

CITY OF ROCKFORD CODE OF ORDINANCES

Chapter 113 - Historical Preservation

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ARTICLE I. IN GENERAL

Sec. 113-1. City historical preservation commission created; purposes.

- (a) There is hereby created the city historical preservation commission, under the authority granted to municipalities in 65 ILCS 5/11-48.2-3. The Commission is created for the purposes of:
- (1) Identifying such buildings, places or areas within the city which are historically significant in that they exemplify and/or reflect the cultural, social, economic, political, or architectural history of the nation, the state or the city;
 - (2) Advising the City council on the designation of such buildings, places or areas as either landmarks or historic districts, as defined in section 109-3;
 - (3) Protecting the distinctive visual characteristics of the landmarks or historic districts by reviewing, giving advice about, and passing upon any changes to their exterior appearance; and
 - (4) Performing such other functions as may be useful or necessary to safeguard and enhance the city's historic, aesthetic, architectural, cultural and community heritage as embodied in its buildings, places and areas.
- (b) It is not the purpose of the city historical preservation commission to prevent or hinder development or growth, except where such development or growth is inconsistent with or detrimental to the inherent value of the historic buildings, places or areas of the city.
- (Code 1970, §13½-1; Ord. No. 1978-134-O, 9-25-1978; Ord. No. 1997-99-O, 6-2-1997)

Sec. 113-2. Definitions.

The following words, terms, phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alteration means any act or process which changes one or more of the exterior architectural features of a structure, including, but not limited to, the erection, construction, reconstruction of any improvement as defined in this section. The term "alteration" shall further mean any act or process which changes or alters the landscaping of any property.

Certificate of appropriateness means a statement containing the signature of the secretary verifying that the Commission has reviewed an application to allow the alteration or demolition of any improvement upon a landmark site or within an historic district; that the commission has found the requested action to be appropriate to the general character of the landmark site or historic district; and that the requested action may be taken subject to applicable building and zoning codes.

Commission means the city historical preservation commission.

Demolition means any act or process which destroys, in part or in whole, an improvement.

Historic district means a place or area designated as a historic district by ordinance of the city council, pursuant to the procedures and requirements prescribed hereunder.

Historic structure means any structure or building designated as a landmark or located in a historic district.

Improvement means any building, structure, wall, fence, steps, paving, gate, sign, light, general arrangement of place or area, the kind or texture or quality of building material, landscaping or landscape architecture, or work of art which may be erected upon or proposed to be erected upon any specific real estate.

Landmark means any improvement designated as a "landmark" by ordinance of the City council, pursuant to procedures and requirements prescribed herein.

Landmark site means a parcel or part thereof on which is situated a landmark as described herein, and any abutting parcel or part thereof used and constituting part of the premises on which the landmark is situated.

Ordinary maintenance means that which does not alter the exterior features of a historic site or historic resource within a historic district. Exterior features include the architectural style, design, and general arrangement of the exterior; the color, nature, and texture of building materials; and the type and style of all windows, doors, light fixtures, signs, and similar items found on, or related to, the exterior of a historic site or historic resource within a historic district. Basically, ordinary maintenance is that which will have no material effect on the historical, architectural, cultural or archaeological value of the historic site or historic resource within a historic district. This definition of ordinary maintenance applies, whenever appropriate, to the appurtenances and environmental setting of the property, as well as the building, structure or object itself. Specific items to be considered as ordinary maintenance include:

- (1) Repair or replacement of roofs, gutters, siding, external doors and windows, trim, lights, and other appurtenant fixtures with like materials of like design;
- (2) Landscaping not requiring other city permits or approval, except the removal of significant healthy trees;
- (3) Paving repair using like materials of like design; and
- (4) Repainting of surfaces.

Owner of record means all of the holders of fee simple title, or an estate of such duration and enjoyment as to be substantially equivalent to fee simple title, as indicated by documents recorded in the recorder's office of the county.

Preservation restriction means a right, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument, executed by or on behalf of the owner of the land or in any order of taking, appropriate to the preservation of areas, places, buildings, or structures to forbid or limit acts of demolition, alteration, use or other acts detrimental to the preservation of the buildings, places or areas designated pursuant to the provisions hereunder as a landmark or as within a historic district.

Significant tree means a tree that is at least 18 inches in diameter.

(Code 1970, §13½-2; Ord. No. 1978-134-O, 9-25-1978; Ord. No. 1979-123-O, §§2, 3, 9-17-1979; Ord. No. 1986-289-O, §1, 12-22-1986; Ord. No. 1987-55-O, 3-16-1987; Ord. No. 1995-66-O, §1, 4-10-1995)

Sec. 113-3. Powers, duties and responsibilities of Historical preservation commission.

Subject to state law and the procedures prescribed hereunder, the city historical preservation commission shall have and may exercise the following powers, duties and responsibilities:

- (1) To accept such gifts, grants and money, as may be appropriated for the purposes of this chapter. Such money may be expended for publishing maps and brochures, hiring staff persons or consultants, and for performing such other functions as are appropriate for the purposes of this chapter;
- (2) To conduct a survey of city buildings, places or areas for the purpose of identifying those of historic significance;
- (3) To recommend that the city council designate by ordinance certain improvements as landmarks, if they qualify as defined hereunder;
- (4) To recommend that the city council designate by ordinance certain places and areas as historic districts, if they qualify as defined hereunder;
- (5) To determine an appropriate system of markers for designated landmarks or historic districts;
- (6) To prepare and publish maps, brochures and other descriptive material about the city's landmarks and historic districts;
- (7) To cooperate with and enlist the assistance of persons, organizations, corporations, foundations and public agencies in matters involving historic preservation, renovation, rehabilitation and reuse;
- (8) To advise and assist owners of landmarks or historic structures on physical and financial aspects of preservation, renovation, rehabilitation and reuse;

- (9) To review and make decisions on any application for a certificate of appropriateness, and to require the presentation of such plans, drawings, elevations and other information as may be necessary to make such decisions;
- (10) To adopt, publish and make available bylaws for the conduct of commission meetings not inconsistent with the administrative review law (735 ILCS 5/3-101 *et seq.*);
- (11) To make recommendations to the city council, pursuant to procedures prescribed hereunder, relative to the exercise of eminent domain powers;
- (12) To certify this ordinance with the Illinois Historic Preservation Agency, and with the Secretary of the United States Department of the Interior, so as to qualify historic structures under this ordinance as historic structures under article 10, division 5 of the Property Tax Code (35 ILCS 200/10-40 *et seq.*) and the Tax Reform Act of 1986 (PL 99-514);
- (13) To act as conservator of, and therefore sue on behalf of, any landmark or historic district when it appears to the commission that the interest of the public in the landmark or historic district is in need of protection through the exercise of litigation. The court may, in its discretion, assess attorneys' fees and costs against a defendant to such action; and
- (14) To identify and certify, for historical preservation purposes, such organization or organizations to which fee titles or lesser interests in property may be granted by recommendation of the commission.

(Code 1970, §13½-3; Ord. No. 1978-134-O, 9-25-1978; Ord. No. 1995-66-O, §2, 4-10-1995)

Sec. 113-4. Historical preservation commission membership.

- (a) The historic preservation commission shall consist of seven residents of the city selected by the mayor and approved by the city council. One commissioner shall be an active member of a city historical society; one commissioner shall be a registered realtor or broker; one commissioner shall be a member of the city council; one commissioner shall be a resident of a local historic district; one commissioner shall be chosen at large; one commissioner shall be a state registered architect; and one commissioner shall be from the fields of architecture, landscape architecture or architectural history.
- (b) Except for the position filled by a member of city council, commissioners shall serve terms of three years. The city council representative shall serve a one-year term, annually appointed by the mayor. There is no limit to the number of terms the city council representative may serve. The remaining six commissioners may serve more than one term, but after two consecutive terms, must wait one full three-year term before reappointment. Commissioners who are appointed to fill an unexpired term if less than two years shall be eligible to serve two full terms in addition to the unexpired term.
- (c) The secretary of the commission shall be the director of community and economic development or his designee from within the department of community and economic development. Officers shall consist of a chair and a vice-chair, shall serve a term of one year, and shall be eligible for re-election. Commissioners who fail to attend four meetings in a calendar year shall be replaced in the manner provided herein for the appointment of commissioners; however, absences excused

by the commission shall not count toward the total listed above. Commissioners shall serve without compensation.

(Code 1970, §13½-4; Ord. No. 1978-134-O, 9-25-1978; Ord. No. 1979-123-O, §4, 9-17-1979; Ord. No. 1982-161-O, 11-15-1982; Ord. No. 1987-55-O, 3-16-1987; Ord. No. 1992-328-O, §§1-3, 12-7-1992; Ord. No. 1995-66-O, §3, 4-10-1995; Ord. No. 1998-120-O, 6-1-1998)

Sec. 113-5. Commission meetings.

The commission shall hold an annual meeting for the express purpose of electing its officers. Regular monthly meetings shall be scheduled by the chair, and special meetings may be called at the request of any commissioner or of the secretary. Meetings shall be chaired by the chair, or in his absence, by the vice-chair. A quorum shall consist of four commissioners. The secretary shall publicly give notice of the meetings as required hereunder. The commission shall adopt bylaws that it shall place on file for public view in the office of the city department of law.

(Code 1970, §13½-5; Ord. No. 1978-134-O, 9-25-1978; Ord. No. 1995-66-O, §4, 4-10-1995)

Sec. 113-6. Duties of secretary.

Provided that no costs for administration of this chapter shall be derived from the general fund, the secretary shall:

- (1) Take the minutes of each commission meeting, and keep the originals thereof in the office of community and economic development;
- (2) Prepare reports of decisions and findings of fact of the commission, originals of which shall be kept in the office of community and economic development;
- (3) Provide administrative and technical assistance to the commission for it to make the decisions and findings as provided hereunder;
- (4) Publish and distribute to the commissioners, and to such persons who may for each meeting so request in writing, the minutes, reports and decisions of the commission; and
- (5) Report on behalf of the commission to the city council on matters requiring council consideration, as described hereunder, and advise the mayor of the terms of office of each commissioner.

(Code 1970, §13½-6; Ord. No. 1978-134-O, 9-25-1978)

Sec. 113-7. Commission decisions; notices and hearings; open meetings.

All commission decisions shall be by majority vote of those commissioners present and voting. No commissioner shall vote on any matter that may materially or apparently affect the property, income or business interest of that commissioner. The secretary shall not vote. No action shall be taken by the commission which directs a private owner to do or refrain from doing any specific thing, or which refuses to permit a private owner to do some specific thing he desires to do, in connection with property designated hereunder, unless due notice is given to such owner as provided hereunder, and unless such

owner shall have had the opportunity to be heard at a public meeting of the commission. Meetings of the commission shall be held pursuant to the provisions of the meetings of public agencies act.

(Code 1970, §13½-7; Ord. No. 1978-134-O, 9-25-1978; Ord. No. 1995-66-O, §5, 4-10-1995)

Secs. 113-8 - 113.32. Reserved.

ARTICLE II. LANDMARK DESIGNATION

Sec. 113-33. Application; fees.

(a) *Applications.*

(1) Any person, organization or association may submit an application to the commission requesting that a building, place or area be designated as a landmark or be removed from designation as a landmark. The commission may also initiate its own request for designation or removal from designation of any building, place or area as a landmark. Applications shall be filed with the secretary of the commission on forms approved by the commission.

(2) The commission shall make all reasonable efforts to secure the written consent of the owner before proceeding with designation or removal. The commission shall notify the owner of record of any property for which an application is made (unless it is made by the owner) within three working days of receipt of such application.

(b) *Fees.* Each application submitted to the commission under this section shall be accompanied by a fee in the amount established by the city. An application submitted without this fee shall have no effect under this chapter.

(c) *Waiver of fees.* Application fees outlined in subsection (b) of this section may be waived if the applicant verifies that he is unable to pay the application fee because he has insufficient income to pay these fees without substantial financial hardship. A gross income that is less than eighty percent of the current median income for the city shall be deemed to be evidence of an inability to pay.

(Code 1970, §13½-8; Ord. No. 1978-134-O, 9-25-1978; Ord. No. 1979-123-O, §5, 9-17-1979; Ord. No. 1985-228-O, 10-7-1985; Ord. No. 1985-231-O, 10-7-1985; Ord. No. 1986-289-O, §2, 12-22-1986; Ord. No. 1995-66-O, §6, 4-10-1995)

Sec. 113-34. Requirements for granting applications.

(a) To be a city landmark, a structure or site must retain the integrity and spirit of the original design. It must also fulfill one of the following criteria:

(1) The structure predates 1860;

(2) It is an exceptional example of a historic or vernacular style, or one of the few remaining in the city;

(3) It is an extraordinary curiosity or picturesque work;

- (4) It is the work of a nationally famous architect;
 - (5) It is an outstanding example of work, or the only known example of work, by a locally well known architect or master builder;
 - (6) The structure or site has a known historic significance because it is the property most closely associated with the life or activities of a major historic person, organization or group (including ethnic groups);
 - (7) The structure or site has known historic significance because it is the property most closely associated with a notable historic event;
 - (8) The structure or site is of a type or is associated with a use once common but now rare;
 - (9) The site has yielded, or may be likely to yield, information important in prehistory or history;
 - (10) By virtue of its location or activities held there, the structure or site is a current or former focal point of life in the city.
- (b) The applicant for landmark designation must demonstrate convincingly the applicability of one or more of the criteria outlined above in subsection (a) of this section, providing ample documentation to support all statements and assertions.

(Code 1970, §13½-8.1; Ord. No. 1995-66-O, §7(13½-8a), 4-10-1995)

Sec. 113-35. Review process.

(a) *Public hearing.*

- (1) The commission shall schedule a public hearing on the question of designation or removal from designation. Written notice setting forth a date, time and place of the hearing shall be given to the owner of record and any other persons having a legal or equitable interest in the property subject to the request. Further, the secretary shall cause a notice to be published in a newspaper of general circulation in the city setting forth the nature of the hearing, the property involved, and the date, time and place of the scheduled hearing.
- (2) At the public hearing, the commission shall afford the opportunity of any persons there to present their views pertinent to the proposed designation or removal from designation. If the commission must schedule any meetings for subsequent further public hearing on the request, it shall so announce at the first said meeting, but need not give further public notice. All public hearings shall be completed within 60 days of receipt of a request.

- (b) *Commission review and recommendation.* The commission shall review all information presented to it pertinent to the request for designation or removal from designation, and shall present and submit to council within 30 days of the last public hearing date considering the request, a written report containing its findings and recommendations. Any building, place or area that is already on the national or state registers of historic places shall automatically be recommended for approval for designation or denial to remove from designation. A copy of said report shall be sent to every

person making a written request to the secretary for a report and to every member of the code and regulation committee of council, or any successor committee designated to review requests under this chapter.

(c) *Determination by council.*

- (1) The report and recommendations of the commission shall be referred to the code and regulation committee, or any successor committee designated to review requests under this article, and the committee's recommendations shall be presented to the council for decision. Council shall take final action approving or denying the application within 60 days of the submission of the report of the commission. An ordinance passed by majority vote of council is required to approve an application.
- (2) Upon designation by ordinance of the council, such building, place or area shall be a landmark afforded the protection of this chapter as administered by the commission. Upon removal from designation by ordinance of the council, the building, place or area affected shall no longer be subject to the regulations of this chapter.
- (3) Denial of an application by council may occur in one of two ways:
 - a. A majority vote of the council voting for denial shall be deemed a final decision.
 - b. If the council fails to act within 60 days of the submission of the commission's report, the petition shall be deemed denied.
- (4) A two-thirds affirmative vote of the city council is required to approve landmark designation of any building, place or area when the owner of said building, place or area is opposed to said designation.

(d) *Reapplication upon denial or expiration.* A new application for designation, or removal from designation, unless made by the owner, shall not be considered for a period of one year from the date of denial or expiration.

(e) *Certificate of appropriateness.* Upon the submission of an application requesting landmark designation to the historic preservation commission, all permits issued by the building official for the proposed landmark site shall be accompanied by a certificate of appropriateness from the commission at least until such time as the council makes a final determination on whether to designate as a landmark the item identified in the application.

(f) *Rescission or amendment of designation.* A designation may be amended or rescinded by the same procedure and according to the same standards and consideration set forth for designation.

(Code 1970, §13½-9; Ord. No. 1978-134-O, 9-25-1978; Ord. No. 1979-123-O, §6, 9-17-1979; Ord. No. 1985-228-O, 10-7-1985; Ord. No. 1985-231-O, 10-7-1985; Ord. No. 1986-289-O, §2, 12-22-1986; Ord. No. 1995-66-O, §9, 4-10-1995; Ord. No. 2001-46-O, 3-5-2001; Ord. No. 2009-031-O, 3-23-2009)

Sec. 113-36. Notice of designation.

Within five working days after designation, and on a yearly basis thereafter, the secretary shall notify the owner of the landmark site that it has been designated as such, and that an owner must possess a certificate of appropriateness before he can procure a building permit, or otherwise materially affect the exterior appearance of his property. If a site is removed from designation as a landmark, the secretary shall notify the owner of the removal from designation.

(Code 1970, §13½-9.1; Ord. No. 1995-66-O, §9 (13½-9a), 4-10-1995; Ord. No. 2004-100-O, 6-14-2004)

Sec. 113-37. Landmark status recorded with deed.

A copy of the ordinance designating the building, place or area as a landmark shall be recorded with the deed to the landmark site by the commission at the office of the county recorder of deeds.

Sec. 113-38. Historic landmark designation.

The following buildings, places or areas have been designated historic landmarks:

- (1) The Graham-Ginestra Home, located at 1115 South Main Street (as described more fully in Ordinance No. 1979-136-O, passed October 1, 1979);
- (2) The Herrick-Logli Cobblestone House, located at 2127 Broadway (as described more fully in Ordinance No. 1979-183-O, passed December 17, 1979);
- (3) Jenny's, located at 1313 East State Street (as described more fully in Ordinance No. 1980-14-O, passed January 28, 1980);
- (4) The Coronado Theatre, located at 312-324 North Main Street (as described more fully in Ordinance No. 1980-61-O, passed March 31, 1980);
- (5) Freeman School, located at 910 Second Avenue (as described more fully in Ordinance No. 1980-216-O, passed October 27, 1980);
- (6) Anderson Building, located at 803 North Church Street (as described more fully in Ordinance No. 1981-26-O, passed March 2, 1981);
- (7) The Midway Theatre, located at 721 East State Street (as described more fully in Ordinance No. 1981-137-O, passed August 3, 1981);
- (8) The Burpee Natural History Museum, located at 813 North Main Street (as described more fully in Ordinance No. 1983-53-O, passed April 11, 1983);
- (9) The Tinker Swiss Cottage, located at 411 Kent Street (as described more fully in Ordinance No. 1983-55-O, passed April 11, 1983);
- (10) The Burpee Art Museum, located at 737 North Main Street (as described more fully in Ordinance No. 1983-54-O, passed April 11, 1983);

- (11) The John Erlander Home, located at 404 South Third Street (as described more fully in Ordinance No. 1986-141-O, passed July 14, 1986);
- (12) The Times Theatre Building, located at 222-230 North Main Street (as described more fully in Ordinance No. 1987-39-O, passed February 23, 1987);
- (13) 701-703 Seventh Street (train depot) (as described more fully in Ordinance No. 1993-240-O, passed September 20, 1993);
- (14) 203-207 West State Street, Four Squires Building (as more fully described in Ordinance No. 1993-257-O, passed September 27, 1993);
- (15) 1900 North Rockton Avenue, West Middle School (as more fully described in Ordinance No. 1996-37-O, passed March 4, 1996);
- (16) 2929 Charles Street, East High School (as more fully described in Ordinance No. 1996-103-O, passed May 6, 1996);
- (17) 1105 North Court Street, Garrison School (as more fully described in Ordinance No. 1996-159-O, passed July 1, 1996);
- (18) 330 North Main Street, Liebling Building, a/k/a Jackson Piano (as more fully described in Ordinance No. 1997-229-O, passed October 6, 1997);
- (19) 713 East State Street, Shumway Market Building (as more fully described in Ordinance No. 1997-230-O, passed October 6, 1997);
- (20) ~~815 South Main Street, Illinois Central Railroad Freight Station (as more fully described in Ordinance No. 1999-161-O, passed June 28, 1999);~~ [Designation of 815 South Main Street was removed under Ordinance No. 2002-63-O, passed March 11, 2002.]
- (21) 605 North Main Street, Illinois National Guard Armory (as more fully described in Ordinance No. 2000-19-O, passed January 24, 2000);
- (22) 425 East State Street (Rockford City Hall), (as more fully described in Ordinance No. 2002-64-O, passed March 11, 2002);
- (23) The old jail building located at 403 Elm Street (as more fully described in Ordinance No. 2002-120-O, passed April 30, 2002);
- (24) Chick House located at 119-123 South Main Street (as more fully described in Ordinance No. 2003-164-O, passed September 22, 2003);
- (25) Elks Club located at 210 West Jefferson Street (as more fully described in Ordinance No. 2003-179-O, passed September 29, 2003);
- (26) Abraham Lincoln Junior High School located at 1500 Charles Street (as more fully described in Ordinance No. 2004-5-O, passed January 12, 2004);

(27) Beyer Stadium Ticket Gatehouse located at 311 15th Avenue (as more fully described in Ordinance Number 2004-105-O, passed June 21, 2004).

(Code 1970, §13½-10.1; Ord. No. 1986-180-O, 9-2-1986; Ord. No. 1987-39-O, 2-23-1987; Ord. No. 1993-240-O, 9-20-1993; Ord. No. 1993-257-O, 9-27-1993; Ord. No. 1996-37-O, 3-4-1996; Ord. No. 1996-103-O, 5-6-1996; Ord. No. 1996-159-O, 7-1-1996; Ord. No. 1997-229-O, 9-29-1997; Ord. No. 1997-230-O, 9-29-1997; Ord. No. 2000-19-O, 1-24-2000; Ord. No. 2002-63-O, 3-11-2002; Ord. No. 2002-64-O, 3-11-2002; Ord. No. 2002-120-O, 4-30-2002; Ord. No. 2004-105-O, 6-21-2004)

Secs. 113-39 - 113-64. Reserved.

ARTICLE III. HISTORIC DISTRICT DESIGNATION

Sec. 113-65. Petitions for designation, amendment, dissolution.

- (a) *Form.* Any person, organization or association may present to the commission, by filing with the secretary thereof, a petition requesting that a defined geographic area be designated a historic district, that a defined geographic area be added to or deleted from an existing historic district, or that an existing historic district be dissolved. The petition shall be in the form required by the commission and shall elicit information related to the criteria for granting the petition as stated in Section 113-67. The petition shall contain the signatures of owners of record as required by subsection (b) of this section, and shall be accompanied by the fee established in subsection (c) of this section.
- (b) *Signatures.*
- (1) *Designation.* A petition for designation of a historic district shall contain the signatures of the owners of record of no less than 66 percent of the properties proposed for inclusion in the district.
 - (2) *Additions or deletions.* A petition for the addition of properties to or deletion of properties from an existing historic district shall contain the signatures of the owners of record of the same percentage of the properties proposed for addition or deletion as was initially required of all the properties in the district at the time the existing district was initially designated.
 - (3) *Dissolutions.* A petition for dissolution of a district shall contain the signatures of the owners of record of the same percentage of properties in the district as was required for designation of the district.
- (c) *Fees.* Each petition submitted to the commission under this section shall be accompanied by a fee in the amount established by the city. A petition submitted without this fee shall have no effect under this chapter.

(Code 1970, §13½-11; Ord. No. 1978-134-O, 9-25-1978; Ord. No. 1979-123-O, §8, 9-17-1979; Ord. No. 1982-161-O, 11-15-1982; Ord. No. 1985-228-O, 10-7-1985; Ord. No. 1985-231-O, 10-7-1985; Ord. No. 1986-289-O, §3, 12-22-1986; Ord. No. 1995-66-O, §10, 4-10-1995)

Sec. 113-66. Requirements for granting petitions.

Before a petition is granted under this chapter the following requirements that are applicable to the particular type of petition shall be met:

(1) In the case of *designation*:

- a. The geographic area which is the subject of the petition has definable boundaries in the form of natural features or existing physical improvements; and
- b. A visual sense of history exists within the proposed boundaries; and
- c. The buildings, places or areas within the proposed district, by their inclusion therein, are of sufficient historic significance to be worthy of rehabilitation, restoration and preservation because either:
 1. The proposed district contains, within definable geographic boundaries, one or more landmarks along with such other buildings, places or areas, which, while not of such historic significance to be designated as landmarks, nevertheless contribute to the overall visual characteristics of the landmark or landmarks located within the district; or
 2. The proposed district contains, within definable geographic boundaries, such buildings, places or areas, that, while not of such individual significance to be designated as landmarks, nevertheless, as an aggregate, possess historic significance for the city in:
 - i. Establishing a sense of time and place unique to the city; and/or
 - ii. Exemplifying or reflecting the cultural, social, economic, political or architectural history of the nation, the state or the city; and/or
 - iii. Representing distinguishing characteristics of an architectural type which is inherently valuable for studying a period, style, method of construction, indigenous materials or unique craftsmanship.

(2) In the case of *additions to existing historic districts*:

- a. The historic district, after inclusion of the property or properties proposed for addition, constitutes one contiguous area without holes or gaps, defined by natural or existing improved boundaries.
- b. The proposed addition does not impair the visual sense of history within the existing historic district.
- c. Properties within the proposed addition possess historic significance or characteristics compatible with that found to exist in the original district at the time it was designated.

(3) In the case of *deletion from existing historic districts*:

- a. The historic district, after removal of the property or properties proposed for deletion, constitutes one contiguous area without holes or gaps, defined by natural or existing improved boundaries.
 - b. The historic district, after removal of the property or properties proposed for deletion, retains the historic significance or historic characteristics found to exist at the time the district was originally designated.
 - c. The property or properties proposed for deletion do not materially contribute to the historic significance or historic characteristics found to exist at the time the district was originally designated.
- (4) In the case of *dissolutions of existing historic* districts, an existing historic district may be dissolved upon petition to the commission and compliance with the same procedure and according to the same requirements for designation set forth in subsection (1) of this section.

(Code 1970, §13½-11.1; Ord. No. 1986-289-O, §3, 12-22-1986; Ord. No. 1995-66-O, §11, 4-10-1995)

Sec. 113-67. Planning division review.

- (a) The secretary shall within five working days of receipt of the completed petition and all required information, refer the petition and information to the planning division, department of community and economic development, for its review and comment.
- (b) The planning division, department of community and economic development, shall review the petition to determine its conformity with the standards of this chapter for granting the petition, an assessment of the petition's impact on development within the city, conformity of the petition with the general plan, and assessment of the economic effects which the petition may have upon the city. The planning division may, from time to time, confer with a representative of the petitioners in order to compile adequate information upon which to make its comment.
- (c) Within 30 days of receipt of the petition from the secretary, the planning division shall submit its recommendations concerning the petition to the commission.

(Code 1970, §13½-12; Ord. No. 1978-134-O, 9-25-1978; Ord. No. 1982-161-O, 11-15-1982; Ord. No. 1986-289-O, §3, 12-22-1986)

Sec. 113-68. Public hearing.

- (a) The commission shall determine any properties which may be materially affected by the petition, and the secretary shall forthwith send by mail, postage prepaid, to the owners of those properties and to the owners of all property in the affected or proposed historic district as they appear on the most recent real estate tax list, reasonable notice of a public hearing to be held by the commission on the petition. Further, the secretary shall cause notice to be published in a newspaper of general circulation in the city setting forth the nature of the hearing, the property involved, and the date, time and place of the scheduled hearing. The hearing shall be held no sooner than 15 days, nor later than 45 days, from receipt of the planning division's

recommendations. All public hearings shall be completed within 60 days of receipt of the recommendations of the planning division.

- (b) At the public hearing, the commission shall view and hear all information presented to it pertaining to whether the petition is appropriate under the requirements of section 113-67. The commission shall afford the opportunity of any persons thereat to present their views pertinent to the petition. If the commission must schedule any subsequent meetings for further public hearing on the petition it shall so announce at the first meeting.

(Code 1970, §13½-13; Ord. No. 1978-134-O, 9-25-1978; Ord. No. 1979-123-O, §9, 9-17-1979; Ord. No. 1982-161-O, 11-15-1982; Ord. No. 1986-289-O, §3, 12-22-1986)

Sec. 113-69. Determination by council.

- (a) *Commission's report.* The commission shall review all information presented to it pertinent to the petition and shall present and submit to council, within 30 days of the last public meeting considering the proposed designation, a written report containing its findings and recommendations. A copy of said report shall be sent to every person making a written request to the secretary for a report, and to each member of the council committee designated to make recommendations to the council on petitions submitted from this chapter.
- (b) *Referral to other committees.* The report and recommendations of the commission shall be referred to the code and regulation committee or such other designated council committee, and the committee's recommendations shall be presented to the council for decision.
- (c) *Approval of petition.* An ordinance passed by majority vote of council is required to approve a petition. The council shall take final action approving or denying the petition within 60 days of the submission of the report of the commission. Upon designation or addition to an existing historic district by ordinance of the council, such geographic area shall be considered a historic district afforded by the protection of this chapter as administered by the commission. Upon deletion from or dissolution by ordinance of the council, the geographic area affected shall no longer be subject to the regulations of this chapter.
- (d) *Denial of application and petition.* Denial of an application and petition may occur in one of two ways:
 - (1) A majority vote of the council adopting a committee report recommending denial of a petition shall be deemed a final decision of denial.
 - (2) If the council fails to act within 60 days, the petition shall be deemed denied.

(Code 1970, §13½-14; Ord. No. 1978-134-O, 9-25-1978; Ord. No. 1986-289-O, §3, 12-22-1986; Ord. No. 1995-66-O, §12, 4-10-1995)

Sec. 113-70. Pending council designation.

Upon the submission of a petition to create a historic district or an addition to an existing historic district to the historic preservation commission, all permits issued by the building official for property within the area of contemplated designation shall be accompanied by a certificate of appropriateness from the

commission, at least until such time as a final determination is made on the petition. Notwithstanding the above language, the building official may issue permits for work done on the interior of a structure when, in the building official's judgment, the permits are for the repair or upgrading of the existing building, plumbing, electrical or heating and cooling systems in that building. After a denial by council, a new petition for the same area shall not be considered for a period of one year from the date of denial.

(Code 1970, §13½-15; Ord. No. 1978-134-O, 9-25-1978; Ord. No. 1979-123-O, §10, 9-17-1979; Ord. No. 1980-40-O, 2-18-1990; Ord. No. 1985-228-O, 10-7-1985; Ord. No. 1985-231-O, 10-7-1985; Ord. No. 1986-289-O, §3, 12-22-1986)

Sec. 113-71. Notice of designation.

Within five working days after designation, or addition to an existing historic district, and on a yearly basis thereafter, the secretary shall notify all property owners within the boundaries of the historic district that the area has been designated as such, and that an owner must possess a certificate of appropriateness before he can procure a building permit, or otherwise materially affect the exterior appearance of his property. If an area is deleted from an historic district or a district is removed from designation, the secretary shall notify the owners of the properties deleted or removed.

(Code 1970, §13½-16; Ord. No. 1978-134-O, 9-25-1978; Ord. No. 1979-123-O, §11, 9-17-1979; Ord. No. 1986-289-O, §3, 12-22-1986)

Sec. 113-72. Historic district designation.

The following buildings, places or areas have been designated historic districts:

- (1) Haight Village (as described more fully in Ordinance No. 1980-258-O, passed December 29, 1980);
- (2) Garfield Avenue (as described more fully in Ordinance No. 1982-26-O, passed March 1, 1982);
- (3) Brown's Hills/Knightsville (as described more fully in Ordinance No. 1984-12-O, passed February 6, 1984), including 748 Joslyn Street;
- (4) Indian Terrace (as described more fully in Ordinance No. 1984-11-O, passed February 6, 1984);
- (5) Area bounded by North Main, West State and North Wyman Streets and the alley north of State Street (Northeast State and Main) (as described more fully in Ordinance No. 1993-275-O, passed October 18, 1993).
- (6) Peacock Brewery Historic District (as more fully described in Ordinance No. 2009-032-O, passed March 16, 2009).

(Code 1970, §13½-17; Ord. No. 1986-184-O, 9-2-1986; Ord. No. 1993-275-O, 10-18-1993; Ord. No. 2004-104-O, 6-21-2004)

Sec. 113-73. District status recorded with deed.

- (a) In cases where a new historic district is designated or an area is added on to an existing historic district, a copy of the ordinance designating the new district or the addition shall be recorded with the deed to all properties included in the designation by the commission at the office of the county recorder of deeds.
- (b) In cases where areas are deleted from an existing historic district or designation of an entire district is removed, a copy of the ordinance removing said designation shall be recorded with the deed of all affected properties at the office of the county recorder of deeds.

(Code 1970, §13½-18; Ord. No. 1995-66-O, §13, 4-10-1995)

Sec. 113-74 - 113-104. Reserved.

ARTICLE IV. CERTIFICATE OF APPROPRIATENESS

Sec. 113-105. Required.

No alteration, improvement or demolition shall be allowed within a designated historic district or upon a landmark site unless a certificate of appropriateness has been issued by the historical preservation commission; further, no building permit or demolition permit shall be issued for any landmark or any historic structure until the building official is satisfied that the applicant for the permit has been issued said certificate.

(Code 1970, §13½-21; Ord. No. 1978-134-O, 9-25-1978)

Sec. 113-106. Criteria in granting a certificate of appropriateness.

- (a) In reviewing an application for a certificate of appropriateness, the commission shall consider the appropriateness to the historic district or to the landmark of the proposed alteration, new construction or demolition, and whether such proposed alteration, new construction or demolition will further the purposes of this chapter. The commission shall consider a proposed alteration, new construction or demolition for any historic structure from the visual perspective of the street, public way or public buildings; and shall not deny a certificate for an alteration, new construction or demolition that is not subject to public view.
- (b) The commission shall decide upon the issuance of a certificate by reference to the "Secretary of the Interior's Standards for Rehabilitation," as published in 36 CFR 67, and as revised from time to time, and hereby adopted by reference; and by further reference to such specific design standards as the commission may adopt based on those Standards or may require for the designation of the landmark or historic district. Such specific standards shall relate to the historical significance; the architectural value; the unique design, arrangement, texture, material or color of the building, place or area in question; for the relation of such improvement to similar improvements in the immediate surroundings, and the position of such improvement in relation to the street or public way and to other improvements.
- (c) Before granting a request for a certificate to demolish a structure, the commission must find that at least one of the following conditions exists:

- (1) The demolition request is for an inappropriate addition, a nonsignificant portion of a building, or a nonsignificant accessory structure, provided that the demolition will not adversely affect those parts of a building which are significant as determined by the Commission;
 - (2) The demolition request is for a noncontributing building and the demolition will not adversely affect the character of the district; or
 - (3) The building official of the city certifies that demolition is required for the public safety because of an unsafe or dangerous situation.
- (d) The commission shall not deny the granting of a certificate of appropriateness whenever the applicant shows that the alteration, new construction or demolition will enhance, or is not inconsistent with, the inherent historic value of the landmark or of the historic district.
- (e) Nothing in this chapter shall be construed to prevent work or repairs on any structure or site coming under the heading of ordinary maintenance as defined in section 113-2; nor to prevent any alteration or demolition which the building official shall certify is required by the public safety because of an unsafe or dangerous condition; nor to prevent any alteration, new construction or demolition under a permit issued by the building official prior to the date of petitioning for the designation of a historic district or landmark.

(Code 1970, §13½-22; Ord. No. 1978-134-O, 9-25-1978; Ord. No. 1987-55-O, 3-16-1987; Ord. No. 1995-66-O, §14, 4-10-1995; Ord. No. 1999-2-O, 1-11-1999)

Sec. 113-107. Maintenance and repair required.

- (a) All historic structures, whether owned or controlled privately or by any public body, shall receive reasonable care, maintenance and upkeep appropriate for the preservation, protection, perpetuation or use in conformity with the purposes of this chapter and the building code of the city. Neither the owner of nor the person in charge of such a structure shall permit such structure, real estate or improvement to fall into a state of disrepair which may result in the deterioration of any exterior appurtenance or architectural feature so as to produce or tend to produce in the judgment of the commission a detrimental effect upon the appearance, life or character of the improvement, or on the character of the district as a whole where applicable. Provisions of this section shall apply to all properties that have been designated by the city as landmarks or as part of a historic district.
- (b) All historic structures shall be maintained in good condition and repair so as to avoid deteriorating or inadequate foundations; defective or deteriorating roofs or roof supports, chimneys and exterior walls, subject to buckling, listing or sagging; deteriorating or ineffective waterproofing of exterior walls, roofs and foundations; and broken windows or doors or any other fault or defect which renders a structure unsafe or not protected from weathering. In addition, all such premises or vacant property shall be kept clear of all weeds, fallen trees or limbs, debris, abandoned vehicles and all other refuse as specified under the Code and the building code of the city.
- (c) A violation of this section may subject the property owner to the penalties set forth in section 113-140(b).

- (d) The commission shall give written notification by certified mail, return receipt requested, of any violation of this section of the ordinance to the owner or lessor or trustee or other legally responsible party for such property, stating in such notification that they have inspected the property and have found it in violation of this section. They shall state in the notification in clear precise terms a description or explanation of the violation. The legally responsible party shall have 30 days from their receipt of the notice of violation in which to correct such violation or to give satisfactory evidence that they have taken steps that will lead to correcting such violation within a stated period of time, which time must be agreeable to the commission as being fair and reasonable.
- (e) The owner, trustee, lessor or other legally responsible party shall be deemed to be in violation of this section if after 30 days of written notification by the commission the violation has not been corrected or is not in the process of being corrected within a reasonable amount of time as determined by the commission. A second notice of the violation shall be sent to the legally responsible party by certified mail, return receipt requested.
- (f) An owner, lessor, trustee or other legally responsible party who is deemed to be in violation of this section may on his own behalf request a hearing before the commission. Such a request shall be made within ten days of receipt of the second notice of violation. If no request is received by the commission during this time period, the violation shall become final.
- (g) In the event a public hearing is requested, it shall be held by the commission within 30 days' written notice mailed by certified mail, return receipt requested to the owner of record and to all persons having any right, title or interest in the subject property; and by first class mail to the occupant or other person responsible for the maintenance of the property.
- (h) After the public hearing on the issue of violation of this section, if the commission still finds demolition should be prevented, it shall instruct the secretary to issue a final notice to be mailed by certified mail, return receipt requested to the owner of record and to all persons having any right, title, or interest in the subject property; and by first class mail to the occupant or other person responsible for the maintenance of the property stating the items of repair and maintenance necessary to correct or prevent further deterioration.
- (i) The property owner or other responsible person shall institute corrective action to comply with the final notice within 30 days of receipt of the final notice, unless an extension is granted by the Commission.

(Code 1970, §13½-23; Ord. No. 1997-99-O, 6-2-1997)

Sec. 113-108. Application for certificate.

Applications for certificates of appropriateness shall be filed with the secretary of the commission on forms approved by the commission.

(Code 1970, §13½-24; Ord. No. 1978-134-O, 9-25-1978; Ord. No. 1987-55-O, 3-16-1987; Ord. No. 1995-66-O, §16, 4-10-1995)

Sec. 113-109. Issuance of certificate.

- (a) The commission shall review all applications presented to it for certificates of appropriateness at its regular monthly meetings, and shall grant or deny at said meeting a certificate. The denial of a certificate shall be accompanied by a written statement indicating the reasons for denial.
- (b) Upon the granting of a certificate by the commission, the secretary shall sign and issue to the applicant a certificate of appropriateness. The secretary shall send a list of those individuals issued a certificate to the building official and, where appropriate, the zoning supervisor.
- (c) A certificate of appropriateness shall expire six months after the date of issuance, and shall be ineffective for the granting of a building, demolition or sign permit.

(Code 1970, §13½-25; Ord. No. 1978-134-O, 9-25-1978; Ord. No. 1995-66-O, §17, 4-10-1995)

Sec. 113-110. Hardship.

- (a) The commission shall issue a certificate of economic hardship upon determination that its failure to issue a certificate of appropriateness has denied, or will deny, the owner of a landmark or a property within a historic district all reasonable use of, or return on, the property. Application for a certificate of economic hardship shall be made on a form supplied by the commission and in the manner described subsections (b) through (e) of this section.
- (b) Upon final notification from the commission of its decision to deny an application for a certificate of appropriateness to construct, reconstruct, alter, add to, demolish or relocate a historic structure, the applicant may within 30 days apply to the commission for an economic hardship exemption on the basis that denial of the certificate will result in loss of all reasonable use of or return from the property. Applications for a certificate of economic hardship may not be submitted until after the commission has taken final action on an application for a certificate of appropriateness. The Commission shall schedule a hearing concerning the application and notify the owner of the property of the date, time and place of the hearing.
- (c) The commission may solicit expert testimony or require that the application for a certificate of economic hardship include submissions concerning any or all of the following information before it makes a determination on the application:
 - (1) The amount paid for the property, the date of purchase and the party from whom purchased, and any terms of financing between the seller and buyer;
 - (2) The assessed value of the property according to the two most recent assessments;
 - (3) All real estate taxes for the previous two years;
 - (4) The remaining balance on any mortgage or any other financing secured by the property and annual debt service, if any, for the previous two years;
 - (5) All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing or ownership of the property;
 - (6) Any listing of the property for sale or rent, price asked and offers received, if any, within the previous two years, including testimony and relevant documents regarding:

- a. Any real estate broker or firm engaged in to sell or lease the property;
 - b. Reasonableness of the price or rent sought by the applicant; and
 - c. Any advertisements and/or multiple listings placed for the sale or rent of the property;
- (7) Any consideration by the owner as to profitable adaptive uses for the property;
- (8) If the property is income-producing, the annual gross income from the property for the previous two years, itemized operating and maintenance expenses for the previous two years, depreciation deductions and annual cash flow before and after debt service, if any, during the same period;
- (9) The form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture or other;
- (10) If the property is owned by a not-for-profit corporation, a statement of the purpose for which the property was purchased, whether the property continues to serve that purpose, and how denial of the certificate of appropriateness affects the organization's ability to carry out its stated mission;
- (11) The infeasibility of profitable alternative uses for the property as considered in relation to the following:
- a. 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;
 - b. Estimated 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 appropriateness. Estimates for each are to be obtained from at least two sources; and
 - c. Estimated market value of the property in the current condition; after completion of the proposed construction, alteration, demolition or removal; and, in the case of a proposed demolition, after renovation of the existing property for continued use;
- (12) Any other information, including the income tax brackets of the owner, applicant or principal investors in the property, considered necessary by the commission to a determination as to whether the property does yield or may yield a reasonable return to present or future owners.
- (d) The applicant bears the burden of proof that the existing use of the property is economically infeasible and that the sale, rental, or rehabilitation of the property is not possible, resulting in the property not being capable of earning any reasonable economic return. Proof of economic hardship is not established solely by submission of proof of actual financial loss or lost opportunity to obtain increased return from the property, although these are factors to be considered by the commission. Proof of economic hardship must be established by clear and convincing evidence.
- (e) If the commission finds that, without the approval of the proposed work, the property and improvements cannot be put to a reasonable use or the owner cannot obtain a reasonable

economic return therefrom, then the application shall be delayed for a period not to exceed six months. During this period of delay, the commission shall investigate alternatives that would allow for a reasonable use of the subject property. Such alternatives may include, but are not limited to, a relaxation of the provisions of this chapter.

If by the end of the six-month period the commission has found that, without approval of the proposed work, the property and improvements cannot be put to a reasonably beneficial use or the owner cannot obtain a reasonable economic return therefrom, the commission shall issue a certificate of economic hardship approving the proposed work. If the commission finds otherwise, its denial of a Certificate of appropriateness shall stand. In granting a certificate of economic hardship, the commission may prescribe any conditions or limitations that may be necessary to minimize the adverse impact of the proposed work. Written notice of the commission's decision shall be provided to the applicant within seven days.

(Code 1970, §13½-26; Ord. No. 1978-134-O, 9-25-1978; Ord. No. 1979-123-O, §12, 9-17-1979; Ord. No. 1995-66-O, §18, 4-1-1995; Ord. No. 1997-99-O, 6-2-1997)

Sec. 113-111. When building or demolition permit is not required.

When neither a building nor demolition permit is required, if a proposed alteration or demolition constitutes a material change in the exterior appearance of a landmark or of a property within a historic district, then a certificate of appropriateness shall be required. Failure to receive a certificate prior to effecting such material change shall constitute a violation of this chapter.

(Code 1970, §13½-28; Ord. No. 1978-134-O, 9-25-1978)

Sec. 113-112. Appeals.

Decisions of the commission in the granting, denying or reviewing of the granting or denying of certificates of appropriateness or certificates of economic hardship shall be final administrative decisions. Appeals to said decisions of the commission shall be had directly to a court of competent jurisdiction.

(Code 1970, §13½-29; Ord. No. 1978-134-O, 9-25-1978; Ord. No. 1979-123-O, §13, 9-17-1979; Ord. No. 1997-99-O, 6-2-1997)

Sec. 113-113 - 113-137. Reserved.

ARTICLE V. MISCELLANEOUS PROVISIONS

Sec. 113-138. Zoning.

- (a) Whenever an application for a zoning map amendment, variation or special use permit, including a modification or renewal thereof, is submitted to the zoning officer for property within a designated historic district, or which is a landmark site, then a notice of any public hearing to be held on the application by the zoning board of appeals shall be sent to the commission. Such notice shall be the same as that sent to owners of property adjacent to that for which the application was filed. The commission shall have the status of legal objector at the time of public hearing, and may submit

its comments to the zoning board of appeals, which shall consider such comments, decisions or recommendations on the application.

- (b) In cases where a zoning application will result in actions requiring issuance of a certificate of appropriateness by the commission, said certificate shall be obtained prior to hearing of the zoning applications by the zoning board of appeals.
- (c) Any external changes not requiring action by the zoning board of appeals, but which do require a certificate of appropriateness from the commission, shall have said certificate prior to granting zoning clearance.

(Code 1970, §13½-31; Ord. No. 1978-134-O, 9-25-1978; Ord. 1995-66-O, §19, 4-10-1995)

Sec. 113-139. Eminent domain.

In the exercise of the powers granted herein for the protection of any landmark or historic district, the commission may recommend to the city council through the finance and personnel committee that the council exercise its power of eminent domain on behalf of the commission.

(Code 1970, §13½-32; Ord. No. 1978-134-O, 9-25-1978; Ord. No. 1995-66-O, §20, 4-10-1995)

Sec. 113-140. Violations.

- (a) Any person who causes the alteration of any designated structure or any landmark shall be guilty of an offense.
- (b) Any unauthorized demolition of a landmark or any property within a historic district shall be punishable by a fine of not less than \$500.00. In the case of any unauthorized demolition, the city may refuse to issue a building permit for the subject property for a period not to exceed three years after the violation.
- (c) The unauthorized removal of a significant healthy tree as defined in section 113-2 from within a historic district or on a designated landmark property shall be punishable by a fine of not less than five hundred dollars \$500.00.

(Code 1970, §13½-34; Ord. No. 1978-134-O, 9-25-1978; Ord. No. 1979-123-O, §14, 9-17-1979; Ord. No. 1997-99-O, 6-2-1997.