

AN ORDINANCE AMENDING CHAPTER 20.67 OF THE EL PASO CITY CODE (HISTORIC LANDMARK PRESERVATION), IN ITS ENTIRETY, DECLARING THE CITY'S POLICY ON AND SUPPORT OF HISTORIC PRESERVATION; DESIGNATING THE HISTORIC LANDMARK COMMISSION; DEFINING KEY TERMS; DIRECTING THE COMMISSION TO IDENTIFY AND PROPOSE INCENTIVES FOR HISTORIC RENOVATION; INCLUDING AN APPLICATION PROCEDURE FOR ECONOMIC HARDSHIP; INCLUDING DEMOLITION BY NEGLECT PROVISIONS. THE PENALTY BEING AS PROVIDED IN CHAPTER 20.68 OF THE EL PASO CITY CODE.

## Chapter 20.67

## HISTORIC LANDMARK PRESERVATION

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20.67.010 Definitions.

Definitions which appear below relate only to this Chapter 20.67:

(a) Alteration. Any construction or change of the exterior of a building, object, site, or structure, or of an interior space designated as a landmark. For buildings, objects, sites or structures, alteration shall include, but is not limited to, the changing of roofing or siding materials; changing, eliminating, or adding doors, door frames, windows, window frames, shutters, fences, railings, porches, balconies, signs, or other ornamentation; the changing of paint color; regrading; fill; imploding or other use of dynamite. Alteration shall not include ordinary repair and maintenance.

(b) Appurtenance. Any accessory or subordinant building, object or structure, fence, street furniture, fixture, vending machine, fountain, or public artwork, located on the grounds of an historic landmark or in an historic district.

(c) Archaeological. The science or study of the material remains of past life or activities and the physical site, location, or context in which they are found, as delineated in the Department of Interior's Archaeological Resources Protection Act of 1979.

(d) Area. A specific geographic division of the City of El Paso.

(e) Building. A building is a structure created to shelter people or things, such as a house, barn, church, hotel, warehouse, or similar structure, including an historically

related complex, such as a courthouse and jail or a house and barn.

(f) Cemetery. Any site, as defined by Texas Statutes, which contains at least one burial, marked or previously marked, dedicated to and used or intended to be used for the permanent interment of the human dead, to include perpetual care and nonperpetual care cemeteries, even though suffering neglect or abuse.

(g) Cluster. A group of cultural resources with compatible buildings, objects, or structures geographically or thematically relating to and reinforcing one another through design, setting, materials, workmanship, congruency and association.

(h) Construction. The act of adding an addition to an existing building or structure or the erection of a new principal or accessory building or structure on a lot or property.

(i) Contributing Property. A building, object, site or structure, zoned C-5 (Commercial) in an historic district or cluster that contributes to the district's or cluster's historical significance through location, design, setting, materials, workmanship, feeling and association.

(j) Cultural Resources. Those resources which possess qualities of significance in American, Texas, or El Paso history, architecture, archaeology, and culture present in districts, sites, structures, and objects that possess integrity of location, design, setting, materials, workmanship, congruency and association.

(k) Demolition. Any act or process that destroys or razes in whole or in part a landmark, wherever located, or a building, object, site, or structure, within an historic district, or permanently impairs its structural integrity.

(l) Design Guidelines. Standards recommended by the Commission and which are recommended to the City Plan Commission and subsequently adopted by the El Paso City Council, and which are available to property owners through the City's Planning Department, which are intended to preserve the historic, cultural and architectural character of an area or of a building, object, site, or structure.

(m) District. A geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of buildings, objects, sites, or structures united by past events or aesthetically by plan or physical development which may also comprise individual elements separated geographically but thematically linked by association or history.

(n) Economic Return. A profit or capital appreciation from use or ownership of a building, object, site or structure that accrues from investment or labor.

(o) Effect. A change in the quality of the historical, architectural, archaeological, or cultural significance of a resource, or in the characteristics that qualify the resource as historically important.

(p) Effect, Adverse. A negative change in the quality of the historical, architectural, archaeological, or cultural

significance of a resource, or in the characteristics that qualify the resource as historically important.

(q) Historic District. An area, urban or rural, residential or commercial, defined as an "historic district" by City Council, State, or Federal authority and which may contain within definable geographic boundaries one or more landmarks or clusters, including their accessory buildings, fences and other appurtenances, and natural resources having historical, cultural, and archaeological significance, and which may have within its boundaries other buildings or structures, that, while not of such historical, cultural, architectural or archaeological significance as to be designated landmarks, nevertheless contribute to the overall visual setting of or characteristics of the landmark or landmarks located within the district.

(r) Historic Landmark: Those buildings, objects, sites or structures of the highest historical, cultural, architectural or archaeological importance and whose demolition or destruction would constitute an irreplaceable loss to the quality and character of El Paso; certain inventoried interior spaces designed or intended to be occupied as part of the structure or which are accessible to the public; such buildings, objects, sites, or structures, their appurtenances, and the property on which they are located, having been so designated by City Council. Also referred to as an "H" overlay property.

(s) Historic Interiors: An architecturally or historically significant interior space which remains substantially

intact in terms of (1) original configuration, (2) original volume, (3) original architectural ornamentation and decoration; which exhibits surviving original historical finishes or has the potential for research which could aid in the accurate restoration of such finishes; and which is open, to used by, or may be used by the public. This will normally only be interior spaces of commercially-zoned buildings.

(t) Intrusion. A building, object, site or structure which detracts from a district's or cluster's historical significance because of its incompatibility with the district's or cluster's sense of time and place and historical development; or its incompatibility of scale, materials, texture, or color; or whose integrity has been irretrievably lost; or whose physical deterioration or damage makes it infeasible to rehabilitate.

(u) Inventory. A systematic listing of cultural, historical, architectural, or archaeological resources prepared by a city, state, or federal government, following standards set forth by federal, state and city regulations for evaluation of cultural properties.

(v) Landscape Architectural Feature. The general arrangement of grounds, including but not limited to the topographic grade water pooling and runoff, types and sites of plant materials, types and sites of surface materials such as decorative bark, rock, stone, gravel, concrete, asphalt, brick, and the types and sites of constructions not otherwise deemed to be structured per se, such as

fences, retaining walls, decks and other miscellaneous fixtures.

(w) Multiple Resource Historic District. An area defined by City Council, State or Federal authority within a defined geographical area which identifies specific cultural resources having historic, architectural, cultural, or archaeological significance.

(x) Non-contributing Property. A building, object, site, or structure in an historic district which does not contribute to the district's or cluster's historical significance through location, design, setting, materials, workmanship, feeling, and association.

(y) Object. An object is a material thing of functional, aesthetic, cultural, historical, archaeological, or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

(z) Ordinary Repair and Maintenance. Any work, the purpose and effect of which is to correct or prevent any deterioration or decay of or damage to a building, object or structure or any part thereof and to restore the same, as nearly as may be practicable, to its condition prior to such deterioration, decay or damage, using the same materials or those materials available which are, in appearance, as close as possible to the original.

(aa) Reconstruction. The act or process of reassembling, reproducing, or replacing by new construction, the form, detail, and appearance of a destroyed or vanished property and its setting as it appeared at

a particular period of time by means of the removal of later work, or by the replacement of missing earlier work, or by reuse of original materials.

(bb) Rehabilitation. The act or process of returning a building, object, site, or structure to a state of utility through repair, remodeling, or alteration that makes possible an efficient contemporary use while preserving those portions or features of the building, object, site, or structure that are significant to its historical, architectural, and cultural values.

(cc) Relocation. Any change of the location of a building, object or structure in its present setting or to another setting.

(dd) Resource. A source of collection of buildings, objects, sites, structures, or areas that exemplify the cultural, social, economic, political, archaeological, or architectural history of the nation, state, or city.

(ee) Restoration. The act or process of accurately recovering the form and details of a building, object, site or structure and its setting as it appeared at a particular period of time by means of the removal of later work or by the repair or replacement of missing earlier work.

(ff) Setback. Distance between a structure and the nearest point of the required yard, as required by Code Title 20.

(gg) Significant Historic Landmark. A building, structure, site, or area of land which is of the highest historic significance,

and whose demolition or destruction would constitute an irreplaceable loss to the quality and character of El Paso, or which is, or on which a decision is pending, or for which an application has been made to become a Recorded Texas Historic Landmark, a National Historic Landmark or entered into the National Register of Historic Places, or property with an "H" overlay designated as an historic landmark by the City Council, or pending a decision on such a designation, or interior areas which are separately and specifically designated as Historic Landmarks are to be treated as Significant Historic Landmarks under this Chapter.

(hh) Site. The location of a significant event, a prehistoric or historic occupation or activity, or a building, structure, or cluster, whether standing, ruined, or vanished, where the location itself maintains historical or archaeological value regardless of the value of any existing structure.

(ii) Stabilization. The act or process of applying measures designed to reestablish a weather-resistant enclosure and the structural stability of an unsafe or deteriorated building, object, site, or structure while maintaining the essential form as it exists at present.

(jj) Structure. A structure is a non-movable work made up of interdependent and interrelated parts in a definite pattern of organization.

(kk) Thematic Group. A finite group of resources related to one another in a clearly distinguishable way, by association with a single historic person, event or

developmental force, as one building type, design, or use, as designed by a single architect, as a single archaeological site form, or as a particular set of archaeological research.

(ll) Unreasonable Economic Hardship.

An economic burden imposed upon the owner which is unduly excessive and prevents a realization of a reasonable rate of return upon the value of his property.

(mm) Vista. A view through or along an avenue or opening, including those along the River's banks, which, as a view corridor, frames, highlights or accentuates a prominent building, object, site, structure, scene, or panorama, or patterns or rhythms of buildings, objects, sites, or structures; to include views of areas at a distance, such as a remote view of the downtown or the mountains.

(nn) Zone. A designated area, within an historic district, which is further unique in character, tone, theme, architectural, cultural or other ways. A district may be divided into zones, to assist property owners and the Commission in structuring design guidelines and further evaluating applications for certificates of appropriateness.

20.67.020 Declaration of policy.

The city council finds and declares as a matter of public policy that the protection, enhancement, preservation and use of historic landmarks is a public necessity and is required in the interest of the culture, prosperity, education, safety and general welfare of the people. The purposes of this chapter are:

A. To protect, enhance and perpetuate historic landmarks which represent or reflect distinctive and important elements of the city's, region's, state's, or nation's architectural, archaeological, cultural, social, economic, ethnic, and political history and to develop appropriate settings for such places;

B. To safeguard the city's historic and cultural heritage, as embodied and reflected in such historic landmarks by appropriate regulations;

C. To stabilize and improve property values in such locations;

D. To foster civic pride in the beauty and accomplishments of the past;

E. To protect and enhance the city's attractions to tourists and visitors and provide incidental support and stimulus to business and industry.

F. To strengthen the economy of the city;

G. To promote the use of historic landmarks for the culture, prosperity, education and general welfare of the people of the city and visitors to the city. (Ord. 6243 (part), 1978: prior code §25-35.3 (part))

H. To prevent the uprooting of architectural products of distinct periods, which may occur without regard to the feasibility of preserving and continuing the use of such landmarks, and without consideration of the irreplaceable loss to the people of the city of the cultural,

historic and aesthetic values represented by such landmarks.

**20.67.030 Historic landmarks -- Designation.**

A. The city council may designate buildings, structures, sites, districts, areas and lands in the city as historic landmarks and define, amend and delineate the boundaries thereof. The suffix "H" shall appear before the zoning designation of those buildings, structures, sites, districts, areas and lands which the city council designates as historic landmarks. Such designation shall be in addition to any other designation established under this chapter. The zoning map shall reflect the designation of a historic landmark by the letter "H" as a suffix to any other use designation established in this chapter. (Ord. 6243 (part), 1978: prior code §25-35.3 (part))

B. Council may use the following designations for individual buildings, objects, sites or property which are zoned as C-5 (Commercial) and which are in an historic district or designated with an "H" overlay:

1. significant historic landmark,
2. contributing property,
3. non-contributing property,

as those terms are defined in 20.67.010. The guidelines for any such commercially-zoned buildings, objects, sites, or property within an historic district shall be separate from guidelines for residential properties, if any, within that same historic district, and shall recognize the above three-tiered

designations and allow the Commission to consider the economics of compliance with the guidelines for contributing properties, allowing modifications from those guidelines for economic reasons if the visual, structural, architectural, or other features and appearance will not be detrimentally affected.

**20.67.040 Historic landmarks -- Designation -- Criteria to be used in designations.**

In making such designations as set forth in this section, the City Council shall consider, but shall not be limited to, one or more of the following criteria:

A. Character, interest, or value as part of the development, heritage, or cultural characteristics of the city, state, or the United States.

B. Recognition as a Recorded Texas Historic Landmark, a National Historic Landmark, or entered into the National Register of Historic Places.

C. Embodiment of distinguishing characteristics of an architectural type or specimen.

D. Identification as the work of an architect or master builder whose individual work has influenced the development of the city.

E. Embodiment of elements of architectural design, detail, materials, or craftsmanship which represent a significant architectural innovation.

F. Relationship to other distinctive buildings, sites, or areas which are eligible for preservation according to a plan based on architectural, historic or cultural motif.

G. Portrayal of the environment of a group of people in an area of history characterized by a distinctive architectural style.

H. Archaeological value in that it has produced or can be expected to produce data affecting theories of historic or prehistoric interest.

I. Exemplification of the cultural, economic, social, ethnic or historical heritage of the city, state, or the United States.

J. Location as the site of a significant historic event.

K. Identification with a person or persons who significantly contributed to the culture and development of the city, region, state, or the United States.

L. A building or structure that because of its location has become of value to a neighborhood, community area, or the city.

M. Value as an aspect of community sentiment or public pride. (Ord. 6243 (part), 1978; prior code §25-35.3 (part))

#### 20.67.050 Historic Landmark Commission - Creation.

A. There is created a commission to be

known as the Historic Landmark Commission of the city, hereinafter called the Commission, consisting of fifteen members appointed by the Mayor and City Council. The members of the Commission shall serve without compensation and the membership shall include the following:

1. At least two architects, registered and licensed to practice in Texas;

2. At least one archeologist;

3. At least one licensed commercial real estate broker;

4. At least one finance or banking professional;

5. At least one attorney;

6. At least one owner of commercial property in an historic district;

7. At least one owner of residential property in an historic district;

8. Other members of the commission shall be appointed from such other individuals and organizations as the City Council may, in its discretion, select, provided that no one business, economic, or professional interest shall constitute a majority of the commission.

B. All Commission members, regardless of background, shall have a demonstrated

interest, competence, or knowledge in historic preservation within the City of El Paso.

C. Each member of the Commission shall be appointed for a term of three years. The members of the Commission shall elect as officers from the voting membership of the Commission a chairman and a vice-chairman and shall likewise fill any vacancy in either of such offices. Any vacancy on the Commission shall be filled by appointment by the Mayor and City Council for the remainder of the unexpired term. As members' terms expire or otherwise become vacant, City Council shall appoint the successor or re-appoint the members by the next regular meeting of the Commission.

D. Any appointed member of the Commission who fails to attend three consecutive regular or called meetings of the Commission or fails to attend at least eighty percent of all such regular or called meetings during any six-month period shall lose membership on the Commission, unless such failure to attend was the result of circumstances beyond the member's control. Verification of attendance shall be based exclusively on the minutes of each meeting. The vacancy shall be filled by the Mayor and City Council pursuant to this section.

E. The Mayor and City Council are encouraged to draw on the knowledge, experience, and expertise of any persons in the community by appointing Advisory Boards and members to the Historic Landmark Commission. Membership may be, but shall not be limited to,

representatives from the following fields:

- Banking or Accounting
- Commercial Development and Real Estate Law
- Architecture
- Urban Design and Planning
- Consumer Advocacy, representing residents and/or business owners
- Local preservation
- Prehistory and History

#### 20. 67.060 Historic landmark commission - Meetings.

A. The commission shall meet at least once a month at a regularly scheduled time with advance notice posted according to the Texas Open Meetings Law. Additionally, meetings may be called upon request of the chairman, or upon written request of five members. Upon the filing of an application for a building permit in an historic district, or for a building, designated as an historic landmark, the commission shall take action thereon within sixty consecutive days after the date of filing of such application. If the Commission fails to act on an application within sixty days, such application shall be deemed to have been recommended for approval and a certificate showing the filing date and the failure to take action on the application within sixty days shall be issued by the commission on demand. The applicant may withdraw the application before the sixty-day period expires and may resubmit it at a later time if additional time is required for the preparation of information or for research required by the commission. A majority of the voting members shall constitute a quorum. Action taken at a meeting shall

require the affirmative vote of a majority of the voting members present at the meeting.

B. The director of the department of planning, research and development or his representative shall act as secretary of the commission and shall attend and keep the minutes of all meetings. (Ord. 9610 §2, 1989; Ord. 6243 (part), 1978; prior code §25-35.3 (part))

#### 20.67.070 Historic landmark commission - Functions.

A. The commission shall thoroughly familiarize itself with buildings, interiors, structures, sites, districts, areas and lands within the city which may be eligible for designation as historic landmarks and shall prepare a historic landmark preservation plan, hereinafter referred to as the preservation plan, which shall:

1. Establish criteria to be used in determining whether certain buildings, interiors, structures, sites, districts, areas, lands and other objects should be designated as historic landmarks;

2. Create and recommend to City Council for approval, guidelines for designated historic buildings, interiors, structures, sites, and districts to be used as general guides in determining the approval or denial of certificates of appropriateness and certificates of demolition or removal; the guidelines may address any alterations on historic landmarks in order to protect significant architectural, historical, archaeological, or cultural elements of the district by listing:

a. architectural regulations for the exterior of buildings, in addition to existing zoning classification, height and area limitations, and

b. design regulations for those interior areas specifically designated as Historic Interiors, in order to protect significant architectural, historical, archaeological, or cultural elements of the district.

c. The regulations for subparagraphs 2a. and b. above, may include the following:

i. acceptable materials for construction;

ii. appropriate architectural character, scale, and detail;

iii. acceptable appurtenances to new and existing structures;

iv. acceptable textures and ornamentation;

v. acceptable accessories;

vi. acceptable landscape architectural features.

3. Formulate a program for private and public action which will state the role of various city agencies in preservation of historic landmarks;

4. Suggest sources of funds for preservation and restoration activities and acquisitions, to include federal sources, state sources, private and foundation sources, as well as municipal sources;

5. Recommend, to the proper agencies, incentives designed to encourage historical preservation.

B. The preservation plan shall be presented to the city plan commission for consideration and recommendation to the city council for inclusion in the comprehensive plan of the city. At least annually the landmark commission shall review the preservation plan and the state of preservation of designated historic landmarks, insert in the landmark commission minutes a report of such review and take appropriate action on any amendments to the plan deemed necessary. Prior to presenting the preservation plan, or any amendment thereto, to the plan commission, the landmark commission shall hold a public hearing on the preservation plan or the amendment thereto.

C. The landmark commission shall recommend to the city plan commission ordinances designating certain buildings, structures, sites, districts, areas and lands in the city as historic landmarks or such other designations as are defined in this ordinance if they apply within a certain district. The landmark commission shall hold a public hearing on all proposed ordinances and notice shall be given in the same manner as required by Article 1011f, Vernon's Annotated Texas Statutes.

D. Any owner of property may request from the landmark commission a decision on whether the landmark commission intends to recommend to the plan commission that such property be designated "H". The landmark commission shall render a decision on the

owner's request within sixty days after the request is made.

E. If the landmark commission finds that buildings, structures, sites, districts, lands or areas cannot be preserved without acquisition, the landmark commission shall recommend to the city council that the fee or a lesser interest of the property in question be acquired by gift, devise, purchase, eminent domain or otherwise, pursuant to the city Charter and state and federal law.

F. The designation of a historic landmark may be amended or removed using the same procedure provided in this section for the original designation.

G. The landmark commission and City Historic Preservation staff shall provide information and counseling to owners of designated historic landmarks. (Ord. 6243 (part), 1978: prior code §25-35.3 (part))

H. Rule on requested exceptions to the guidelines based upon the overall visual effects of the proposed exceptions.

I. Conduct surveys and maintain an inventory of historic, architectural, archeological and cultural landmarks located within the city.

**20.67.080 Action by the city plan commission.**

A. The city plan commission shall hold public hearings as provided for in Article 1011f, Vernon's Annotated Texas Statutes, to consider any historical landmark designation ordinance after receiving a recommendation from the landmark

commission. The notices provided for in Article 1011f, shall be sent to all owners of property which is proposed for "H" designation as well as to the adjoining property owners specified in such article. Such notice shall be given by certified mail in addition to any methods required by statute.

B. Within ten days after the hearing the city plan commission shall set forth in writing its recommendation, including the findings of fact that constitute the basis for its decision, and shall transmit its recommendations concerning the proposed ordinance to the city council along with the recommendation of the landmark commission, provided that in the event the recommendation of the plan commission differs from the recommendation of the landmark commission, the plan commission shall within ten days after the hearing first transmit its recommendations, including its findings of fact, to the landmark commission and then, within fifteen days of the public hearing the plan commission and the landmark commission shall each transmit their recommendation, including the finding of facts that constitute the basis for their decision, to the city council. (Ord. 6243 (part), 1978: prior code §25-35.3 (part))

#### 20.67.090 Recording of designation.

Upon passage of an historic landmark designation ordinance, the city clerk shall file a copy of the ordinance with city and county tax assessors and in the County Deed Records and in the Real Property Records of the County Clerk together with a notice briefly stating the fact of the designation and shall send a copy of such

notice to the owner or owners of the affected property. (Ord. 6243 (part), 1978: prior code 25-35.3 (part))

#### 20.67.100 Alterations and changes - Certificate of appropriateness, ordinary repair or maintenance, Appeal.

A. No person or entity shall fail to maintain, construct, reconstruct, alter, change, remove or demolish any of the following unless a certificate of appropriateness or a certificate of demolition has been approved by the Historic Landmark Commission:

1. Any permanent feature on a property listed as a Texas Antiquities Landmark or on the National Register of Historic Places

2. Any building, object, site, landscape architectural feature, or group of such designated with an H-Overlay or designated as a significant Historic Landmark as defined by this Ordinance and provided in Section 20.67.030(B) by the El Paso City Council.

B. The Historic Landmark Commission shall grant or deny certificates of appropriateness or certificates of demolition based on one of the following sets of criteria:

1. when City Council has adopted architectural and design guidelines for a particular district, those guidelines shall control. Except to the extent that the Commission has approved exceptions to the guidelines pursuant to section

20.67.070.), in which case the approved exception shall control.

2. when no guidelines have been adopted for a particular district, the guidelines from the district most similar in character, design, materials, workmanship, time of construction shall apply; or contained in the "Guide to the Identification and Preservation of El Paso's Cultural, Historic and Architectural Resources" (Fall 1980), or as updated.

3. when the above do/does not provide guidelines applicable to the project, then The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings shall apply. (36 CFR 68;) (U.S. Department of the Interior, National Park Service, Preservation Assistance Division. U.S. Government Printing Office Document Number: 1983 0 - 416-688, Washington, D.C., Revised 1983) shall apply.

#### C. Procedure when Building Permit is Required.

1. When applying for a building permit for the exterior of a designated historic landmark, or a designated historic interior, the applicant shall submit two copies of all detailed plans, elevations, perspectives, specifications and other documents pertaining to the work to the building official, who shall forward such application to the commission chairman within five days of receipt thereof. Any applicant may appear at a regular or special meeting of the landmark commission before submitting an application and may consult with the

commission during the review of the permit application.

2. The landmark commission, upon ten days written notice to the applicant, shall hold a hearing on the application. Upon review of the application, if the landmark commission finds the proposed work of a nature which will not adversely affect any significant architectural or historical feature of the designated historic landmark, and is appropriate and consistent with the spirit and purposes of this section, it shall forward a certificate of appropriateness to the building official within ten days after the public hearing and the building official shall so advise the applicant within five days after the certificate is received.

3. If the commission finds that the proposed work will adversely affect or destroy any significant architectural or historical feature of the designated historic landmark or historic interior, or is inappropriate or inconsistent with the spirit and purposes of this section, it shall forward the disapproved application to the building official within ten days after the public hearing and the building official shall so advise the applicant within five days after the certificate is received. The landmark commission shall state in its disapproval the changes necessary for approval of the application.

4. If no action has been taken by the landmark commission within sixty days of original receipt by the landmark commission, a certificate of appropriateness shall be deemed issued by the landmark commission, and the building official shall so advise the applicant.

5. No change shall be made in the application for any building permit after the issuance of a certificate of appropriateness without resubmittal to the landmark commission and approval thereof in the same manner as provided above.

6. After a decision is reached by the landmark commission denying an application for a certificate of appropriateness, a resubmittal of application will not be accepted for additional hearing within a twelve-month period from the date of final decision except upon written request by the applicant indicating that there has been a change in conditions or that all changes in the application as recommended by the landmark commission have been made.

D. Procedure when Building Permit is not Required.

1. Those proposed exterior or interior changes and alterations not requiring a building permit shall be submitted in writing directly to the historic landmark commission for a certificate of appropriateness which must be granted before such work can be undertaken.

Applicant shall submit a copy of all proposed alterations and changes to the commission. The application must specifically describe the alteration or change proposed. Any applicant may appear at a regular or special meeting of the landmark commission before submitting an application and may consult with such commission during the review of the application.

2. The landmark commission, upon ten days written notice to the applicant, shall hold a hearing on the application. Upon review of the application, if the landmark commission finds the proposed work of a nature which will not adversely affect any significant architectural or historical feature of a designated historic landmark and is appropriate and consistent with the spirit and purposes of this section, it shall forward a certificate of appropriateness to the applicant within thirty days of the receipt of such application.

3. If the commission finds that the proposed work will adversely affect or destroy any significant architectural or historical feature of the designated historic landmark or historic interior, or is inappropriate or inconsistent with the spirit and purposes of this section, it shall notify the applicant within ten days of receipt of such application that the application has been disapproved and shall include in such notification the changes necessary for approval of the application.

4. If no action has been taken by the landmark commission within sixty days of the receipt of the application, a certificate of appropriateness shall be deemed issued by the landmark commission.

5. No change shall be made in the application for issuance of a certificate of appropriateness without resubmittal to the landmark commission and approval thereof in the same manner as provided in this section.

6. After a decision is reached by the landmark commission denying an application for certificate of appropriateness, a resubmittal of application will not be accepted for additional hearing within a twelve-month period from the date of final decision indicating that there has been a change in conditions or that all changes in the application as recommended by the landmark commission have been made.

C. Ordinary Repair or Maintenance. Ordinary repair or maintenance which does not involve changes in architectural and historical value, style or general design is exempt from the provisions of this section.

D. Appeal. Any applicant or interested person aggrieved by a ruling of the Landmark Commission under the provisions of this section may, within sixty days after ruling, appeal to the city council. (Ord. 6243 (part), 1978: prior code §25-35.3 (part))

#### 20.67.105 Economic Hardship Application Procedure

A. After receiving written notification from the Commission of the denial of any type of application, an applicant may commence the hardship process. No building permit or demolition permit shall be issued unless the Commission makes a finding that hardship exists pursuant to this section. The Commission shall establish and make available a list of the information required of the owner for a complete application. No action need be taken by the Commission until the

application for Economic Hardship is complete.

B. When a claim of hardship is made pursuant to this section an owner must show to the satisfaction of the Commission that:

1. The property is incapable of earning a reasonable return under the applicable sections of this chapter, regardless of whether that return represents the most profitable return possible; and

2. The property cannot reasonably be adapted to any other use compatible with this chapter which would result in a reasonable return; and

3. A good faith effort to find a purchaser interested in acquiring the property at a reasonable price and then preserving it, has failed.

4. Efforts to find a purchaser interested in preserving it have failed.

C. The applicant and the Commission shall consult in good faith in a diligent effort to seek an alternative that will result in preservation of the property.

D. The Commission shall hold a public hearing on the application within thirty days from the date the complete application is received by the Commission.

E. If the Commission approves the application, it shall forward a certificate of appropriateness to the building official within ten days after the public hearing and the building official shall so advise the applicant within five days after the certificate is received.

F. If the Commission denies the application, it shall forward the disapproved application to the building official within ten days after the public hearing and the building official shall so notify the applicant within five days of receipt of the disapproved application. The Commission shall state in its disapproval the changes necessary for the approval of the application.

G. If no action is taken by the Commission within sixty days of original receipt by the Commission, a certificate of appropriateness or certificate of demolition shall be deemed to have been issued by the Commission, and the building official shall so advise the applicant.

H. No change shall be made in the application for any building permit after the issuance of a certificate of appropriateness without resubmitting an application to the Commission and approval thereof as provided above.

I. After a decision is reached by the Commission denying an application, a resubmittal will not be accepted within a twelve month period from the date of final decision except upon written request by the applicant indicating that there has been a change in conditions.

J. Appeal. Any Applicant or interested person aggrieved by a ruling of the Commission under the provisions of this section may, within sixty days after the final ruling, appeal the decision to City Council.

#### 20.67.110 Historic landmarks - Demolition or removal.

A. If an application is received for demolition or removal of a designated historic landmark, the building official shall immediately forward the application to the landmark commission. The landmark commission shall hold a public hearing on the application within thirty days after the application is initially filed with the building official. The applicant shall be given ten days written notice of the hearing. The landmark commission shall consider the historic value, the state of repair of the building, the reasonableness of the cost of restoration or repair, the existing and potential usefulness, including economic usefulness, of the building, the purposes behind preserving the structure as a historic landmark, the character of the neighborhood, and all other factors it finds appropriate.

If the Commission determines, based on the evidence presented, that the cost of restoration or repair would render the property incapable of earning a reasonable return, the Commission may recommend to City Council, within ten days of the hearing before the Commission, or at the Council's next regular meeting, that the property be acquired pursuant to section 20.67.070.E. Council will have thirty days to state an affirmative intent to negotiate with the property owner and, if successful; to act on such a purchase within a reasonable time thereafter. If Council does not act affirmatively, or the Commission determines that the interest of preserving historical values will not be adversely

affected by such demolition or removal or that the interest of preserving historical values can best be served by the removal of the structure to another specified location, it shall issue a certificate of demolition or a certificate of removal to the building official, and the building official shall so advise the applicant within five days therefrom.

B. If no action has been taken by the landmark commission within sixty days of original receipt by the landmark commission of the application, a certificate of demolition or a certificate of removal shall be deemed issued by the landmark commission and the building official shall so advise the applicant.

C. After a decision is reached by the landmark commission denying an application for a certificate of demolition or a certificate of removal, a resubmittal of application for such certificate will not be accepted for additional hearing within a twelve-month period from the date of final decision, except upon written request of the applicant indicating that there has been a change in conditions sufficient to warrant an earlier rehearing.

D. Any applicant aggrieved by a ruling of the landmark commission under the provisions of this section may, within sixty days after the ruling of the landmark commission, appeal to the city council. Following an appropriate public hearing, within at least sixty days of the filing of a notice of appeal with the city clerk, the city council may, by a simple majority vote, uphold or overturn the ruling of the landmark commission.

E. The foregoing subsections A through D shall not apply whenever the city engineer, the building official or the fire marshal proceeds under Section 18.52.040 of the city code (Unsafe structures - Remedial action by owner or city). In such case, the city council after the appropriate notice and hearing, may order the building or structure or part thereof repaired, removed or demolished as provided by Section 18.52.040 without regard to the H-designation on the building or structure or part thereof; but in no event may the city council take such action unless it determines that the building or structure or part thereof is unsafe and dangerous so as to endanger persons or property or is a fire hazard, and that such danger or hazard is so great and so immediate that subsections A through D of this section should be circumvented to prevent immediate and substantial harm to persons or property. Such a determination by the city council shall be final and there shall be no appeal. (Ord. 8886, 1986; Ord. 6243 (part), 1978; prior code §25-35.3 (part))

#### 20.67.120 Demolition by Neglect.

A. No owner or person with an interest in real property designated as a significant historic landmark shall permit the property to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural feature or interior feature on a designated historic interior, which would, in the judgment of the Commission, produce a detrimental effect upon the character of the historic district as a whole, or the life and character of the individual property itself.

Examples of such deterioration include:

- (a) Deterioration of roofs or other horizontal members.
- (b) Deterioration of chimneys.
- (c) Deterioration or crumbling of stucco or mortar.
- (d) Ineffective waterproofing of exterior walls, roof, or foundations, including broken windows or doors.
- (e) Deterioration of any feature so as to create a hazardous condition which could lead to the claim that demolition is necessary for the public safety.

B. Upon notification to the Commission of such a state of disrepair, the Commission shall notify the owner in writing, informing them of the complaint and specifics of the alleged deterioration, requesting that the owner appear before the Commission for a fuller and more accurate determination of the existence of detrimental deterioration.

C. If, after a hearing before the Commission, the Commission determines that the deterioration has produced a detrimental effect as described in paragraph A above, the owner, tenant, or anyone with an interest in the property, shall be given a reasonable time and opportunity to cure the deterioration by restoration or other appropriate actions. The owner of individual who will be restoring the property must comply with all requirements of requesting a Certificate

of Appropriateness from the Commission. This may be requested at the time of the hearing in B. Property owners may appeal to the Commission or City Council under Section 20.67.105, above.

**20.67.130 Historic landmark designation to coexist with other use classifications.**

Use of classifications as to all property which may be included in a historic landmark designation shall continue to be governed by the comprehensive zoning ordinance of the city and the procedures therein established. (Ord. 6243 (part), 1978: prior code §25-35.3 (part))

**20.67.140 Penalty for Demolition or Alteration without a permit.**

A. It shall be unlawful to construct, reconstruct, structurally alter, remodel, renovate, restore, demolish, raze or maintain any building, structure, or land in a historic landmark designation in violation of the provisions of this chapter, and the city in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful construction, restoration, demolition, razing or maintenance, to restrain, correct or abate such violation, to prevent any illegal act, business or maintenance in and about such premises.

B. In addition to any remedies allowed by law and exercised under paragraph A, and the penalty provided in Chapter 20.68 of the El Paso City Code, a person or corporation is liable to the City if the person demolishes, causes to be

demolished, or otherwise adversely affects the structural, physical, or visual integrity of an historic structure or property without first obtaining a permit from the Department of Public Inspection and a certificate of demolition from the Historic Landmark Commission as required by Section 20.67. The structure or property must have a designated "H" overlay, individually or as part of an historic district.

If the structural, physical, or visual integrity of the structure or property is adversely affected to the extent that it is not feasible to restore the structural, physical, or visual integrity substantially to its former level, the damages are equal to the cost of constructing, using as many of the original materials as possible, a new structure or property that is a reasonable facsimile of the historic structure or property and the cost of attorney's, architect's, and appraiser's fees and other costs related to the enforcement of this section. If it is feasible to restore the structural, physical, or visual integrity of the structure or property substantially to its former level, the damages are equal to the cost of the restoration, using as many of the original materials as possible, and the cost of attorney's, architect's, and appraiser's fees and other costs related to the enforcement of this section.

Instead of accepting monetary damages, the City Council may permit the liable person to construct, within a reasonable time and using as many of the original materials as possible, a structure or property that is a reasonable facsimile of the demolished historic structure or property or to restore, using as many of

the original materials as possible, the historic structure or property and to pay the cost of attorney's, architect's, and appraiser's fees and other costs related to the enforcement of this section. (Local Government Code, Chapter 315.006)

#### 20.67.150 Notice.

Any notice required to be given under this section shall be by certified mail, return receipt requested, postage prepaid, to the addressee at his last known mailing address. (Ord. 6243 (part), 1978: prior code §25-35.3 (part))

#### 20.67.160 Severability.

The terms and provisions of this chapter are severable and shall be governed by Section 1.04.060 of this code. (Ord. 6243 (part), 1978: prior code §25-35.3 (part))

#### 20.67.170 Zoning board of adjustment.

This chapter is not to be construed as conferring any jurisdiction on the zoning board of adjustment in matters pertaining to historic landmark preservation. (Ord. 6243 (part), 1978: prior code §25-35.3 (part))

#### 20.67.180 Appeal to city council.

Any applicant or the owner of any property located within three hundred feet of any landmark who is aggrieved by a ruling of the commission concerning that landmark under the provisions of this

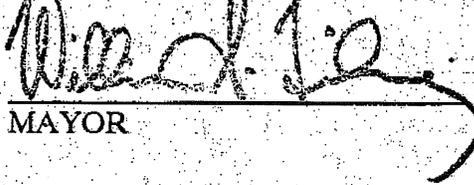
section may, within sixty days after the ruling of the commission, appeal to the city council by filing written notice of such appeal with the city clerk. Following a public hearing to be held within sixty days of the filing of such notice of appeal, the

city council may, by a simple majority vote, uphold or overturn any ruling of the commission made pursuant to this section. (Ord. 6243 (part), 1978: prior code §25-35.3 (part))

Except as herein amended, Title 20 (Zoning), shall remain in full force and effect.

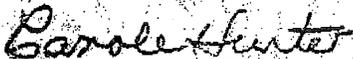
PASSED AND APPROVED THIS 30<sup>th</sup> DAY OF DEC., 1991.

THE CITY OF EL PASO

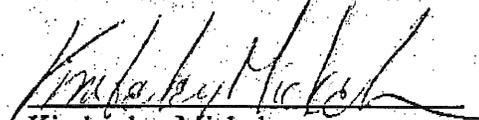


MAYOR

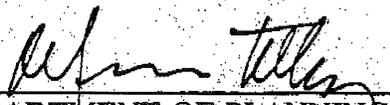
ATTEST:

  
CITY CLERK

APPROVED AS TO FORM:

  
Kimberley Mickelson,  
ASSISTANT CITY ATTORNEY

APPROVED AS TO CONTENT:

  
DEPARTMENT OF PLANNING,  
RESEARCH AND DEVELOPMENT

CAKMHISTORCORD (22)