

## **ARTICLE 12: LANDMARKS AND URBAN CONSERVATION**

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### **§ 14-12-1 SHORT TITLE.**

This article shall be known and may be cited as "The Landmarks and Urban Conservation Ordinance."

('74 Code, § 7-5-3) (Ord. 22-1978; Am. Ord. 4-1985; Am. Ord. 51-1991)

#### **§ 14-12-2 AUTHORITY AND JURISDICTION.**

(A) This article is created pursuant to the authority set forth in Article I of the Charter of the City of Albuquerque, which was originally adopted at a special election on June 29, 1971 pursuant to Article X, Section 6, of the Constitution of the State of New Mexico. In addition, this article is pursuant to the authority set forth in Chapter 3, Article 22 NMSA 1978, the Historic District and Landmark Act.

(B) Use of all property which may be included in a historic landmark shall be governed by the Zoning Code. No provision herein shall be construed as prohibiting a property owner from continuing to use property for a legally nonconforming use. In the event this article designating a landmark and the Zoning Code govern the same matter, other than use, the provisions of whichever ordinance is more stringent shall prevail.

('74 Code, § 7-5-1) (Ord. 22-1978; Am. Ord. 4-1985; Am. Ord. 51-1991)

#### **§ 14-12-3 INTENT.**

The purpose of this article is to preserve, protect, enhance, perpetuate, and promote the use of structures and areas of historical, cultural, architectural, engineering, archeological, or geographic significance located in the city; to strengthen the city's economic base by stimulating the tourist industry; to enhance the identity of the city by protecting the city's heritage and prohibiting the unnecessary destruction or defacement of its cultural assets; and to conserve existing urban developments as viable economic and social entities.

('74 Code, § 7-5-2) (Ord. 22-1978; Am. Ord. 4-1985; Am. Ord. 51-1991)

#### **§ 14-12-4 DEFINITIONS.**

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ALTERATION.** Any construction, modification, addition, moving, or destruction which would affect the exterior appearance of a structure which has been designated a landmark or which is located in a historic zone or urban

conservation overlay zone or which has been formally identified as worthy of preservation or for which the city has received a preservation facade easement.

***CERTIFICATE OF APPROPRIATENESS.*** The written approval of the Landmarks and Urban Conservation Commission or designated city staff indicating that a project has been reviewed and determined to meet the applicable design criteria.

***COMMISSION.*** The Landmarks and Urban Conservation Commission established herein.

***CONSTRUCTION.*** The erection of any new structure on property located within a historic zone or urban conservation overlay zone, or within the boundaries of a landmark site.

***DEMOLITION.*** The complete removal of a structure located within a historic zone or urban conservation overlay zone, or within the boundaries of a landmark site.

***DEMOLITION PERMIT.*** The permit issued by the City of Albuquerque for the demolition of a structure, excluding a permit issued solely for the demolition of the interior of a structure.

***EXTERIOR APPEARANCE.*** The visual character of all outside surfaces of a structure, including the kind and texture of the signs, light fixtures, steps, or appurtenant elements.

***HISTORIC ZONE.*** Any area designated under the authority of the Zoning Code as a Historic Zone or Historic Overlay Zone.

***LANDMARK.*** Any real property designated as such pursuant to this article.

***STRUCTURE.*** Anything constructed or erected above ground level which requires location on the ground or attached to something having a location on the ground but not including a tent, vehicle, vegetation, or public utility pole or line.

***URBAN CONSERVATION OVERLAY ZONE.*** Any area designated as such under the authority of the Zoning Code.

('74 Code, § 7-5-4) (Ord. 22-1978; Am. Ord. 4-1985; Am. Ord. 51-1991; Am. Ord. 2012-005)

## **§ 14-12-5 LANDMARKS AND URBAN CONSERVATION COMMISSION.**

(A) There is hereby created a Landmarks and Urban Conservation

Commission which shall consist of seven members. Two members shall own property in a Historic Zone. One member shall be a professional architect, one member shall be a licensed real estate agent, and one member shall be a knowledgeable lay-person. Of the remaining members, each one shall have demonstrated expertise in at least one of the following areas: architecture, law, graphic arts, planning, real estate, history, construction, or archeology; provided, however, that a university degree shall not be required as proof of expertise. All of the members shall have demonstrated, through previous experience or training, an ability and interest in preserving the historic and architectural character of Albuquerque and in conserving urban areas. Members may reside outside of the boundaries of the City of Albuquerque if they have special expertise. The term of each member shall be three years; of the Commission members first named, two shall have terms ending April 1, 1979, two shall have terms ending April 1, 1980, and three shall have terms ending April 1, 1981. The Mayor shall determine which persons have which terms.

(B) Except as provided in this article, the qualifications, appointment and conduct of the members of the Commission and its organizational structure shall be governed by §§ 2-6-1-1 et seq.

('74 Code, § 7-5-5) (Ord. 22-1978; Am. Ord. 4-1985; Am. Ord. 51-1991)

#### **§ 14-12-6 POWERS AND DUTIES OF THE COMMISSION.**

The Landmarks and Urban Conservation Commission may:

(A) Conduct studies and programs designed to identify and evaluate structures and areas worthy of conservation, and to review the status of structures and zones already designated.

(B) Recommend to the Mayor and City Council landmarks to be designated by the Council in accordance with the procedures established in this article.

(C) Conduct a public hearing on an application for a historic or urban conservation overlay zone. The Commission may recommend approval or amendment of such an application to the City Council or it may deny the application. Historic and urban conservation zone procedures, including procedures for appeal of the Commission's denial of an application, are prescribed by the Zoning Code.

(D) Prepare and adopt specific development guidelines for any designated landmark, historic zone or urban conservation overlay zone.

(E) Make decisions on applications for Certificates of Appropriateness for alteration, new construction, or demolition, in accordance with the procedures

established in this article.

(F) Disseminate information to the public concerning historic preservation and urban conservation and seek input from groups and individuals about these matters.

(G) Consider methods for encouraging and achieving historic preservation and urban conservation and make recommendations to the Mayor and City Council.

(H) Advise the Mayor, Council, and the Environmental Planning Commission on any proposed public improvements which would impact the exterior appearance of landmarks or significant structures in historic zones or urban conservation overlay zones.

(I) Perform demolition review as provided for in § 14-12-9 ROA 1994 when provided for in a sector development plan.

('74 Code, § 7-5-6) (Ord. 22-1978; Am. Ord. 4-1985; Am. Ord. 51-1991; Am. Ord. 2012-005)

#### **§ 14-12-7 LANDMARKS DESIGNATION.**

(A) *Criteria for Landmark Designation.* Real property may be designated a landmark if it has historical or other cultural significance or integrity, is suitable for preservation, has educational significance, and in addition:

- (1) It is the site of a significant historic event;
- (2) It is identified with a person who significantly contributed to the history of the city, state or nation;
- (3) It portrays the environment of a group of people in an era of history characterized by a distinctive architectural style;
- (4) It embodies the distinctive characteristics of a type, period, or method of construction;
- (5) It possesses high artistic values;
- (6) It represents the work of an architect, designer, or master builder whose individual work has influenced the development of the city;
- (7) It embodies elements of architectural design, detail, materials, or craftsmanship which represent a significant architectural innovation;

(8) Its preservation is critical because of its relationship to already-designated landmarks or other real property which is simultaneously proposed as a landmark;

(9) It has yielded or is very likely to yield information important in history or prehistory; or

(10) It is included in the National Register of Historic Places or the New Mexico Cultural Properties Register. The Commission shall also evaluate whether the property, as it would be controlled as a landmark, is suitable for uses allowed by the Zoning Code, including legally nonconforming uses, if any.

(B) *Procedures for Designation of Landmarks*

(1) Applications for landmark designation may be made by the Mayor or his designated representative, or by a person with direct financial, contractual, or proprietary interest in the affected property on forms provided by the city. The application shall specify

(a) Why the property meets the criteria set out in this article and should be designated a landmark,

(b) The legal description of the site, the particular features and/or characteristics proposed to be preserved, and such other description of the property as seems appropriate, including a sketch or photograph if available, and

(c) The owner's written consent to the designation, or a statement as to why the Commission should proceed without the owner's consent.

(2) The Commission shall hold a public hearing on any duly filed application. Notice and procedures for a public hearing shall be as provided for in § 14-11-9.

(3) Prior to the public hearing, the Mayor shall cause an investigation and report to be made on the historical, architectural, or other significance of the property proposed to be designated. The report shall include:

(a) A statement from the Planning Department regarding planning considerations which may be relevant to the proposed designation;

(b) The comments of other involved departments and agencies;

(c) Evaluation of how the property meets the criteria established in division (A) of this section,

(d) If the owner has not given written consent to the designation,

analysis of the economic impact of designation on the premises; and

(e) An analysis of the significant features of the structure which merit preservation.

(4) The Commission shall recommend approval of or shall deny any proposed designation at a public meeting within 60 days after the date the application was filed. The Commission may recommend modifications to a proposed landmark designation, but no proposal may be extended beyond the boundaries of the land described in the application unless a new application is filed and the procedure is repeated for the enlarged boundaries. The Commission shall set forth in its resolution its findings relative to how the proposed landmark meets the designation criteria, a list of the proposed landmark's distinctive features, and general preservation guidelines for the structure.

(5) If the Commission recommends approval of landmark designation, the Commission shall transmit its resolution to the City Council within 12 working days of the Commission's decision. The City Council shall approve or deny an ordinance which designates the property as a landmark within 75 days of receipt of the Commission resolution. The City Council ordinance shall include a legal description of the site, the Council's findings relative to how the landmark meets the designation criteria, a list of the landmark's distinctive features, and preservation guidelines for the structure. The City Council ordinance may differ from the Commission resolution.

(6) Within ten working days of the effective date of an ordinance designating property as a landmark, the Mayor shall:

(a) Cause to be recorded with the County Clerk a notice stating that the specified property has been designated as a landmark, citing the ordinance and the effective date thereof; and

(b) Cause to be sent to the owner of said property, by certified mail, a copy of the ordinance and a copy of the notice filed with the County Clerk.

(7) An application for landmark designation for the same property may not be filed within 12 months from the date of final action by the city on a prior application.

(8) Landmark designation may be amended or rescinded by the same procedure and based on the same criteria and considerations as are prescribed for designation, except that a City demolition permit or Certificate of Appropriateness for demolition approved in the manner prescribed in this article shall automatically constitute rescission of landmark status.

(9) From the date of filing an application for landmark designation for a

property until the designation procedures are completed, such property shall be protected as if it were a landmark, and a Certificate of Appropriateness, as provided for in this article, shall be required. However, this interim control shall in no case apply for more than 110 days after the application for designation is filed.

(C) *Specific Development Guidelines for Designated Landmarks.* Within 45 days of the effective date of an ordinance designating property as landmark, the Commission shall approve specific development guidelines for the landmark at a public meeting. The specific development guidelines shall establish criteria for evaluation of applications for Certificates of Appropriateness which may be approved by city staff designated by the Mayor. The specific development guidelines shall be consistent with the provisions of the ordinance designating the landmark. The guidelines may be amended by the Commission at a public hearing at any time.

(D) *Minimum Maintenance and Security Requirement.*

(1) Any landmark shall receive reasonable maintenance and security for the purpose of preserving it and carrying out the intent of this article.

(2) Any occupied residential landmark shall be maintained to meet the requirements of the Housing Code set forth in Chapter 14, Article 3.

(3) The owner or any other person having legal custody or control of a landmarked structure shall repair or stabilize the structure if it is found to have any of the following defects:

(a) A deteriorated or inadequate foundation.

(b) Deteriorated, loose or ineffective waterproofing and weatherproofing of exterior walls, roofs, foundations or floors, including broken windows or doors.

(c) Any fault in the building or structure that renders it structurally unsafe or not properly watertight.

(d) Parts that are so attached that they may fall and injure members of the public or property.

(e) Significant architectural features, as described in the ordinance designating the landmark, that are deteriorating or in need of stabilization to insure their preservation.

(f) Or other condition determined by appropriate city officials to cause an immediate threat to public health, safety or welfare.

(4) Any landmarked archeological site or vacant landmarked structure shall be adequately secured against unauthorized entry.

(E) To better correlate landmarks status with the Zoning Code, the HO Historic Overlay Zone will be mapped promptly on the official zone map for all real property designated a landmark, unless the area is in the H-1 Historic Old Town Zone.

('74 Code, § 7-5-7) (Ord. 22-1978; Am. Ord. 83-1980; Am. Ord. 4-1985; Am. Ord. 51-1991)

#### **§ 14-12-8 PROCEDURES FOR ALTERATION, DEMOLITION AND NEW CONSTRUCTION WITHIN AN HISTORIC ZONE, URBAN CONSERVATION OVERLAY ZONE OR LANDMARK SITE.**

(A) *Requirement.* Within the boundaries of a historic zone, urban conservation overlay zone, or landmark site, the exterior appearance of any structure shall not be altered, new structures shall not be constructed, and existing structures shall not be demolished until a Certificate of Appropriateness has been duly approved. Within a historic zone, urban conservation overlay zone, or landmark site which has specific sign requirements, no sign may be altered, constructed, or demolished until a Certificate of Appropriateness has been duly approved. Interior features which are listed as worthy of preservation in the landmark's general preservation guidelines or specific development guidelines shall not be altered or demolished until a Certificate of Appropriateness has been approved. Notwithstanding the above, a Certificate of Appropriateness shall not be required for:

(1) Ordinary maintenance and repair where the purpose of the work is to correct deterioration to the structure and restore it to its condition prior to deterioration;

(2) Any construction, alteration, or demolition duly approved prior to the effective date of this article;

(3) Any construction, alteration, or demolition which only affects the interior of the structure unless the interior features which will be affected were listed as worthy of preservation in the landmark's general preservation guidelines or specific development guidelines;

(4) Any construction, alteration, or demolition which is exempted from this requirement by approved specific development guidelines;

(5) Any alteration or demolition which is necessary to correct or abate a condition which has been declared unsafe by the appropriate City official after

notification of the Commission and consultation with the Chairperson of the Commission and where emergency measures have been declared necessary by such departments; or

(6) Any demolition which is approved by the City Council after the demolition moratorium period has elapsed.

(B) *Criteria for Issuance of Certificates.* An Application for a Certificate of Appropriateness shall be approved if it complies with the following criteria:

(1) The change is consistent with the designation ordinance and specific development guidelines for the landmark or historic zone or urban conservation overlay zone;

(2) The architectural character, historical value, or archaeological value of the structure or site itself or of any historic zone or urban conservation overlay zone in which it is located will not be significantly impaired or diminished, and

(3) The change qualified as a "certified rehabilitation" pursuant to the Tax Reform Act of 1976, if applicable;

(4) The structure or site's distinguished original qualities or character will not be altered. For the purposes of this division (4), **ORIGINAL** shall mean at the time of initial construction or developed over the course of history of the structure;

(5) Deteriorated architectural features shall be repaired rather than replaced, if possible. If replacement is necessary, the new material shall match the original as closely as possible in like material and design;

(6) Additions to existing structures and new construction may be of contemporary design if such design is compatible with its landmark status (if any) or the historic zone or urban conservation overlay zone in which it is to be located; and

(7) Demolition shall only be permitted if it is determined that the property is incapable of producing a reasonable economic return as presently controlled and that no means of preserving the structure has been found. In making a determination regarding reasonable economic return the Commission may consider the estimated market value of the building, land and any proposed replacement structures, financial details of the property including, but not limited to, income and expense statements, current mortgage balances and appraisals, the length of time that the property has been on the market for sale or lease, potential return based on projected future market conditions, the building's structural condition, and other items determined to be relevant to the application.

(C) *Procedures for Approval of Certificate.*

(1) Application:

(a) Prospective applicants should discuss their situation with city staff designated by the Mayor before preparing plans and making an application so as to familiarize themselves with city plans and policies.

(b) An application for a Certificate of Appropriateness shall be in writing on forms prescribed by the city. For a major project, submission of preliminary drawings is recommended, with later submission of final drawings for approval at a separate meeting. Drawings shall include a site plan, all relevant elevations, and other relevant information required by the Commission. Submission of inaccurate information with an application is grounds for denial.

(2) Staff Decision. If the application is for work which may be approved by the city staff designated by the Mayor according to the specific development guidelines, the staff shall act on the application within ten working days of its filing. Provided, however, that the staff may refer the application to the Commission if the staff believes that the intent of this article would be better served by so doing.

(3) Commission Decision.

(a) Applications for Certificates of Appropriateness shall be heard by the Commission at the next regularly scheduled meeting for which public notification requirements can be met, but no later than 60 days from the date of filing the application. Notice of the public hearing shall be as prescribed in § 14-12-10.

(b) The Commission shall approve, approve with specified modifications and conditions, or deny any application it considers at a public meeting or public hearing within 90 days of its filing, unless the Commission determines that there is due cause for deferral beyond that time. Applications shall only be approved if they comply with the criteria established by this article and with any applicable general preservation guidelines or specific development guidelines. The Commission shall set forth the findings of fact which constitute the basis of its decision.

(4) Issuance of Certificate of Appropriateness. Fifteen days after approval of an application, a Certificate of Appropriateness shall be issued to the applicants. Provided, however, that if the approval is appealed, no Certificate of Appropriateness shall be issued until a final decision is made on the appeal.

(5) The applicant shall comply with any conditions listed in the Certificate of Appropriateness.

(6) A Certificate of Appropriateness shall be void one year after the date of approval if a building permit has not been issued for the project.

(7) Demolition.

(a) If the Commission denies an application for a Certificate of Appropriateness for demolition, there shall be a moratorium on demolition for one year, during which time the Commission and the City of Albuquerque shall make every effort to find a means of preserving the structure.

(b) At the end of the prescribed moratorium, the City Council shall approve demolition if it determines that the property is incapable of producing a reasonable economic return as presently controlled and no means of preserving the structure has been found. In making a determination regarding reasonable economic return the Council may consider items noted in division (B)(7) of this section.

('74 Code, § 7-5-8) (Ord. 22-1978; Am. Ord. 4-1985; Am. Ord. 51-1991; Am. Ord. 2012-005)

**§ 14-12-9 PROCEDURE FOR DEMOLITION WITHIN A SECTOR DEVELOPMENT PLAN AREA THAT PROVIDES FOR DEMOLITION REVIEW FOR STRUCTURES NOT COVERED BY § 14-12-8.**

(A) *Applicability.* This section shall only apply in areas governed by a sector development plan that adopts demolition review procedures in substantial compliance with this section.

(B) *Procedure.*

(1) No demolition permit for a structure, which is in whole or in part, 50 years or more old and located within a sector development plan area requiring demolition review shall be issued without following the provisions of this section. If a structure is of unknown age, it shall be presumed that the structure is over 50 years old for the purposes of this article.

(2) An applicant for a demolition permit proposing to demolish a structure shall file with the city an application containing the following information:

- (a) The address of the structure to be demolished;
- (b) The owner's name, address and telephone number;
- (c) A description of the structure;

(d) The reasons for requesting demolition. A brief description of the proposed reuse, reconstruction or replacement;

(e) A photograph or photographs of the structure;

(f) A statement as to the age of the structure and the basis for that statement.

(3) The Chief Building Official shall forward a copy of the application to the Commission staff. The Commission staff shall, within 15 days after receipt of the application, make a written determination of whether the structure is subject to demolition review. Any structure that the Commission staff finds is or is presumptively more than 50 years old and as to which the Commission staff finds that there is a likelihood that it meets the criteria of division (H)(1) as set out below is subject to demolition review.

(4) Upon determination by the Commission staff that the structure is not subject to demolition review, the Commission staff shall so notify the Chief Building Official and applicant in writing. The city may then issue the demolition permit.

(5) Upon determination by the Commission staff that the structure is subject to demolition review, the Commission staff shall so notify the Chief Building Official and the applicant in writing. No demolition permit may be issued following a staff determination that the structure is subject to demolition review prior to a Commission hearing. If the Commission staff does not notify the Chief Building Official within 15 days of receipt of the application that the structure is subject to demolition review, the city may proceed to issue the demolition permit.

(6) If the Commission staff finds that the structure is subject to demolition review, the Commission shall hold a public hearing within 60 days of the written notification. The city shall publish notice of the place, time and subject matter of the public hearing and the city shall also post the property subject to the application to indicate that a demolition permit has been requested. The city will mail written notice to the applicant and the record owners of the property subject to the application. If the address of the property owner is not a matter of record, any failure to send notice by mail does not invalidate any proceedings on the permit application. The city will mail written notice to recognized neighborhood associations within 300 feet of the subject property.

(7) Parties at the hearing shall be limited to:

(a) Applicants;

(b) Owners and occupants of the subject property;

- (c) Owners and occupants of adjacent properties;
- (d) Neighborhood associations covering or within 300 feet of the subject property;
- (e) Other persons who so request and whom the Commission determines have due cause to be considered parties; and
- (f) The city.

(8) The purpose of the public hearing is for the Commission to decide whether a 120-day demolition review period shall be invoked. In order to foster discussion and possible resolution of issues between the city and the applicant the Commission may postpone the issuance of its decision if agreed to in writing by the applicant.

(a) To invoke the 120-day review period, the Commission must find that, in considering the public interest, it is preferable the structure be preserved or rehabilitated rather than demolished. Factors for consideration include:

(i) the structure's historic, architectural, engineering or cultural significance;

(ii) the structure's potential to contribute to the city's economic development or tourism industry;

(iii) the structure's potential to enhance the city's heritage and historical identity;

(iv) whether the structure is unique or one of the last remaining examples of its kind in the neighborhood, the city or the region; and

(v) the structure's condition.

(b) Upon a determination by the Commission that the 120-day review period is to be invoked, the Commission shall notify the Chief Building Official and applicant in writing. No permit for demolition, new construction or alterations on the premises shall be issued for a period of 120 days from the date of the determination. If the Commission does not notify the Chief Building Official in writing within 21 days of the public hearing that the review period is to be invoked, the Chief Building Official may issue the demolition permit.

(c) No permit for demolition of a structure determined to be subject to a review period shall be granted until all plans for future use and development of the site have been filed with the Chief Building Official and have been found to comply with all laws pertaining to the issuance of a building permit, or, if for a parking lot,

a certificate of occupancy for that site. All approvals necessary for the issuance of such building permit or certificate of occupancy including without limitation any necessary zoning variances or special permits must be granted and all appeals from the granting of such approvals must be concluded, prior to the issuance of a demolition permit under this section.

(d) A "Determination of No Feasible Alternative" may be issued during the public hearing if the Commission finds that, as to a structure that otherwise meets the requirements for the 120-day demolition review period, there is no feasible alternative to demolition.

(e) If the Commission determines that the 120-day review period is not to be invoked, the Commission shall so notify the Chief Building Official and applicant in writing. The Chief Building Official may then issue the demolition permit.

(9) The Chief Building Official may issue a demolition permit or a building permit upon expiration of the 120-day review period, and if a City Landmark designation has not been initiated or some other means of preserving the structure intact has not been agreed to in writing by the Commission and the applicant.

(10) During the demolition review period, the city and/or Commission staff may take any action that it deems necessary and consistent with this section to preserve the structure, including, without limitation, consulting with groups, public agencies, and interested citizens; recommending acquisition of the property by private or public bodies or agencies; exploring the possibility of moving structures that would otherwise be demolished; and salvaging significant or distinctive architectural materials or artifacts prior to demolition. During the review period the Landmarks and Urban Conservation Commission shall provide for the documentation of the structure.

(11) If after an inspection, the Chief Building Official finds that a structure subject to this article poses an immediate threat to public health or safety due to its deteriorated condition and that there is no reasonable alternative to the immediate demolition of the structure, then the Chief Building Official may issue an emergency demolition permit to the owner of the structure. The Chief Building Official shall then prepare a report explaining the condition of the structure and the basis for his decision, which shall be forwarded to the Commission.

(12) The Commission may adopt such rules and regulations as are necessary to administer the terms of this article. The Commission is authorized to adopt a schedule of reasonable fees to cover the costs associated with the administration of this article.

(Ord. 2012-005)

**§ 14-12-10 NOTICE AND PROCEDURES FOR PUBLIC HEARINGS.**

(A) The Commission shall announce the time and place of the public hearing in a public notice in a daily newspaper of general circulation in the city at least 15 days before the date of the hearing. The notice shall give the location of the property and the place where copies of the application may be examined.

(B) For any public hearing held by the Commission relating to landmark designation or a Certificate of Appropriateness the applicant must post and maintain one or more signs, as provided and where instructed by the city staff designated by the Mayor, at least 15 days before the date of the hearing. The applicant is responsible for removing such signs within five days after the hearing is completed. Failure to properly post signs is grounds for deferral or denial of the application. No one except the applicant or an agent of the applicant or the city shall remove or tamper with any such required sign during the period it is required to be maintained under this division (B).

(C) Prior to filing an application, the applicant shall notify neighborhood associations covering the subject site or adjacent premises of their proposal; notice by certified letter, return receipt requested, is normal. See § 14-8-2-7.

(D) For any public hearing, the city staff designated by the Mayor shall mail written notice not less than six days prior to the date of the hearing to the applicant, to the owner if he is not the applicant, and to all persons filing written requests for such notice. For this purpose, the last known name and address of the owner shown in the records of the County Assessor shall be considered to be the owner.

(E) General procedure for Commission hearing on landmark designation or certificate of appropriateness.

(1) The following persons shall be named parties by the Commission:

- (a) Applicants;
- (b) Owners and occupants of the subject property;
- (c) Owners and occupants of adjacent properties who timely request to be made parties;
- (d) Neighborhood associations covering the subject property if they timely request to be made parties; and
- (e) Other persons who so request and whom the Commission determines have due cause to be considered parties.

(2) A party shall be afforded an opportunity to present evidence and

argument and to question witnesses on all relevant issues. However, the Commission chairman may impose reasonable limitations on the number of witnesses heard and on the nature and length of their testimony and cross-examination.

(3) Any person who communicates outside a hearing with a member of a Commission concerning a filed application pending hearing or decision by the Commission shall do so only in printed materials and shall supply copies of said printed communications to the record, to any neighborhood association entitled to be a party, and to all parties; the copies shall be distributed at least five days before the next hearing, and there shall be no communication after the five day deadline until the public hearing.

(4) All testimony shall be under oath or affirmation.

(5) No member of the Commission shall inspect the site with any party or representative of a party.

(F) An advertised hearing may be continued to a time and place announced at the hearing without advertising or reposting of signs.

(G) The Commission may prescribe regulations pertaining to the submission of documentary evidence into the record of any application prior to the advertised hearing date for said application.

('74 Code, § 7-5-9) (Ord. 22-1978; Am. Ord. 4-1985; Am. Ord. 51-1991; Am. Ord. 2012-005)

#### **§ 14-12-11 APPEALS.**

(A) The applicant or any person aggrieved by decision of city staff may appeal the decision of the city staff designated by the Mayor relative to a Certificate of Appropriateness to the Commission. The applicant or any person aggrieved by decision of the Commission may appeal the decision to the City Council. Any city staff or Commission decision is final unless appeal is initiated by application to the city within 15 days of the decision. The date of determination is not included in the 15-day period for filing an appeal, and if the 15th day falls on a Saturday, Sunday, or holiday as listed in § 3-1-12, the next working day is considered as the deadline for filing the appeal. A building permit dependent on a case shall not be issued and a proposed project not requiring a building permit shall not be initiated until an appeal is decided or the time for filing the appeal has expired without an appeal being filed.

(B) *Acceptance.*

(1) The City Council, after consideration of the appeal record, may decline to hear an appeal if it finds that all adopted city plans, policies, and ordinances have been properly followed. If it decides that there is a substantial question that all such city plans, policies, and ordinances have not been properly followed or are inadequate, it shall hear the appeal.

(2) By the affirmative vote of the majority of all its members, the City Council may remand an appeal to the Commission for rehearing and decision if it finds that rehearing would be likely to serve public policy and resolve the appeal.

(3) The Commission shall hold a public hearing and make a decision relative to all appeals sent to it initially or remanded to it by the City Council.

(4) No public advertising or announcement of appeals is required beyond that specified in division (C)(2) of this section.

(5) By the affirmative vote of the majority of all its members, the City Council may approve the withdrawal of an appeal if it has received a written request to this effect from the appellant.

(C) *Hearing and Decision.*

(1) An appeal shall be heard within 60 days of its filing. Decision shall be following a public hearing.

This hearing shall review carefully the decisions on the matter.

(2) City staff designated by the Mayor shall give written notice of an appeal, together with a notice of the date, time and place of hearing to the applicant, the owner, a representative of the opponents, if any are known, and the appellant.

(3) A concurring vote of a simple majority of the City Council is required to reverse a determination of the Commission.

(4) General procedure for appeal hearing is as follows:

(a) The appellate body may hold a public hearing on the entire record sent to it and reverse, affirm, or modify the decision appealed.

(b) If it appears to the appellate body that some additional evidence is necessary for the proper disposition of the matter, it may allow evidence to be taken.

(c) The appellate body may remand the matter for reconsideration; if the appellate body remands the appeal, it shall state specifically the matters to be reconsidered and the reasons for remand on which that action is based.

(d) The presiding officer may impose reasonable limitations on the number of witnesses heard and on the nature and length of their testimony and cross-examination.

(e) In addition to appearing before the body, any party to an appeal may provide written argument to the appellate body by submitting it through the staff of that body. The written argument shall not include new evidence and shall be submitted at least five days before the next hearing on the appeal with copies provided to any neighborhood association entitled to notice in the case and to all parties. Any appellate body may, by rule or regulation, increase the five day period. There should be no other communication, outside a hearing, with a member of an appellate body concerning a pending appeal. Any other communication that does occur shall be disclosed by the member of the appellate body who receives the communication.

(5) All testimony at the appeal shall be under oath or affirmation.

(6) No member of the appellate body shall inspect the site with any party to the appeal or his representative

(7) In hearing an appeal, the City Council shall state the key findings of fact.

(D) *Judicial Review.* The exclusive remedy for parties dissatisfied with the action of the City Council shall be a filing of a petition for Writ of *Certiorari*. The petition shall be presented to the District Court within 30 days after the Council decision is entered into the records of the Council meeting. The petition for review shall be limited to the record made on the public hearings held pursuant to this article.

('74 Code, § 7-5-10) (Ord. 22-1978; Am. Ord. 4-1985; Am. Ord. 51-1991; Am. Ord. 33-2008; Am. Ord. 2012-005)

#### **§ 14-12-12 TIME LIMITS.**

Since it is important that decisions be made as rapidly as possible, time limits shall be considered as maximum and every effort shall be made to expedite the process. However, time limits for Council or Commission approval or denial may be extended or shortened if the applicant and the Council or Commission agree in writing. In the event the last day of the time limit falls on a weekend or a legal holiday as defined by § 3-1-12, the time limits shall be extended to include the next working day as well.

('74 Code, § 7-5-11) (Ord. 22-1978; Am. Ord. 4-1985; Am. Ord. 51-1991; Am. Ord. 2012-005)

### **§ 14-12-13 FEES.**

A nonrefundable application fee shall accompany each application, as follows:

(A) Application for designation or rescission of landmark status \$55

(B) *Application for Certificate of Appropriateness.*

(1) Change to a building exterior which requires building permit or demolition permit \$35

(2) Change only to the interior of a building designated a landmark when the change alters an item specified in the general preservation guidelines for the structure or is listed as a distinctive feature of the landmark \$25.

(3) All other no fee.

('74 Code, § 7-5-12) (Ord. 22-1978; Am. Ord. 4-1985; Am. Ord. 83-1989; Am. Ord. 51-1991; Am. Ord. 23-2001; Am. Ord. 30-2002; Am. Ord. 2012-005)

### **§ 14-12-14 CERTIFICATION.**

Upon enactment, the Mayor shall submit a copy of this article to the Secretary of the Interior for certification as an appropriate local government statute for the purpose of U.S. Code Section 191 of the U.S. Tax Reform Act of 1976.

('74 Code, § 7-5-13) (Ord. 22-1978; Am. Ord. 4-1985; Am. Ord. 51-1991; Am. Ord. 2012-005)

### **§ 14-12-99 PENALTY.**

Any person who violates any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to the penalty provisions set forth in § 1-1-99 of this code of ordinances. Each day this article is violated shall be considered a separate offense.

('74 Code, § 7-5-14) (Ord. 22-1978; Am. Ord. 51-1991)

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