive to its historic resources;
- (e) promote economic prosperity and welfare of the community by encouraging the most appropriate use of historic properties within the city;
- (f) encourage stabilization, restoration, and improvements of such properties and their values by offering incentives for rehabilitation.

SECTION 2 DEFINITIONS

The following words and phrases when used in this Ordinance shall have, unless the context clearly indicates otherwise, the following meanings:

City. The City of _____.

Commission. The Historic Preservation Commission of the City of _____.

Historic Property. Any building, structure, district, area or site that is significant in the history, architecture, archaeology or culture of this community, the state or the nation.

Designated Historic Property. In order for any historic property to be designated in the ordinance, it must in addition meet the criteria established for inclusion of the property in the National Register of Historic Places.

Historic Preservation. The identification, evaluation, recordation, documentation, curation, acquisition, management, protection, restoration, rehabilitation, stabilization, maintenance, interpretation, conservation, and education of buildings, structures, objects, districts, areas, and sites significant in the history, architecture, archaeology or culture of this state, its communities or the Nation.

SECTION 3 HISTORIC PRESERVATION COMMISSION

- (a) There is hereby created a Historic Preservation Commission which shall consist of ## members who shall be appointed by the Mayor with the advice and consent of the Council.
- (b) All members of the Commission shall have a demonstrated interest, competence, or knowledge in history or historic preservation. The Council shall appoint [##] members with professional training or experience in the disciplines of architecture, history, architectural history, urban planning, archaeology, engineering, conservation, landscape architecture, law, or other historic preservation related disciplines.
- (c) Initial appointments to the Commission shall be made as follows: Half of appointed Commissioners shall serve for one-year terms and half for two-year terms, except as otherwise established by Council. All subsequent appointments shall be made for two-year terms. Commission members may be reappointed to serve additional terms. Vacancies shall be filled in the same manner as original appointments and the appointee shall serve for the remainder of the unexpired term.
- (d) The members of the Commission may be reimbursed by the City for expenses incurred in connection with their duties.

SECTION 4 ORGANIZATION, OFFICERS, RULES, MEETINGS

- (a) The Commission shall have the power to make whatever rules are necessary for the execution of its duties as set forth in this Ordinance. Rules of procedure and bylaws adopted by the Commission shall be available for public inspection.
- (b) The Commission shall elect officers from among the Commission members. The chairperson shall preside at meetings of the Commission. The vice-chairperson shall, lacking the chairperson, perform the duties of the chairperson.
- (c) All meetings of the Commission shall be open to the public, and follow the requirements of Nevada's open meeting laws (NRS 241). The Commission shall keep minutes and other appropriate written records of its resolutions, proceedings, and actions.
- (d) The Commission may recommend to the Council, within the limits of its funding, the employment of or the contracting with other parties for the services of technical experts or other persons as it deems necessary to carry on the functions of the Commission.

SECTION 5 POWERS, DUTIES, AND RESPONSIBILITIES OF THE COMMISSION

In general, the Commission shall be advisory to the Council and shall be authorized to:

- (a) Conduct a survey of local historic properties.
- (b) Recommend the acquisition of fee and lesser interests in historic properties, including adjacent or associated lands, by purchase, bequest, or donation.
- (c) Recommend methods and procedures necessary to preserve, restore, maintain and operate historic properties under the ownership or control of the City.
- (d) Recommend the lease, sale, or other transfer or disposition of historic properties subject to rights of public access and other covenants and in a manner that will preserve the property.
- (e) Contract, with the approval of the Council, with the state or federal government, or any agency of either, or with any other organization.
- (f) Cooperate with the federal, state, and local governments in the pursuance of the objectives of historic preservation.
- (g) Make recommendations in the planning processes undertaken by the county, the city, the state, or the federal government and the agencies of these entities.
- (h) Recommend ordinances and otherwise provide information for the purposes of historic preservation in the City.

- (i) Promote and conduct an educational and interpretive program on historic preservation and historic properties in the City.
- (j) Commission members, employees or agents of the Commission may enter private property, buildings, or structures in the performance of its official duties only with the express consent of the owner or occupant thereof.
- (k) Review nominations of properties to the National Register of Historic Places for properties within the City's jurisdiction.

SECTION 6 PROCEDURES FOR LANDMARK OR HISTORIC DISTRICT
RECOMMENDATION

- (a) *Generally.* The City Council may designate landmarks and historic districts in the City to accomplish the purposes of this article. In making such designations, the Council shall consider the recommendation of the Historic Preservation Commission.
- (b) *Public Hearing.* The Council shall conduct a public hearing on such historic designations according to public hearing procedures described in this chapter, and NRS 278 and 384.
- (c) *Recommendation by the Historic Preservation Commission.* In general, the Council will not schedule a public hearing for historic designation until the nomination for such designation is reviewed and approved by the Commission.
 - 1. *Public Hearing.* The Commission shall conduct a public hearing on all recommendations of landmarks, landmark sites, or historic districts.
 - 2. *Initiation of Process.* A Commission member, the owner of the property, or any Council member may initiate consideration by the Commission of the recommendation of any site as a Landmark or Historic District in writing. The decision to conduct a public hearing shall be approved or denied by a majority of the Commission present.
 - a) If a request for recommendation is approved for a public hearing upon the request of someone other than the owner of the property, notice of the proposed recommendation shall be mailed by certified mail to the owner of the property. Such notice shall describe the property affected and provide notice of the date, time, and place at which a hearing before the Commission shall be conducted.
 - b) The hearing shall be not less than 30 days following the mailing of notice to the owner.
 - 3. *Recommendations on Landmarks and Historic Districts.* At the conclusion of the public hearing, the Commission shall recommend to the Council the designation of a

Landmark or Historic District if such resource or collection of resources under the following guidelines:

- a) An individual Landmark may be designated if it is at least fifty (50) years old and it substantially complies with two or more of the following:
 - i. Possesses significance in history, architecture, archeology, and culture.
 - ii. Is associated with events that have made a significant contribution to the broad patterns of local, regional, state, or national history.
 - iii. Is associated with events that have made a significant impact in our past.
 - iv. Represents the work of a master designer, builder, or craftsman.
 - v. Embodies the distinctive characteristics of a type, period, or method of construction.
 - vi. Represents an established and familiar visual feature of the city.
 - b) A District may be designated if it substantially complies with both of the following:
 - vii. Contains properties and an environmental setting which meet two or more of the criteria for designation of a Landmark, and;
 - viii. Constitutes a distinct section of the city.
4. *Recommended Waivers.* The Commission's recommendation to the Council may include recommendations for exceptions from provisions of this Code. The Commission in its recommendation shall describe the reasons for the decision and provide written notice of the decision to the property owner within ten days of the hearing. The Commission shall forward its recommendation to the Council.
5. *National Register Designation.* Inclusion of any area or property within the City in the National Register of Historic Places, as provided in the National Historic Preservation Act of 1966, shall not be construed as a local historic designation, and shall not automatically subject a property owner to the provisions of this chapter.
- (d) *Economic Incentives.* The Council, at its discretion, may make available economic incentives to enhance the possibility of designation as an historic landmark or district. The Council is further empowered to receive private or public grants that would enhance historic preservation.
- (e) *Code Waivers.* The Council shall also be empowered to designate items for "community significance waivers." Upon the recommendation of the Commission, waivers to provisions of this Code may be granted by the Council, including but not limited to setback and height restrictions that would otherwise require the facades, historic landmarks, or structures within historic districts to be altered. Such a waiver may also exempt square footage, animation, and prohibitions or any other Code provision as indicated by the city Council. At Council's discretion, designation of community significance waivers may occur any time after the Commission has recommended Landmark or Historic District status for any item. The Council may award such designation without further review by the Commission, and without public hearing.

- (f) *Waiver Criteria.* The criteria for such designation shall be that the waiver is necessary to preserve the historic character or significance of the affected site. The protections and guidelines emanating from such designation shall be identical to those for Historic Landmarks or Districts, and shall expire at the time the use that created the historical character of the item changes or ceases. Owners or managers of property containing items with community significance waivers shall paint, repair, and otherwise refurbish the items to keep them in good repair and working order. Failure to maintain the item may cause a rescission of the waiver designation.
- (g) *Amendments.* The Council may also amend or rescind its designation of any historic landmark, district, or community significance waiver. The Commission's recommendation for such amendment or rescission of historic designation shall be effected in the same manner and procedure as was followed in the original designation, including a public hearing.

SECTION 7 CERTIFICATES OF APPROPRIATENESS FOR ALTERATIONS OR NEW CONSTRUCTION AFFECTING LANDMARKS OR HISTORIC DISTRICTS

- (a) *Applicability.* No person shall carry out any construction, reconstruction, alteration, restoration, rehabilitation, or relocation of any Landmark or any property within a District, nor shall any person make any material change to the character-defining features of the property, or other exterior elements visible from a public right-of-way which affect the appearance and cohesiveness of any Landmark or any property within a District without a Certificate of Appropriateness (CoA). The application for a CoA must be reviewed and approved by the Historic Preservation Officer (HPO) or the Commission prior to the issuance of any building permit involving any Landmark or property located within a District. The application shall be required in addition to, and not in lieu of, any required building permit.
- (b) *Review Criteria.* In considering an application for a Certificate of Appropriateness, the HPO and the Commission shall review it for compliance with the *Secretary of the Interior's Standards for Treatment of Historic Properties* (the Standards) and any applicable adopted Design Guidelines previously ratified by the City Council. The Standards and any applicable adopted Design Guidelines shall apply to all properties designated as an Historic District or Historic Landmark by the Council. All review criteria shall be made available to the applicant, and property owners of Landmarks and properties located within Districts. The Commission shall promulgate and make recommendations to update the adopted Design Guidelines as necessary, provided that the changes do not pose a conflict with underlying land-use zoning and the changes do not take effect until ratified by Council.
- (c) *Procedure for Review.* The procedure for obtaining a Certificate of Appropriateness may be initiated by the City for all City-owned Landmarks or proposed work within a District, or by the individual property owner(s) of the subject Landmark or for a property located within a District. The application must be submitted for reviewed and approved by the HPO or the Commission prior to the commencement of any work. An application for Certificate of Appropriateness shall be made on forms as prescribed by the City and shall be filed with the HPO along with fees in accordance with the municipal fee schedule, if applicable.

1. *Administrative design review affecting Landmarks and properties located in Districts.*

- a. Upon receipt of a completed Certificate of Appropriateness application as determined by the HPO, the HPO shall review the application for a preliminary determination of compliance with the Secretary of the Interior's Standards for Rehabilitation and the adopted Design Guidelines. The applicant is encouraged to schedule a meeting with the HPO prior to the submittal of an application to discuss the proposed work and get initial design direction. The HPO reserves the right to forward any Certificate of Appropriateness application to the Commission for review and approval when direction on design policy is needed or if unable to determine compliance with the Secretary of the Interior's Standards for Rehabilitation or the Design Guidelines. Proposed work to all city-owned Landmarks, all proposed work within a District, and for all city preservation related incentive programs or federal projects must be reviewed by the Commission.
- b. Within five (5) days of receipt of a completed Certificate of Appropriateness application and a preliminary determination of compliance, notice of the pending administrative action shall be mailed to the property owner(s), to all immediate adjacent property owner(s), and posted on the property by the city establishing a fourteen (14) day period in which written comments may be submitted to the HPO.
- c. At the end of the notice period, the HPO shall meet with the Chair of the Commission to review the application and any comments received for design compliance consensus. If approved, the HPO shall issue a Certificate of Appropriateness consisting of written findings of fact, conclusions of law and any specific conditions of approval (if any), supporting the decision. The HPO shall also provide anyone who submitted written comments with a copy and forward its decision to the Development Services Department. Any specific conditions of approval as identified by the HPO shall be attached to the construction documents prior to the issuance of any building permits. No subsequent changes shall be made to the approved design without the prior review and approval of the HPO. An applicant shall have one (1) year from the date of issuance of a Certificate of Appropriateness to secure a building permit for the specified improvements or it shall become null and void.
- d. If the HPO and Chair of the Commission finds the proposed work will have an Adverse Effect on the Landmark, or property located within a District, or if the proposed work is inconsistent with the Secretary of the Interior's Standards for Rehabilitation or adopted Design Guidelines, the HPO shall advise the applicant and any written commenter of the disapproval of the application and of any changes to the application which are necessary for approval of same. A Certificate of Appropriateness application that has been denied administratively may not be resubmitted without incorporating changes to the application which are necessary for approval of the same.

- e. If no action has been taken by the HPO within sixty (60) days of the original receipt of the application, a Certificate of Appropriateness shall be deemed issued by the HPO and the HPO shall so advise the applicant in writing.
- f. The applicant or any persons adversely affected by the determination of the HPO may appeal the decision to the Commission. Appeal requests shall be filed in writing to the HPO within ten (10) days of the HPO's decision. The HPO must schedule the appeal for a public hearing at the next available regularly scheduled Commission meeting. Notice of the appeal shall be posted on the property for a period of fourteen (14) days upon receipt of a 17 formal appeal request. A written notice of the public hearing for the appeal request shall also be provided to all parties who received mailed notice for the original HPO's preliminary determination. Appeals to the Commission shall be considered only on the record made before the HPO.

2. *Commission design review affecting Landmarks and properties located in Districts.*

- a. Upon receipt of a completed Certificate of Appropriateness application as determined by the HPO, the HPO shall review the application for a preliminary determination of compliance with the Secretary of the Interior's Standards for Rehabilitation and any applicable adopted Design Guidelines. The applicant is encouraged to schedule a meeting with the HPO prior to the submittal of an application to discuss the proposed work and get initial design direction.
- b. Within five (5) days of receipt of a completed Certificate of Appropriateness and a preliminary determination of compliance, the HPO shall schedule a public hearing at the next available regularly scheduled Commission meeting. Notice of the pending Commission hearing for compliance with the Secretary of the Interior's Standards for Rehabilitation and any adopted Design Guidelines shall be mailed to the property owner(s), to all immediate adjacent property owner(s), and posted on the property by the city establishing a fourteen (14) day period in which written comments may be submitted to the HPO. A published notice of the scheduled hearing shall also be made in accordance with Nevada Open Meeting Law. All review criteria shall be made available to the applicant prior to the hearing.
- c. The Commission shall review the application at a regularly scheduled meeting. At that time, the applicant shall have an opportunity to be heard, present testimony and evidence to demonstrate that the proposed work is in compliance with the Secretary of the Interior's Standards for Rehabilitation and any adopted Design Guidelines. Other interested parties and technical experts may also present testimony or documentary evidence which will become part of a record. The burden of proof shall be upon the applicant. In the event a hearing is not scheduled within ninety (90) days of receipt of the application, a Certificate of Appropriateness shall be considered be granted.
- d. The Commission may take action to approve, postpone requesting additional information, or deny the application. If no hearing has been scheduled within

ninety (90) days of the original receipt of the application by the HPO, a Certificate of Appropriateness shall be deemed issued and the HPO shall so advise the applicant in writing.

- e. If approved, the HPO shall issue a Certificate of Appropriateness to the applicant with the written findings of fact, conclusions of law and any specific conditions of approval (if any) supporting the decision. The HPO shall also provide anyone who submitted written comments with a copy and forward the Commission's decision to the [appropriate City department]. Any specific conditions of approval made by the Commission shall be attached to the construction documents prior to the issuance of any building permits. No subsequent changes shall be made to the approved design without the prior review and approval of the HPO or Commission. An applicant shall have one (1) year from the date of issuance of a Certificate of Appropriateness to secure a building permit for the specified improvements or it shall become null and void.
 - f. If the Commission finds the proposed work will have an Adverse Effect on the Landmark, or property located within a District, or if the proposed work is inconsistent with the Secretary of the Interior's Standards for Rehabilitation or any applicable adopted Design Guidelines, the Commission shall advise the applicant at the hearing of the disapproval of the application and of any changes to the application which are necessary to approval of the same. Within five (5) days following the meeting, the HPO shall provide the applicant and any written commenter noticing in writing of the disapproval of the application and of any changes to the application which are necessary for approval of the same. A Certificate of Appropriateness application that has been denied may not be resubmitted without incorporating changes to the application which are necessary for approval of the same.
 - g. The applicant or any persons adversely affected by the action of the Commission may appeal the decision to the City Council. Appeal requests shall be filed in writing to the HPO within ten (10) days of the Commission's decision. The HPO must schedule the appeal for a public hearing at the next available regularly scheduled Council meeting. Notice of the appeal shall be posted on the property for a period of fourteen (14) days upon receipt of a formal appeal request. A written notice of the public hearing for the appeal request shall also be provided to all parties who received mailed notice for the Commission hearing.
 - h. The City Council shall give notice, follow publication procedure, hold hearings, and make its decision in the same manner as provided in the general zoning ordinance of the City. Appeals to the City Council shall be considered only on the record made before the Commission, and may only allege that the Commission's decision was arbitrary, capricious, or illegal.
- (d) *Ordinary Maintenance.* Nothing in this ordinance shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of a landmark or property within a Historic District which does not involve a change in design, material, or outward appearance that require the issuance of a building permit. In-kind repair/replacement and repainting is included in this definition of ordinary maintenance unless painting involves an

exterior masonry surface that was not previously painted. The HPO shall determine what actions constitute "ordinary maintenance."

SECTION 8 DEMOLITION OF LANDMARKS AND CONTRIBUTING PROPERTIES IN HISTORIC DISTRICTS

It is the intent of this chapter to preserve the historic and architectural resources of the City through limitations on demolition and removal of Landmarks and contributing resources in Historic Districts to the extent it is economically feasible practical and necessary. The demolition or removal of historic buildings structures and sites in the City diminishes the character of the city's Historic Districts and it is strongly discouraged. Instead the City recommends and supports preservation rehabilitation or relocation within the historic district. It is recognized however that structural deterioration, economic hardship and other factors not entirely within the control of the property owner may result in the necessary demolition or removal of a historic building structure or site.

(a) *Removal or repair of hazardous or dangerous Landmarks.*

1. If the building official determines a Landmark to be structurally unsound and a hazardous or dangerous building pursuant to the provisions found in the City's adopted building code, the building official shall be required to provide written notice to the Commission of the ordered removal or repair of the Landmark prior to taking such action.
2. The property owner(s) of the demolished Landmark removed under this procedure is subject to the penalties found in Section 10 herein.

(b) *Certificates of Appropriateness for Demolition Affecting Landmarks or Historic Districts.* No person shall carry out the demolition of a Landmark or property within a District, including secondary buildings and landscape features that are not previously deemed a hazardous or dangerous building by the building official, without the review and approval of a Certificate of Appropriateness for Demolition application by the Commission. The application shall be required in addition to, and not in lieu of, any required building permit.

1. In the absence of a determination by the building official of the subject property as a hazardous or dangerous building, the Commission may consider an application for a Certificate of Appropriateness for Demolition of a Landmark or property located within a District, only if it meets compliance with one of the following:
 - a) The subject building, structure or object is an accessory building and/or landscape features that is not integral to the historic interpretation or integrity of the Landmark.
 - b) The applicant is requesting a Certificate of Appropriateness for Demolition of a Landmark on the basis of Economic Hardship pursuant to paragraph (c)(4) of this section.
 - c) The subject building, structure or object has lost its architectural significance and integrity over time for reasons not entirely within the control of the current or previous property owner(s).

(c) *Procedure for Certificates of Appropriateness for Demolition Affecting Landmarks or Historic Districts.* The procedure for obtaining a Certificate of Appropriateness for Demolition may be initiated by the City for all City-owned Landmarks or proposed work within a District, or by the individual property owner(s) of the subject Landmark or property within a District. The application must be submitted to the HPO for review and approval by the Commission prior to the commencement of any work. An application for Certificate of Appropriateness for Demolition shall be made on forms as prescribed by the City and shall be filed with the HPO.

1. The application shall contain:
 - a) Name, address, and contact information of applicant, and physical address of the individual property.
 - b) Site plan of the individual property or map indicating the area of the proposed demolition showing all affected buildings and/or structures on the site.
 - c) Photographs of existing conditions as well as any historical photographs, if available.
 - d) All future development plans for the property, if available.
 - e) Any other information which the Commission may deem necessary pursuant to this section.
2. An individual property that is under review by the City for a Certificate of Appropriateness for Demolition shall be protected by and subject to all of the provisions of this Article governing demolition, minimum maintenance standards and penalties until a final decision by the Commission becomes effective.
3. The procedure for a Certificate of Appropriateness for Demolition shall be the same as provided for in Section 7 herein.
4. The procedure for a Certificate of Appropriateness for Demolition application involving a claim of Economic Hardship shall be as follows:
 - a) No Certificate of Appropriateness for Demolition involving a claim of economic hardship may be approved, nor shall a demolition permit be issued by the City unless the owner proves compliance with the following standards for economic hardship:
 1. The property is incapable of earning a reasonable return in its current or rehabilitated state, regardless of whether that return represents the most profitable return possible.
 2. The property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return.
 3. Earnest and reasonable efforts to find a purchaser interested in acquiring the property and preserving it have failed.

4. The property cannot be moved or relocated to another, similar site or, for contributing properties within a District, to a new location within the District.
- b) The City shall adopt by resolution separate criteria for review in considering claims of economic hardship for investment for income producing and non-income producing properties, as recommended by the Commission. Non-income producing properties shall consist of owner occupied single family dwellings and non-income producing institutional properties. All standards for review shall be made available to the owner prior to the hearing. The information to be considered by the city may include but not be limited to the following:
1. Purchase date price and financing arrangements
 2. Current market value
 3. Form of ownership
 4. Type of occupancy
 5. Cost estimates of demolition and post demolition plans for development
 6. Maintenance and operating costs
 7. Inspection report by licensed architect or structural engineer having experience working with historic properties
 8. Costs and engineering feasibility for rehabilitation
 9. Property tax information
 10. Rental rates and gross income from the property
 11. Other additional information as deemed appropriate
- c) Claims of economic hardship by the owner shall not be based on conditions resulting from:
1. Evidence of demolition by neglect or other willful and negligent acts by the owner
 2. Purchasing the property for substantially more than market value at the time of purchase
 3. Failure to perform normal maintenance and repairs
 4. Failure to diligently solicit and retain tenants
 5. Failure to provide normal tenant improvements
- d) Throughout the process, the applicant shall consult in good faith with the HPO, local preservation groups and interested parties in a diligent effort to seek an alternative that will result in preservation of the property. Such efforts must be demonstrated to the Commission at the hearing.
- e) Upon receipt of a completed Certificate of Appropriateness for Demolition application, the HPO shall review the application for a preliminary

determination of compliance with the standards for economic hardship and the criteria for review found in this section. The applicant is encouraged to schedule a meeting with the HPO prior to the submittal of an application to discuss the application and receive initial direction.

- f) Within five (5) days of receipt of a completed Certificate of Appropriateness involving a claim of Economic Hardship and a preliminary determination of compliance, the HPO shall schedule a public hearing at the next available regularly scheduled Commission meeting. Notice of the pending Commission hearing for compliance with the standards for economic hardship and the criteria for review. Notice of the hearing shall be mailed to the property owner(s), to all immediate adjacent property owner(s), and posted on the property by the City. The owner shall be required to stabilize and secure the property subject to the penalties of this Article until a final decision by the Commission becomes effective. A published notice of the scheduled hearing shall also be made in accordance with Nevada Open Meeting Law (NRS 241). All review criteria and the formal written report to the HPO shall be made available to the applicant prior to the hearing.
- g) The Commission shall conduct its initial review of the application at a regularly scheduled meeting. At that time, the applicant shall have an opportunity to be heard, present testimony and evidence to demonstrate that standards for economic hardship and the criteria for review have been met. Other interested parties and technical experts may also present testimony or documentary evidence which will become part of the record. The burden of proof shall be upon the applicant. In the event the Commission does not act within ninety (90) days of receipt of the application, a Certificate of Appropriateness for Demolition may be granted.
- h) In considering the application, the Commission shall take action to postpone the application in order to establish a Stay of Demolition period, during which time the owner shall allow the city to post a sign stating that the property is subject to demolition. Said sign shall be readable from a point of public access and state that more information may be obtained from the HPO for the duration of the stay. The owner shall conduct in good faith with the City, local preservation organizations, and interested parties a diligent effort to seek an alternative that will result in the rehabilitation of the Landmark or contributing resource in a District. Negotiations may include, but are not limited to, such actions to utilize various preservation incentive programs, sell or lease the Landmark, or facilitate proceedings for the City to acquire the Landmark under its power of eminent domain, if appropriate and financially possible. If negotiations are successful, the Certificate for Demolition application shall be considered withdrawn and all associated applications closed.
- i) If approved, the HPO shall issue a Certificate of Appropriateness to the applicant with the written findings of fact, conclusions of law and any specific conditions of approval (if any) supporting the decision. The HPO shall also provide anyone who submitted written comments with a copy and

forward the Commission's decision to the [appropriate City department]. The approval shall be valid for one (1) year from the hearing date of the Commission's final decision. The historic property shall immediately be removed from the City's inventory of historic properties, any official public records of real property of [County name], and the official zoning maps of the City.

5. Prior to demolition, the City may as a condition of approval require the owner to provide documentation of the demolished historic property at the owner's expense in accordance with the standards of the Historic American Building Survey (HABS). Such documentation may include photographs, floor plans, measured drawings, an archeological survey, and/or other information as specified.
6. Approval for the demolition of a structure may be conditioned upon the construction of an acceptable replacement structure, or landscape or park plan. A bond or other financial guaranty in the amount of the cost of the replacement structure may be required in order to assure the construction of the replacement structure, or park, or landscape plan.
7. Denial of a Certificate of Appropriateness application for Demolition involving Economic Hardship shall prevent the owner from demolishing the property or reapplying for another Certificate of Appropriateness application for Demolition for a period of three (3) years from the hearing date of the Commission's final decision, unless substantial changes in circumstances have occurred other than resale of the property or those caused by acts beyond the control of the owner. It shall be the responsibility of the owner to stabilize and maintain the minimum maintenance standards for the property so as not to create a hazardous or dangerous building, as outlined in Section 9 herein.
 - a) The City may continue to provide the owner with information regarding financial assistance for the necessary rehabilitation or repair work as it becomes available.
 - b) The owner may appeal the decision of the Commission to the City Council. Appeal requests shall be filed in writing to the HPO within ten (10) days of the Commission's decision. The City Council shall give notice, follow publication procedure, hold hearings, and make its decision in the same manner as provided in the general zoning ordinance of the City. Appeals to the City Council shall be considered only on the record made before the Commission, and may only allege that the Commission's decision was arbitrary, capricious, or illegal.

SECTION 9 MINIMUM MAINTENANCE STANDARDS

No owner or person with an interest in real property designated as a Landmark or a property located within a District shall permit the property to fall into a serious state of disrepair so as to result in the significant deterioration of any exterior architectural feature which would, in the judgment of the Commission, create a detrimental effect upon the historic character of the Landmark or District.

(a) *Examples of serious disrepair or significant deterioration:*

1. Deterioration of exterior walls, foundations, or other vertical support that causes leaning, sagging, splitting, listing, or buckling.
2. Deterioration of external chimneys that causes leaning, sagging, splitting, listing, or buckling.
3. Deterioration or crumbling of exterior plaster finishes, surfaces or mortars.
4. Ineffective waterproofing of exterior walls, roofs, and foundations, including broken windows or doors.
5. Defective protection or lack of weather protection for exterior wall and roof coverings, including lack of paint, or weathering due to lack of paint or other protective covering.
6. Rotting, holes, and other forms of material decay.
7. Deterioration of exterior stairs, porches, handrails, window and door frames, cornices, entablatures, wall facings, and architectural details that causes delamination, instability, loss of shape and form, or crumbling.
8. Deterioration that has a detrimental effect upon the special character of the district as a whole or the unique attributes and character of the contributing structure.
9. Deterioration of any exterior feature so as to create or permit the creation of any hazardous or unsafe conditions to life, health, or other property.

(b) *Procedure to mitigate Demolition by Neglect.* Demolition by Neglect refers to the gradual deterioration of a property when routine or minimum maintenance is not performed. The HPO and other City staff shall work together in an effort to reduce Demolition by Neglect involving Landmarks or properties located within Districts within the City. A Demolition by Neglect citation as determined by the Commission may be issued against the owner of the property for failure to comply with the minimum maintenance standards by permitting the subject property to exhibit serious disrepair or significant deterioration as outlined in paragraph (a) of this section.

1. While the HPO will act as the point of contact, the [appropriate City department] staff shall, when needed, assist with inspections. If there is a dispute between the HPO and [appropriate City department] staff, the City Manager may be consulted as a mitigating party.
2. The procedure for citing a property for Demolition by Neglect shall be as follows:
 - a) Initial identification is made by visual inspection of the area by the HPO, a Commission member, or by referral from someone in the area. All referrals shall be made in writing and shall be submitted to the HPO.
 - i. Once the initial identification is made, followed by a preliminary determination by the HPO, the property owner shall be notified by US mail of the defects of the building and informed of various incentive programs that may be available for repair. The owner is given thirty (30) days in which to respond to the preliminary determination by

submitting a stabilization proposal to HPO. The stabilization proposal will be presented to the Commission at the next available meeting. If the Commission approves the proposal, a Certificate of Appropriateness (if necessary) may be issued administratively by the HPO. The approval will detail the specific work which is necessary to correct the Demolition by Neglect conditions, as well as a time period to begin and complete the work. The HPO shall update the Commission on the status of the property every thirty (30) days once work begins on the property.

- ii. If the property owner receives the letter regarding the preliminary determination, but fails to respond, a second notice shall be sent in the same manner as described above.
- iii. If the property owner fails to receive and/or respond to the letter regarding the preliminary determination after two (2) attempts, the matter returns to the Commission for a citation hearing. The HPO shall send a third notice via certified mail informing the owner of the hearing, the property is posted with a notice of the violation in accordance with the provisions of this chapter, and a public hearing on the citation is scheduled.
- iv. At the public hearing the owner is invited to address the Commission's concerns and to show cause why a citation should not be issued. The Commission may take action to approve any proposed work, defer the matter to give the owner more time either to correct the deficiencies or make a proposal for stabilization, or issue a citation to the owner of the property for failure to correct the Demolition by Neglect conditions.
- v. If the owner is cited for the condition of Demolition by Neglect of the property, he is given fourteen (14) days to submit a stabilization proposal to the HPO, and at the discretion of the Commission, up to one (1) year to correct the defects. The HPO shall update the Commission on the status of the property every thirty (30) days once work begins on the property.
- vi. If the owner does respond with a stabilization proposal, the matter is turned over to the City Attorney's office for action in Municipal Court.

SECTION 10 ENFORCEMENT

All work performed pursuant to a certificate of appropriateness issued under this ordinance shall conform to any requirements included therein. It shall be the duty of the building inspector to inspect periodically any such work to assure compliance. In the event work is not being performed in accordance with the certificate of appropriateness, or upon notification of such fact by the Commission and verification by the HPO, the building inspector shall issue a stop work order and all work shall immediately cease. The property owner shall then be required to apply for a hearing before the Commission to explain the non-compliance. No further work shall be

undertaken on the project as long as a stop work is in effect until a decision is rendered by the Commission on the application.

(a) *Penalties.* It shall be unlawful to construct reconstruct significantly alter restore or demolish any building or structure designated as a Landmark or in a designated District in violation of the provisions of this Article. The City in addition to other remedies may institute any appropriate action or proceeding to prevent such unlawful construction reconstruction significant alteration or demolition to restrain correct or abate such violation or to prevent any illegal act business or maintenance in and about such premises including acquisition of the property

1. Any person firm or corporation violating any provision of this division shall be fined \$500 for each offense. Each day the violation continues shall be considered a separate offense. Such remedy under this section is in addition to the abatement restitution.

SECTION 11 SPECIAL RESTRICTIONS:

Under the provisions of Nevada Revised Statutes, Chapters 278 and 384, the City of _____ may provide by ordinances, special conditions or restrictions for the protection, enhancement and preservation of locally designated historic properties.

SECTION 12 SEPARABILITY:

If any section, subsection, sentence, clause or phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 13 EFFECTIVE DATE:

This Ordinance shall be in full force and effect from and after its passage, approval and publication according to law. PASSED AND APPROVED this _____ day of _____, 20____. City of _____, a municipal corporation of the State of Nevada.

BY: _____
Mayor

ATTESTED: _____
City Clerk

PUBLISHED: _____