

## Chapter 54 - HISTORICAL PRESERVATION<sup>[1]</sup>

### Footnotes:

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**Cross reference—** Buildings and building regulations, ch. 18; consistency and concurrency management system, ch. 30; environment, ch. 42; marine structures, ch. 62; natural resource protection, ch. 66; planning, ch. 86; public improvements, ch. 90; streets, sidewalks and other public places, ch. 106; subdivisions, ch. 110; utilities, ch. 122; vegetation, ch. 126; preservation of historic and specimen trees, § 126-56 et seq.; zoning, ch. 134.

## ARTICLE I. - IN GENERAL

### Sec. 54-1. - Purpose and intent.

It is declared to be a matter of public policy that the protection, enhancement and perpetuation of properties of special, notable, aesthetic or architectural character or historic interest or value is a public purpose and necessity and is required in the interest of health, prosperity, safety and general welfare of the people residing within and without the town. The purpose of this chapter is to:

- (1) Effect and accomplish the protection, enhancement and perpetuation of such properties and of districts that represent or reflect elements of the town's cultural, social, economic, political and architectural history.
- (2) Safeguard the town's historic and cultural heritage, as embodied and reflected in such landmarks and historic districts.
- (3) Stabilize and improve property values.
- (4) Foster civic pride in the beauty and notable accomplishments of the past.
- (5) Protect and enhance the town's attractions to residents and visitors.
- (6) Strengthen the economy of the town.
- (7) Promote the use of historic districts and landmarks for the education, pleasure and welfare of the residents of and visitors to the town.

(Code 1982, § 16-33)

### Sec. 54-2. - Definitions.

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

Alteration means any change because of construction, repair, maintenance or otherwise to a building located within an historic district or designated as a landmark or landmark site.

Applicant means the record owner of the site and/or buildings located thereon, the owner's authorized agent, or a person holding a bona fide contract to purchase same who makes application for a certificate of appropriateness under this chapter joined by the owner of record.

Building means a building or other structure built for the shelter or enclosure of persons, animals or chattels, including fences, signs, paving and boundary walls, and any part of any such building or structure when subdivided by division walls or party walls extending to or above the roof and without openings in such separate walls. The term "building" shall be construed as if followed by the words "or any part thereof."

Certificate of appropriateness means a document evidencing approval of the commission for work proposed by an applicant.

Commission or landmarks commission means the landmarks preservation commission created under this chapter.

Construction means the erection of an on-site improvement to a landmark or to a building or any parcel of ground located within an historic district or on a landmark site, whether the site is presently improved or unimproved, or hereafter becomes unimproved by demolition, demolition by neglect or as a result of destruction of an improvement located thereon by fire, windstorm or other casualty, or otherwise (such a parcel of ground being herein referred to as a "site").

Demolition means the complete or constructive removal of a building or any portion thereof on any site.

Demolition by neglect means neglect in the maintenance of any building, resulting in any one or more of the following:

- (1) The deterioration of a building to the extent that it creates or permits a hazardous or unsafe condition as determined by the building official.
- (2) The deterioration, as determined by the building official, of a building characterized by one or more of the following:
  - a. Those buildings which have parts thereof that are so attached that they may fall and injure persons or property.
  - b. Deteriorated or inadequate foundation.
  - c. Defective or deteriorated floor supports or floor supports insufficient to carry imposed loads with safety.
  - d. Members of walls or other vertical supports that split, lean, list or buckle due to defective material or deterioration.
  - e. Members of walls or other vertical supports that are insufficient to carry imposed loads with safety.
  - f. Members of ceilings, roofs, ceiling and roof supports, or other horizontal members that sag, split or buckle due to defective material or deterioration.
  - g. Members of ceilings, roofs, ceiling and roof supports or other horizontal members that are insufficient to carry imposed loads with safety.
  - h. Fireplaces or chimneys that list, bulge or settle due to defective material or deterioration.
  - i. Any fault, defect or condition in the building that renders the same structurally unsafe or not properly watertight.
  - j. Unsafe electrical and/or mechanical conditions.
- (3) Action by the town council, the fire-rescue chief or the building official based upon the safety or physical condition of any building.

Earthworks means any subsurface remains of historical, archaeological or architectural importance or any unusual ground formations of archaeological significance.

Exterior means all outside surfaces of a building.

Historic district means an area identified by the commission that contains one or more landmarks or landmark sites as well as those abutting sites the commission determines should fall under the provisions of this chapter to assure that their appearance and development is harmonious with such landmarks and landmark sites.

Landmark and landmark site means an unimproved parcel of ground, including, without limitation, earthworks (landmark site) or a parcel of ground with improvements (landmark), wheresoever located in the town of particular historic, architectural or cultural significance, which landmark or landmark site meets the criteria set forth in section 54-161.

Minor exterior change means an exterior change the cost of which does not exceed \$2,000.00 as determined by the building official and is determined by the landmarks project coordinator to not materially affect the exterior of the structure.

Ordinary repairs or maintenance means work done to prevent deterioration of a building or to correct any deterioration or decay of or damage to a building or any part thereof by restoring the building as nearly as practicable to its condition prior to such deterioration, decay or damage.

Owner of record means as reflected on the current county tax roll.

(Code 1982, § 16-34)

**Cross reference**— Definitions generally, § 1-2.

Sec. 54-3. - Deterioration by neglect.

- (a) If the commission determines that a landmark is in the course of deteriorating by neglect, it shall notify the owner of record of such preliminary finding stating the reason therefor and shall give the owner of record 30 days from the date of notice in which to commence work rectifying the evidences of neglect cited by the commission. Such notice shall be accomplished in the following manner:
  - (1) By certified mailing to the last known address of the owner of record.
  - (2) If the procedure outlined in subsection (a)(1) of this section is not successful, then by attaching such notice to the landmark twice within a week.
- (b) Upon the owner of record's failing to commence work within 30 days of such notice, the commission shall notify the owner of record in the manner provided in subsection (a) of this section to appear at the next public hearing of the commission. The commission shall cause to be presented at that public hearing the reasons for the notice, and the owner of record shall have the right to present any rebuttal thereto. If thereafter the commission shall determine that the landmark is deteriorating by neglect, the commission shall inform the town council of its determination, whereupon the town council may bring charges against the owner of record for violation of this chapter; and the town council may cause such landmark to be repaired at its expense at such time as funds are appropriated therefor, in which event the town may file an affidavit of the building official to such effect in the office of the county recorder of deeds, which shall operate to create, to the extent it may lawfully do so, a lien against the property for the funds so expended by the town.

(Code 1982, § 16-44)

Sec. 54-4. - Enforcement.

The code enforcement board shall enforce the provisions of this article and, upon conviction, the violator shall pay as provided in chapter 2, article V for each day the violation continues.

(Code 1982, § 16-47)

Secs. 54-5—54-35. - Reserved.

## ARTICLE II. - LANDMARKS PRESERVATION COMMISSION<sup>[2]</sup>

Footnotes:

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**Cross reference**— Boards and commissions, § 2-306 et seq.

Sec. 54-36. - Created; appointment; qualifications; terms; compensation; filling vacancies; reappointment.

- (a) A landmarks preservation commission is created consisting of seven members. At least two members, but not more than three members, of such commission shall be registered architects in the state. In the event there are, in the discretion of the town council, no bona fide applicants who are registered architects in the state, the town may solicit and appoint architects registered outside the state to fill one of the architect seats. A majority of the members shall have, to the highest extent practicable, a special knowledge of and a known interest in landmarks preservation. Each member shall be a registered voter in the town, however, one member may be a non-resident of the town in the event it is determined by the town council that said individual has a special expertise in historic landmarks preservation. Each member other than the individual, if any, appointed by the town council as an expert, shall be a registered voter in the town. The members shall serve staggered terms of three years, and each will serve without compensation, except in the event of the appointment of an outside expert who will serve a term of only one year, but who may be reappointed by the town council on an annual basis. Each member shall serve without compensation. The town council shall appoint the members. If a vacancy shall occur otherwise than by the expiration of a term, it shall be filled by the town council for the unexpired term.
- (b) A member shall not be appointed for more than two consecutive three-year terms but shall be eligible for reappointment upon the lapse of nine months after the expiration of the member's second consecutive three-year term.

(Code 1982, § 16-35; Ord. No. 12-95, § 1(a), 9-12-95; Ord. No. 8-99, § 1, 11-9-99; Ord. No. 7-00, § 1, 6-13-00; Ord. No. 6-01, § 1, 4-10-01; Ord. No. 19-01, § 1, 10-9-01; Ord. No. 19-2013, § 1, 10-8-13)

Sec. 54-37. - Alternate members.

- (a) Appointment. The town council may, in its discretion, appoint three alternate members with similar qualifications who shall serve when called upon the chair of the commission in the absence of any regular members.
- (b) Attendance requirements. Alternate members are required to attend all meetings of the commission and are subject to the same attendance requirements, as regular members with the same provisions relating to excused absences being applicable.
- (c) Voting. Alternate members shall not vote on any matter unless they are sitting to fill the position of a regular member of the commission in the event of absence or in the event of a conflict of interest;

however, alternate members may participate in the discussion of matters coming before the commission whether they are sitting as a voting member or not.

- (d) Terms of office. Although an alternate member may not serve more than two three-year terms as an alternate, an alternate member may be appointed to serve as a regular member of the commission and, in the event of such appointment, shall be entitled to serve two full three-years terms thereafter.

(Code 1982, § 16-35; Ord. No. 12-95, § 1(b), 9-12-95; Ord. No. 8-99, § 2, 11-9-99; Ord. No. 6-01, § 2, 4-10-01)

Sec. 54-38. - Removal provisions; absences; conflicts of interest.

- (a) All members of the commission, including alternates, serve at the pleasure of the town council and may be removed from the commission with or without cause. Members of the commission shall be automatically removed for lack of attendance, which is defined as failure to attend three regularly scheduled meetings in any one calendar year. Excused absences due to illness, a death in the family, religious holidays and requirements of legal process shall not constitute lack of attendance. The member shall notify the director of planning, building and zoning office in writing of the board member's intended absence at least seven business days prior to the regularly scheduled meeting. Failure to do so, absent an emergency which prevents timely notice, will cause the absence to be unexcused. Excused absences shall be entered into the minutes at the next regularly scheduled meeting of the commission after the absence. A member may petition the town council, in the event of extenuating circumstances, to excuse an absence otherwise not automatically excused pursuant to the provisions of this article.
- (b) In the event of excessive conflicts of interest during any one calendar year, the commission member shall be automatically removed from the commission by the town council or, in the event of excessive conflicts of interest during any one term, a commission member may not be reappointed to a successive term. Excessive conflicts of interest are defined as five or more conflicts of interest in any one calendar year. Continuing conflicts of interest on a single application, once declared, shall not be counted as additional conflicts of interest. This rule shall apply from the date of adoption to the end of the 2013 calendar year and shall be applicable, thereafter, on a calendar year basis.
- (c) If a member of the commission has a conflict of interest resulting from that member or the member's firm representing an applicant before the commission, it shall be the duty and obligation of the member having the conflict to comply with the following requirements:
  - (1) Notification of the conflict of interest shall be noted on the application form at the time of the submission of the application. The conflict will be identified on the commission agenda.
  - (2) The member having the conflict of interest shall not participate in the discussion and shall leave the chamber until the item is concluded.
  - (3) The member having the conflict shall not present the project to the commission, except in a case where the commission member is a sole practitioner who is unable to represent a client through an associate.

(Code 1982, § 16-35; Ord. No. 12-95, § 1(c), 9-12-95; Ord. No. 8-99, § 3, 11-9-99; Ord. No. 18-04, § 4, 10-1-04; Ord. No. 13-09, § 5, 7-14-09; Ord. No. 19-2011, § 1, 9-13-11; Ord. No. 9-2013, § 1, 7-9-13)

Sec. 54-39. - Officers, rules of procedure for commission.

The commission shall elect a chair and a vice-chair and may adopt rules for the conduct of its meetings. Four voting members of the commission shall constitute a quorum; however, the affirmative or negative vote of a majority of the entire membership of the commission shall be necessary for it to take action. In

cases of emergency, if a quorum cannot be obtained, the chair, or vice-chair in his absence, and one other member of the commission may act to prevent an imminent or irreparable violation of the provision of this chapter.

(Code 1982, § 16-36; Ord. No. 19-2011, § 2, 9-13-11)

Sec. 54-40. - Commission enforcement powers.

- (a) In the performance of their duties, members of the commission or their designees shall have the right to enter upon properties in the town at reasonable times and upon reasonable notice to the owners thereof.
- (b) Upon request of the commission, the building official shall aid the commission in making necessary inspections in connection with the enforcement of this chapter, shall furnish the commission with copies of reports of his inspections, and shall send notices to all persons who may be in violation of the provisions of this chapter to inform them of such violations.
- (c) Failure to comply with the provisions of this chapter shall constitute a violation hereof, and the violator shall be prosecuted under the provisions of chapter 2, article V of this Code.

(Code 1982, § 16-45)

Sec. 54-41. - Appeals and review.

The applicant or any interested party may file an appeal to the town council on any ruling by the commission or the building official made pursuant to this chapter. The appeal shall take the form of a letter addressed to the town clerk and shall be based upon the record. The appeal shall be filed or made within ten days. Appeals shall set forth the alleged inconsistency or nonconformity with procedures or criteria set forth in this chapter. The town council shall decide an appeal within 45 days of the filing of such appeal unless an extension of time is consented to by the applicant, and such filing shall suspend any building permit issued pursuant to the ruling of the commission or building official until the town council has decided the appeal. The town council may review any decision of the commission or the building official, and their disposition of the matter shall be final. Appeals filed pursuant to this section shall be based on the record of the proceedings below and shall not be presented de novo. The time allotted for presentation of an appeal shall be determined by the town council president.

(Code 1982, § 16-46; Ord. No. 6-06, § 1, 7-11-06; Ord. No. 15-2014, § 1, 10-14-14)

Secs. 54-42—54-70. - Reserved.

### ARTICLE III. - CERTIFICATE OF APPROPRIATENESS

#### DIVISION 1. - GENERALLY

Sec. 54-71. - Required.

- (a) No landmark nor any building or site planning feature, including but not limited to landscaping, garden walls, pools, fountains, etc., on a landmark site or within an historic district shall be erected, altered, restored, moved or demolished until after an application for a certificate of appropriateness as to exterior architectural features has been submitted to and approved by the commission. Similarly, if earthworks of historical or archaeological importance exist in an historic district, or on a landmark site,

there shall be no excavating or moving of earth, rock or subsoil in or about such earthworks without a certificate of appropriateness. For the purpose of this article, "exterior architectural features" shall include but not be limited to the architectural style, scale, general design and general arrangement of the exterior of a building, including the kind and texture of the building material and type and style of roofs, windows, doors and signs. The style, scale, design, materials and location of advertising signs and bill posters on a landmark site or within an historic district, if located or plainly visible from out-of-doors, shall be under the control of the commission.

- (b) The commission shall not consider interior arrangement or use, except as this may affect a request for exterior changes.
- (c) Nothing in this article shall be construed to prevent ordinary maintenance or repairs that do not involve a change of design or material or that do not affect the outward appearance of a building.
- (d) The commission shall exercise only those powers and duties granted by this article and those powers and duties that may be assigned to it at a later date by the town council.
- (e) For an exterior change project consistent with division 3 of this article, a determination may be made that this is a minor exterior change and the requirement of a certificate of appropriateness may be waived. Such determination shall be made by the landmarks project coordinator, with the concurrence of the chair or such other member of the commission as may be designated by the commission, who will so advise the building official, who may then issue a building permit.
- (f) An exterior change project determined by the landmarks project coordinator to be inappropriate, potentially controversial or precedent setting shall be submitted by the staff to the commission for review. No exterior change project with an estimated expenditure exceeding \$2,000.00 as determined by the building official shall fall within the definition of this minor project category.
- (g) Review of minor exterior change projects for which certificates of appropriateness have been waived will be reviewed quarterly by the commission.

(Code 1982, § 16-37)

Secs. 54-72—54-90. - Reserved.

## DIVISION 2. - PROCEDURES AND EFFECT

Sec. 54-91. - Design guidelines.

The commission shall prescribe the procedure for making application for a certificate of appropriateness and may develop design guidelines necessary to provide a framework for studying plans submitted.

(Code 1982, § 16-40(a))

Sec. 54-92. - Preliminary conference.

The applicant for a certificate of appropriateness shall, upon request, have the right to a preliminary conference with a member of the commission or of the commission staff for the purpose of making any changes or adjustments to the application that might be more consistent with the commission's standards.

(Code 1982, § 16-40(b))

Sec. 54-93. - Public hearing; notice.

The commission shall hold a public hearing upon each application for a certificate of appropriateness affecting property under its control. Notice of the time and place of the hearing shall be provided as follows:

- (1) Publication in a newspaper having general circulation in the town at least 15 days before such hearing and by posting such notice on the bulletin board in the lobby of the town hall.
- (2) Mailing at least 15 days prior to the date of such public hearing to the applicant and property owners within a 250-foot radius of the subject property. Such list of property owners, together with a notification map, shall be provided by the applicant along with addressed and properly stamped envelopes and shall be certified by the applicant as being true and accurate.

(Code 1982, § 16-40(c); Ord. No. 15-08, § 1, 5-12-08)

Sec. 54-94. - Commission action.

Within not more than 30 days after a hearing on an application for a certificate of appropriateness, the commission shall act upon it, either approving, denying or deferring action until the next meeting of the commission, giving consideration to the factors set forth in division 3 of this article. Evidence of approval of the application shall be by certificate of appropriateness issued by the commission, valid for a period not to exceed one year from date of issuance, and whatever its decision, a notice in writing shall be given to the applicant and the building official. The commission shall keep a record of its actions under this division.

(Code 1982, § 16-40(d))

Sec. 54-95. - Certificate required for exterior changes.

- (a) No building permit for exterior changes shall be issued by the building official that affects a building or site in an historic district or a landmark or a landmark site or a property under consideration for landmark designation without a certificate of appropriateness, except for those changes specifically exempted under the provisions of section 54-71(e).
- (b) The commission shall have the right to make such recommendations for changes and modifications as it may deem necessary in order to enable the applicant to meet the requirements.

(Code 1982, § 16-40(e), (f))

Sec. 54-96. - Emergency demolition or repairs.

Nothing contained in this division shall prevent the demolition or making of any temporary construction, reconstruction, or other repairs on a landmark, landmark site or a building in an historic district pursuant to the order of any governmental agency or a court of competent jurisdiction for the purpose of remedying emergency conditions determined to be dangerous to life, health or property, as determined by the building official, provided that in case of demolition prior notice of such action shall be given to the commission.

(Code 1982, § 16-40(g))

Sec. 54-97. - Variances authorized.

Where by reason of topographical conditions or irregularly shaped lots, or because of unusual circumstances applicable solely to the particular applicant strict enforcement of the provisions of this article would result in serious undue hardship particularly affecting an applicant for a certificate of appropriateness,



the commission, in passing upon his application, shall have the power to vary or modify adherence to this chapter provided always that its requirements ensure harmony with the general purposes of this chapter and will not adversely affect an historic district, landmark or landmark site. Guidelines for the application of this section may be developed by the commission.

(Code 1982, § 16-40(h))

Sec. 54-98. - Stop work order authorized.

If work is being performed not in accordance with a certificate of appropriateness, the building official or his designated representative shall issue a stop work order, and all work shall cease. No person shall undertake any work on such project as long as such stop work order shall continue in effect.

(Code 1982, § 16-40(i))

Secs. 54-99—54-120. - Reserved.

### DIVISION 3. - CRITERIA FOR ISSUANCE

Sec. 54-121. - Generally.

In passing upon an application for a certificate of appropriateness, the commission shall consider the criteria in this division.

(Code 1982, § 16-41)

Sec. 54-122. - New construction.

- (a) The following aspects of new construction shall be visually compatible with the buildings and environment with which the new construction is visually related:
  - (1) The height, the gross volume, and the proportion between width and height of the facade;
  - (2) The proportions and relationships between doors and windows;
  - (3) The rhythm of solids to voids created by openings in the facade;
  - (4) The materials used in the facade;
  - (5) The texture inherent in the facade;
  - (6) The colors, pattern and trim used in the facade; and
  - (7) The design of the roof.
- (b) Existing rhythm created by existing building masses and space between them should be preserved.
- (c) The landscape plan should be sensitive to the individual building and its occupants and needs and should be visually compatible with the buildings and environment with which it is visually related.
- (d) A new street facade should blend directionally with other buildings with which it is visually related; which is to say, when adjacent buildings have a dominant horizontal or vertical expression, that expression should be carried over in the new facade.
- (e) Architectural details should be incorporated as necessary to relate the new with the old and to preserve and enhance the inherent architectural characteristics of the area.

(Code 1982, § 16-41(a))

Sec. 54-123. - Exterior alterations.

- (a) The criteria set forth in section 54-122, if applicable, shall be considered in passing upon an application for exterior alterations; provided that the commission may consider the original design of the building and the buildings visually related to it and disregard alterations subsequently made thereto.
- (b) Exterior alterations shall not affect the architectural quality or historical character of the building.

(Code 1982, § 16-41(b))

Sec. 54-124. - Signs.

For signs located or plainly visible from out-of-doors, the scale, design, materials, style and patterns should be compatible with the buildings and environment with which they are visually related.

(Code 1982, § 16-41(c))

Sec. 54-125. - Demolition.

- (a) Generally. For demolition of a landmark or a building in an historic district, the following should be considered:
  - (1) The historic or architectural significance of the building.
  - (2) The importance of the building to the overall ensemble of buildings within the district and the importance of the building to the integrity of the historic district.
  - (3) The special character and aesthetic interest the building adds to the district.
  - (4) Whether the building is one of the last remaining examples of its kind in the neighborhood, historic district or city.
  - (5) The difficulty or the impossibility of reproducing such a building because of its design, texture, material, detail, or uniqueness of location.
  - (6) The future utilization of the site and the effect those plans for the site will have on the architectural, historical, archaeological, social, aesthetic or environmental character of the surrounding area and district.
  - (7) Whether reasonable measures can be taken to save the building from further deterioration, collapse, arson, vandalism or neglect.
- (b) Partial demolition.
  - (1) In the event of a request for a partial demolition, in addition to the above criteria, the commission shall consider the impact of the proposed demolition on the architectural and historical integrity of the remaining structure.
  - (2) If a determination is made by the commission that a demolition permit will not be granted on the basis of those items specified in subsection (a) of this section, the applicant may within 30 days of notice of the decision of the commission apply for an exception of extreme economic hardship on the basis that the denial of the permit will result in the loss of all reasonable and beneficial use of or return from the property.
- (c) Appeals on grounds of extreme economic hardship. When a claim of extreme economic hardship is presented, the property owner/applicant must prove he cannot realize any reasonable and beneficial use of or return from the property. The finding of the commission shall be made by considering, and

the property owner/applicant may submit to the commission, evidence establishing each of the following factors:

- (1) The current levels of economic return on the property as considered in relation to the following:
  - a. For all property:
    1. Real estate taxes for the previous four years and the assessed value of the land and improvements thereon according to the two most recent assessed valuations.
    2. The amount paid for the property and the date of purchase of the property or other means of acquisition of title, such as by gift or inheritance, and the party from whom purchased or otherwise acquired.
    3. The fair market value of the property immediately prior to its designation as a landmark and/or designation of the historic district and the fair market value of the property (in its protected status as a landmark or contributing structure within an historic district) at the time the application for certificate of appropriateness is filed.
    4. Remaining balance of any mortgage or other financing secured by the property and the annual debt service, if any, for the previous two years.
    5. All appraisals obtained within the previous two years by the property owner/applicant in connection with the purchase, financing or ownership of the property.
    6. Any state or federal income tax returns on or relating to the property for the past two years.
    7. Form of ownership or operation of the property, whether sole proprietorship, for-profit or nonprofit corporation, limited partnership, joint venture, or other.
  - b. For income producing property:
    1. Annual gross income from the property for the previous two years.
    2. Itemized operating and maintenance expenses for the previous two years, including proof that adequate and competent management procedures were followed.
    3. Depreciation deduction and annual cash flow, if any, for the previous two years before and after debt service, if any, during the same period.
    4. Proof that efforts have been made by the owner to obtain a reasonable return on this investment based on previous service.
    5. Any other information, including the income tax bracket of the owner, applicant or principal investors in the property, considered necessary by the commission to a determination as to whether the property does yield or may yield a reasonable return to the owners.
- (2) The marketability of the property considered in relation to any listing of the property for sale or rent, price asked, and offers received, if any, within the previous two years, including testimony and relevant documents regarding:
  - a. Any real estate brokers or firms engaged to sell or lease the property.
  - b. Reasonableness of the price or rent sought by the applicant.
  - c. Any advertisements placed for the sale or rent of the property.
  - d. Any contracts for purchase submitted.
- (3) The infeasibility of adaptive or alternative uses for the property that can earn a reasonable economic return for the property as considered in relation to the following:
  - a. A report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any structures on the property and their suitability for rehabilitation.

- b. Estimate from a registered architect or professional engineer of the cost of construction, alteration, demolition or removal, and estimate of any additional cost that would be incurred to comply with the recommendation and decision of the commission concerning the appropriateness of proposed alterations.
  - c. Estimate from a qualified appraiser, with competent credentials, of the market value of the property in the current condition, after completion of the demolition, after completion of the proposed construction, and after renovation of the existing property for continued use.
  - d. In the case of a proposed demolition, the testimony of an architect, developer, real estate consultant, appraiser or other real estate professional experienced in rehabilitation as to the economic feasibility of rehabilitation or use of existing structure on the property.
  - e. Financial proof of the ability to complete the replacement project, which may include but is not limited to a performance bond, a letter of credit, a trust for completion of improvements, or letter of commitment from a financial institution.
  - f. Any other information the applicant feels is relevant to show extreme economic hardship.
- (4) The commission may require that an applicant furnish such additional information that is relevant to its determination of extreme economic hardship and may require that such additional information be furnished under oath. The commission may also furnish additional information as the commission or staff believes is relevant. In the event any of the required information is not reasonably available to the applicant and cannot be obtained by the applicant, the applicant shall file an affidavit specifying the information that cannot be obtained and shall describe the reasons why such information cannot be obtained.
- (5) The commission shall not consider a self-imposed hardship as an extreme economic hardship.

Should the applicant for demolition satisfy the commission that he will suffer an extreme economic hardship if a demolition permit is not recommended, such recommendation shall be made.

- (d) Demolition and construction permits; plans. Following recommendation of demolition, the applicant must seek approval of replacement plans based on the standards set forth in this section, prior to receiving a demolition permit. Replacement plans for this purpose shall include but not be limited to project concept, preliminary elevations and site plans, and adequate working drawings. Once the commission has approved the permit for replacement construction, the demolition permit may be issued without further action. Permits for demolition and construction shall be issued simultaneously if the requirements set forth in this section are met and the property owner/applicant provides financial proof of his ability to complete the project. When the commission recommends approval of demolition of buildings of historic or architectural significance, permits shall not be issued until all plans for the site have received approval from all appropriate town departments.
- (e) Time period for applications. Applications for demolition, which demolition involves more than 50 percent of the cubic footage of a landmarked structure, shall be heard by the commission only during the months of November, December, January, February, March and April.

(Code 1982, § 16-41(d))

Sec. 54-126. - Reconstruction of a nonconforming use building.

The reconstruction of a building legally nonconforming as to use and destroyed by fire, storm or other act of God shall be governed by the provisions of the zoning ordinance, chapter 134 of this Code, except that the commission shall regulate the exterior design of such buildings in accordance with the criteria set forth in section 54-122.

(Code 1982, § 16-41(e))

Secs. 54-127—54-160. - Reserved.

#### ARTICLE IV. - DESIGNATION PROCEDURE

Sec. 54-161. - Criteria for landmarks and landmark sites.

A landmark or landmark site shall meet at least one of the following criteria:

- (1) Exemplifies or reflects the broad cultural, political, economic or social history of the nation, state, county or town.
- (2) Is identified with historic personages or with important events in national, state or local history.
- (3) Embodies distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction or use of indigenous materials or craftsmanship.
- (4) Is representative of the notable work of a master builder, designer or architect whose individual ability has been recognized or who influenced his age.

(Code 1982, § 16-38)

Sec. 54-162. - Creation of historic districts.

- (a) Authorized. For preservation purposes, the commission shall identify geographically defined areas within the town to be designated as historic districts and shall cite the guideline criteria upon which such designation shall be made. An historic district may be designated for any geographic area of particular historic, architectural or cultural significance to the town that:
  - (1) Exemplifies or reflects the broad cultural, political, economic or social history of the nation, state, county or town.
  - (2) Is identified with historic personages or with important events in national, state or local history.
  - (3) Embodies distinguishing characteristics of one or more architectural types, or contains specimens inherently valuable for the study of a period, style or methods of construction or use of indigenous materials or craftsmanship.
  - (4) Is representative of the notable works of one or more master builders, designers or architects whose individual ability has been recognized to have influenced their age.
  - (5) Constitutes a unique area of architecture, landscaping and planning.
- (b) Petition for special historic district category. Following the designation of each landmark or landmark site, the commission may petition the town council for the categorizing of such property as special district H. Following the designation of each historic district, the commission may petition the town council for the categorizing of each property in such district to special district HD.

(Code 1982, §§ 16-38.1, 16-39)

Sec. 54-163. - Commission powers with respect to landmarks, landmark sites and historic districts.

The commission has the power to:

- (1) Designate a building, together with its accessory buildings and its lot of record, or a vacant site or a district as historic and worthy of preservation as a landmark, landmark site or historic district,

as the case may be, within the jurisdiction of the commission, provided such designation is ratified by the town council.

- (2) Recommend appropriate legislation for the preservation of any building, site or district which it has so designated.
- (3) Make application for public and private funds when appropriate and available for the purposes set forth in this article subject to the approval of the town council.
- (4) Review applications proposing erection, alteration, restoration or moving of any building it has so designated or any building located in a district it has so designated, and to issue or deny certificates of appropriateness accordingly.
- (5) Review applications for demolition permits proposing demolition of all or part of any landmark or any building located in an historic district, and to issue certificates of appropriateness or to deny them for one year.
- (6) Cooperate with the owner of a landmark or a property located in an historic district throughout the year following a refusal to issue a certificate of appropriateness pursuant to an application for a demolition permit, and to seek alternative economic uses for such landmark or property.
- (7) Review its denial of a certificate of appropriateness for demolition of such landmark or property annually, during a public hearing at which time the owner of the affected landmark or property shall be afforded an opportunity to appear with counsel and to present testimony.
- (8) Prohibit the issuance of building, exterior remodeling or demolition permits affecting any property under consideration for landmark designation without a certificate of appropriateness, this prohibition to remain in effect for the length of time required by the commission and the town council for final action on the proposed designation. The commission shall accomplish such prohibition by furnishing the building official a list of all property under consideration for landmark designation.

(Code 1982, § 16-42)

Sec. 54-164. - Landmark, landmark site and historic district designation and undesignation procedures.

- (a) The following procedure shall be adhered to by the commission in designating any building, building site or district that is worthy of preservation:
  - (1) The commission shall consider for landmark designation any property proposed by the owner of record or by a member of the commission.
  - (2) Notice of a proposed designation shall be sent by certified mail to the owner of record of property proposed for designation as a landmark or landmark site and to each owner of record of property in a district proposed for designation as an historic district, describing the property proposed and announcing a public hearing by the commission to consider such a designation to be held not less than 30 days after the mailing of such notice.
  - (3) The commission shall also cause notice of each such proposed designation to be posted at least 30 days prior to the public hearing on the bulletin board in the lobby of the town hall, and in addition the commission shall cause such notice to be published in a newspaper having general circulation in the town.
  - (4) The commission may retain or solicit expert testimony regarding the historic and architectural importance of the buildings and districts under consideration for designation.
  - (5) The commission may present testimony or documentary evidence of its own to establish a record regarding the historic and architectural importance of the proposed landmark, landmark site or historic district.

- (6) The commission shall afford the owner of each affected property reasonable opportunity to present testimony or documentary evidence regarding the historic and architectural importance of such property.
  - (7) The owner of each affected property shall be afforded a right of representation by counsel and reasonable opportunity to cross examine witnesses presented by the commission.
  - (8) Any interested party may present testimony or documentary evidence regarding the designation of a proposed landmark, landmark site or historic district at the public hearing and may submit to the commission documentary evidence within three days after the hearing.
  - (9) Within not more than 30 days after a public hearing, the commission shall render a final decision regarding the proposed designation and give written notice of its decision to each owner of property affected by the designation, setting forth the reasons for the decision.
  - (10) The commission shall maintain a record of testimony and documentary evidence submitted to it for consideration of the designation of a proposed or previously designated landmark, landmark site or historic district.
  - (11) In accordance with section 54-163(1), the town council shall, within 90 days of the commission's final decision, hold a public hearing to consider ratification of the determination of the commission prior to the designation of a property as a landmark or landmark site or of a district as an historic district becoming effective. Absent ratification by the town council, the commission's determination shall be ineffective.
  - (12) Within 30 days of the date on which the town council ratifies the commission's designation of a landmark, landmark site or historic district, the commission shall cause to be filed in the office of the county recorder of deeds a certificate of notification that such property is designated a landmark or landmark site or is located within a district designated an historic district; and the certificate of notification shall be maintained on the public record until such time as such designation may be withdrawn by the commission and the town council.
- (b) Designation and undesignation hearings before the commission shall be held only during the months of November, December, January, February, March and April.
  - (c) Designation of a landmark, landmark site or a historic district may be withdrawn by following the same procedure as listed above.

(Code 1982, § 16-43)

Sec. 54-165. - Voluntary restrictive covenants.

The owner of any landmark or landmark site may, at any time following the designation of his property, enter into a restrictive covenant on the property after negotiation with the commission. The commission may assist the owner in preparing such a covenant in the interest of preserving the landmark or the landmark site. The owner shall record such covenant in the office of the county recorder of deeds and shall notify the town clerk, building official and town council and may notify the office of the county property appraiser of such covenant and the conditions thereof.

(Code 1982, § 16-48)

Secs. 54-166—54-195. - Reserved.

ARTICLE V. - TAX EXEMPTIONS<sup>31</sup>

Footnotes:

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**Cross reference**— Taxation, ch. 114.

Sec. 54-196. - Scope of tax exemptions.

A method is hereby created for the town council to allow tax exemptions for the restoration, renovation or rehabilitation of historic properties. The exemption shall apply to 100 percent of the assessed value of all improvements to historic properties that result from restoration, renovation or rehabilitation made on or after the effective date of this section. The exemption applies only to taxes levied by the town. The exemption does not apply to taxes levied for the payment of bonds or to taxes authorized by a vote of the electors pursuant to Fla. Const., art. VII, § 9(b) or § 12. The exemption does not apply to personal property.

(Code 1982, § 16-49(a))

Sec. 54-197. - Duration of tax exemptions.

Any exemption granted under this article to a particular property shall remain in effect for ten years, as specified in the ordinance approving the exemption. The duration of ten years shall continue regardless of any change in the authority of the town to grant such exemptions or any changes in ownership of the property. In order to retain an exemption, however, the historic character of the property, and improvements which qualified the property for an exemption, must be maintained over the period for which the exemption was granted.

(Code 1982, § 16-49(b))

Sec. 54-198. - Eligible properties and improvements.

- (a) Property is qualified for an exemption under this section if:
- (1) At the time the exemption is granted, the property is:
    - a. Individually listed in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended;
    - b. A contributing property within a National Register listed district; or
    - c. Designated as historic property, or as a contributing property to an historic district, under the terms of this chapter; and
  - (2) The commission has certified to the town council that the property for which an exemption is requested satisfies this subsection.
- (b) In order for an improvement to historic property to qualify the property for an exemption, the improvement must be:
- (1) Consistent with the secretary of the interior's standards for rehabilitation; and
  - (2) Determined by the commission to meet criteria established in rules adopted by the department of state.

(Code 1982, § 16-49(c))



Sec. 54-199. - Applications.

Any person desiring ad valorem tax exemption for the improvement of historic property must, in the year the exemption is desired to take effect, file with the town council a written application on a form approved by the department of state. All applicable fees shall be paid at the time the application is submitted. The application must include the following information:

- (1) The name of the property owner and the location of the historic property.
- (2) A description of the improvements to real property for which an exemption is requested and the date of commencement of construction of such improvements.
- (3) Proof, to the satisfaction of the commission, that the property that is to be rehabilitated or renovated is historic property under this article.
- (4) Proof, to the satisfaction of the commission, that the improvements to the property will be consistent with secretary of interior's standards for rehabilitation and will be made in accordance with the guidelines developed by the department of state.
- (5) Other information identified in appropriate department of state regulations.

(Code 1982, § 16-49(d))

Sec. 54-200. - Required covenant.

To qualify for an exemption, the property owner must enter into a covenant or agreement with the town for the term for which the exemption is granted. The form of the covenant or agreement must be established by the department of state and must require that the character of the property, and the qualifying improvements to the property, be maintained during the period the exemption is granted. The covenant or agreement shall be binding on the current property owner, transferees, and their heirs, successors, or assigns. Violation of the covenant or agreement results in the property owner's being subject to the payment of the differences between the total amount of taxes that would have been due in March in each of the previous years in which the covenant or agreement was in effect had the property not received the exemption and the total amount of taxes actually paid in those years, plus interest on the difference calculated as provided in F.S. § 212.12(3).

(Code 1982, § 16-49(e))

Sec. 54-201. - Review by commission.

The commission or its successor is designated to review applications for exemptions. The commission must recommend that the town council grant or deny the exemption. Such reviews must be conducted in accordance with the rules adopted by the department of state. The recommendation and the reasons therefor must be provided to the applicant and to the town council before consideration of the application at an official meeting.

(Code 1982, § 16-49(f))

Sec. 54-202. - Approval by the town council.

A majority vote of the town council shall be required to approve a written application for exemption. Such exemption shall take effect on the January 1 following substantial completion of the improvement. The town council shall include the following in the resolution or ordinance approving the written application for exemption:

- (1) The name of the owner and the address of the historic property for which the exemption is granted.
- (2) The period of time for which the exemption will remain in effect and the expiration date of the exemption.
- (3) A finding that the historic property meets the requirements of this article.

(Code 1982, § 16-49(g))