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AN ORDINANCE AMENDING VARIOUS SECTIONS OF TITLE 20 (ZONING), CHAPTER 67 (HISTORIC LANDMARK PRESERVATION) CHANGING THE NUMBER, MAKE-UP, AND FUNCTIONS OF THE HISTORIC LANDMARK COMMISSION. THE PENALTY AS PROVIDED IN CHAPTER 20.68.

WHEREAS, the City Council created Chapter 20.67 (Historic Landmark Preservation) in the interest of providing protection, enhancement, preservation, and use of historic landmarks for the culture, prosperity, education and general welfare of the general public; and,

WHEREAS, the City of El Paso has created nine (9) historic districts, including over 2,500 buildings; and,

WHEREAS, the Historic Landmark Commission has been performing their duties with attention and care;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the number, make-up, and functions of the Historic Landmark Commission and Chapter 20.67 (Historic Landmark Preservation) are amended as follows:

20.67.010: Definitions:

Definitions which appear below relate only to this Chapter 20.67 of this code:

1. "Alteration" means any construction or change of the exterior of a building, site, or structure, or of an interior space designated as a landmark. For buildings, objects, sites or structures, alteration shall include, but not be 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.
2. "Appurtenance" means any accessory or subordinate 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.
3. "Archaeological" means 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, as amended.
4. "Area" means a specific geographic division of the city of El Paso.

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5. "Building" means 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.
6. "Cemetery" means any site, as defined by any Texas Statute, 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 in a condition of neglect or abuse.
7. "Cluster" means 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.
8. "Construction" means the act of adding new material to an existing building or structure or the erection of a new principal or accessory building or structure on a lot or property.
9. "Contributing property" means 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.
10. "Cultural resources" means 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.
11. "Demolition" means 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.
12. "Design guidelines" means 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.
13. "District" means 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.
14. "Economic return" means a financial profit or capital appreciation from use or ownership of a building, object, site or structure that accrues from investment or labor.
15. "Effect" means 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.

16. "Effect, adverse" means 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.

17. "Historic district" means an area, urban or rural, residential or commercial, defined as an "historic district" by city council, state or federal authority and which contains 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 with the district.

18. "Historic interiors" means 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 be used by, or may be used by the public. This will normally only be interior spaces of commercially-zoned buildings.

19. "Historic landmark" also referred to as an "H" overlay property, means 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 which they are located, having been so designated by city council.

20. "Intrusion" means 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, whose integrity has been irretrievably lost; or whose physical deterioration or damage makes it infeasible to rehabilitate.

21. "Inventory" means 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.

22. "Landscape architectural feature" means the general arrangement of grounds including, but not limited to, the topographic grade water pooling and runoff, types and sites of plant materials, type 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.

23. "Multiple resource historic district" means 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.

24. "Noncontributing property" means 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.
25. "Object" means 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.
26. "Ordinary repair and maintenance" means 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.
27. "Reconstruction" means 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 workmanship, or by the replacement of missing earlier work, or by reuse of original materials.
28. "Rehabilitation" means 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.
29. "Relocation" means any change of the location of a building, object or structure in its present setting or to another setting.
30. "Resource" means a source or 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.
31. "Restoration" means 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.
32. "Setback" means a distance between a structure and the nearest point of the required yard, as required by code Title 20.
33. "Significant historic landmark" means 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.

34. "Site" means 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.

35. "Stabilization" means 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.

36. "Structure" means a nonmovable work made up of interdependent and interrelated parts in a definite pattern or organization.

37. "Thematic group" means 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.

38. "Unreasonable economic hardship" means 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.

39. "Vista" means 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, site or structures; to include views of areas at a distance, such as a remote view of the downtown or the mountains.

40. "Zone" means a designated area, within an historic district, which is unique in character, tone, theme, architecture, culture 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;

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.

I. To encourage creation of advisory groups from each historic district to assist in the evaluation of applications.

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 after the zoning designation of those buildings, structures, sites, districts, areas and lands which the city council designates as historical landmarks. Such designation shall be in addition to any other designation established under this chapter. The zoning map shall reflect the designation of an historic landmark by the letter "H" as a suffix to any other use designation established in this chapter.

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. Noncontributing property;

as those terms are defined in Section 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 economic effects 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.

Noncontributing properties in the downtown historic district, as approved by the city council on January 21, 1992, shall be exempted from the design guidelines for building exteriors and shall be noted on zoning maps as noncontributing properties in an historic district by the designation "H/NC."

20.67.040: Historic Landmarks - Designation - Criteria to be used in designation.

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 distinguished 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 distinguished 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.

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 or the landmark commission, consisting of nine members appointed by the mayor and the city representatives. Each representative shall nominate one member and the mayor shall nominate one. A quorum is defined as one more than half of the number of members currently appointed. The members of the commission shall serve without compensation and the membership shall include the following:

1. Two architects, registered and licensed to practice in Texas;
2. One archaeologist;
3. One historian.

B. Each member of the commission shall be appointed for a term of two 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.

C. All members shall have demonstrated special interest, knowledge, and experience in the architectural, archaeological, cultural, social, economic, ethnic, or political history of El Paso. No one business or professional interest shall constitute a majority membership of the commission.

D. If the total number of members appointed to the commission at any time is greater than nine, no new member shall be appointed to replace any member whose term has expired or who has resigned or been removed from the commission, and the nine-member total shall be achieved by attrition. Notwithstanding the foregoing, should any member leaving the commission be of one of the identified professions described in item 1, 2, or 3 of subsection A above, the vacancy thereby created shall be filled by the appointment of another member of the same profession.

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 in accordance with 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 or a demolition permit for a building located 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. Action taken at a meeting shall require the affirmative vote of a majority of the members present at the meeting and eligible to vote on the proposed action (a person who is present and eligible to vote should not abstain).

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.

C. The commission chairman shall appoint an architectural review subcommittee consisting of three members of the commission to review the applications submitted to the full body of the commission. They may meet at a regularly scheduled time. This subcommittee may perform at its own discretion, but shall not be limited to, the following functions:

1. Review applications and plans prior to the meeting of the full body of the commission;
2. Prepare recommendations on each application to be presented to the full body of the commission at their regularly scheduled meeting;
3. Make suggestions which may include sketches and general drawings to assist applicants.

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 an 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 accessible to the general public, 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 building, in addition to existing zoning classification, height and area limitations; and,

b. Design regulations for those interiors mentioned above, areas specifically designated as historic interiors, in order to protect significant architectural, historic, archaeological or cultural elements of the district;

The regulations for subdivision 2a and b of this subsection may also 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;

vi. Acceptable landscape architectural features.

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, areas and lands in the city as historic landmarks or such other designations as are defined in this chapter 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 Section 211.007, Texas Local Government Code.

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

F. The landmark commission and city planning department staff shall:

1. Provide information and counseling to owners of designated historic landmarks;
2. Rule on requested exceptions to the guidelines based upon the overall visual effects of the proposed exceptions;
3. 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 in Section 211.007, Texas Local Government Code, to consider any historical landmark designation ordinance after receiving a recommendation from the landmark commission. The notices provided in Section 211.007, Texas Local Government Code, 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 section. 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 recommendations, 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 recommendations of the landmark commission; provided that in the event the recommendations of the plan commission differs from the recommendations 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 recommendations, including the findings of fact that constitute the basis for their recommendations to the city council.

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.

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 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 chapter and provided in Section 20.67.030(B) by the El Paso city council.

B. The landmark commission shall grant, grant with modifications, or deny certificates of appropriateness or certificates of demolition based on one of the following sets of criteria, which shall also apply to any approval granted through the administrative review process:

1. When city council has adopted architectural and design guidelines for a particular district, those guidelines shall control, except that the commission may make approved exceptions to the guidelines in an effort to maintain the historic integrity of an H-overlay property, in which case the approved exception shall control in that particular case.
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".
3. When the preceding 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 Part 68) (U.S. Department of the Interior, National Park Service, Preservation Assistance Division. U.S. Government Printing Office Document Number: 1994 0 - 160-280 QL 3, Washington, D.C., or most current revision).

C. Procedure when a 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 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 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 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 the original receipt by the landmark commission, a certificate of appropriateness shall be deemed issued by the landmark commission.

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

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 except upon written request of the applicant indicating that there has been a change in conditions sufficient to warrant an earlier rehearing.

7. Applicants aggrieved by a decision of the landmark commission may appeal to city council, using the procedure identified in section 20.67.180.

D. Procedure when a building permit is not required.

1. Proposed exterior or interior changes and alterations not requiring a building permit shall be submitted in writing directly to the 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 the regular or special meeting of the landmark commission before submitting an application and may consult with the commission during the review of the application, after one has been submitted.

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 that the proposed work is 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 original 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 any building permit after the certificate of appropriateness has been issued, without submittal of a new application to the landmark commission and approval thereof as previously provided.

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, unless the commission determines, after reviewing a written request of the applicant, that there has been a change in conditions sufficient to warrant an earlier rehearing.

7. Applicants aggrieved by a decision of the landmark commission may appeal to city council, using the procedure identified in section 20.67.180.

E. 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.

F. Administrative review will be conducted by the director of the department of planning, research and development, or his designee, in accordance with subsection 20.67.100(B) and the administrative review design guidelines, for items listed below.

1. These items will be reviewed and, if they conform to the guidelines, will be approved by the director or his designee and returned to the department of public inspection:

a. Landscape materials including vegetation, irrigation, and xeriscaping, in the front, rear, side yards, and parkways;

b. New fencing on the front, rear and side yards;

c. Wrought iron security coverings for windows and doors;

d. Exterior accessibility ramps;

e. Skylights;

f. Off-premise and on-premise commercial and residential signs within historic districts;

g. Replacement of garage or household exterior doors that match the original doors;

h. Walkways, driveways, and aprons;

i. Swimming pools in the rear yard.

j. Routine maintenance, including but not be limited to: painting, re-roofing, repair of walks, driveways, fences, and installation of windows similar to the original in appearance and strength of purpose, regardless of construction materials.

2. If the applicant disagrees with the administrative decision, he may appeal to the landmark commission, through the application process.

20.67.105: Economic hardship application procedure:

A. After receiving written notification from the commission of the denial of any 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 section 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.

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 has been taken by the commission within sixty days of the original receipt of the application by the commission, a certificate of appropriateness or certificate of demolition shall be deemed to have been issued by the landmark 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 submittal of a new application to the landmark commission and approval thereof as previously provided.

I. After a decision is reached by the landmark commission denying an application, a resubmittal of application shall not be accepted for additional hearing within a twelve month period from the date of final decision, unless the commission determines, after reviewing a written request of the applicant, that there has been a change in conditions sufficient to warrant an earlier rehearing.

J. Applicants aggrieved by a decision of the landmark commission may appeal to city council, using the procedure identified in section 20.67.180.

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 day's 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 reasons for preserving the structure as an 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, This section of text was moved to 20.67.125 or if the commission determines that the interest of preserving historic 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, , unless the commission determines, after reviewing a written request of the applicant, that there has been a change in conditions sufficient to warrant an earlier rehearing.

D. Subsections A through C of this section shall not apply whenever the city engineer, the building official or the fire marshal proceeds under Chapter 18.52. 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 Chapter 18.52 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 C 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.

20.67.120: Demolition by Neglect:

A. No owner or person with an interest in real property designated as an historic landmark, as identified on the department of planning historic district maps, shall permit the historic landmark 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 historic landmark itself.

Examples of such deterioration include:

1. Deterioration of roofs or other horizontal members;
2. Deterioration of chimneys;
3. Deterioration or crumbling of stucco or mortar;
4. Ineffective waterproofing of exterior walls, roof or foundations, including broken windows or doors; or,
5. 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 the owner 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 subsection A of this section, the owner, tenant, or anyone with an interest in the historic landmark shall be given a reasonable time and opportunity to cure the deterioration by restoration or other appropriate actions. The owner or individual who will be restoring the historic landmark 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 subsection B. Property owners may appeal to the commission or city council under Section 20.67.105.

20.67.125: Options for the commission to recommend acquisition of historic landmarks.

The following options shall be available to the commission, for recommendation to the city council of El Paso, for acquisition of historic landmarks:

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

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

C. 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;

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

E. 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 historic landmark be acquired pursuant to Section 20.67.070(E). Council will have thirty days to state an affirmative intent to negotiate with the historic landmark owner and, if successful, the council shall complete such a purchase within a reasonable time thereafter.

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.

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, or raze any historic landmark buildings, identified on the city of El Paso's official zoning map located in the department of planning, in violation 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, or razing, 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 subsection A of this section, and the penalty provided in Chapter 20.68 of this code, a person or corporation is liable to the city if the person demolishes, or causes to be demolished, or otherwise adversely affects the structural, physical or visual integrity of an historic landmark without first obtaining a permit from the department of public inspection and a certificate of demolition from the landmark commission as required by this chapter. 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 historic landmark 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 that is a reasonable facsimile of the historic landmark and the cost of attorney's, architects'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 historic landmark 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 landmark or to restore, using as many of the original materials as possible, the historic landmark and to pay the cost of attorney's, architect's and appraiser's fees and other costs related to the enforcement of this section.

20.67.150: Notice:

Any notice required to be given under this chapter shall be by certified mail, return receipt requested, postage prepaid, to the addressee at has last known mailing address.

20.67.160: Severability:

The terms and provisions of this chapter are severable and shall be governed by Section 1.04.060.

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.

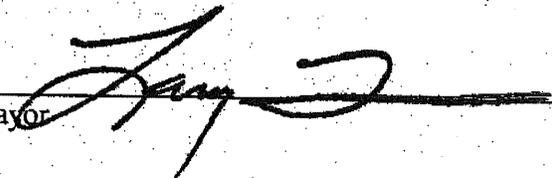
20.67.180: Appeal to the City Council.

Any applicant or the owner of any property located within three hundred feet of any landmark, or the owner of any property with the same historic district as the subject of the appeal, who is aggrieved by a ruling of the commission concerning that landmark under the provisions of this section, may within fifteen 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 chapter.

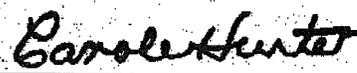
(Signatures on following page)

PASSED AND APPROVED this 3rd day of Dec., 1996.

THE CITY OF EL PASO

Mayor 

ATTEST:



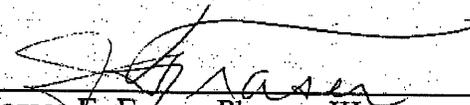
City Clerk

APPROVED AS TO FORM:



John F. Nance
Assistant City Attorney

APPROVED AS TO CONTENT:



James E. Fraser, Planner III
Dept. of Planning, Research & Development