
The Oklahoma Main Street

Sample Historic Preservation Ordinance

*A Tool to Reintroduce
Historic Preservation into the Public Forum*

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OKLAHOMA
DEPARTMENT OF COMMERCE

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Introduction

The continued sustainability and vitality of Oklahoma Main Street communities rests upon their ability to successfully leverage their resources. One such resource is the unique historic fabric and character of a community’s downtown commercial district—its Main Street. A community’s historic fabric manifests itself in the buildings and structures that compose its Main Street.

Oklahoma has an uneven history with historic preservation. Many cities have some sort of HPO; others do not.¹ Of those that do, a large number are not consistently enforced. Some communities have enacted an ordinance but failed to actually designate a district; others have procedural problems with their commission’s conduct, exposing the local government to litigation and the possible invalidation of the HPO. The most significant threats to Oklahoma’s historic resources are development and economic pressures, population decline, lack of state and local laws offering protection, misguided “green” initiatives^a, and uninformed, apathetic communities.²

Currently, there are little, if any, macro-economic forces that lead to large-scale reconstruction and redevelopment in many of the commercial districts in rural Oklahoma. But many of Oklahoma’s communities possess highly attractive Main Streets. These resources must be safeguarded.

Each of these threats can be addressed by historic preservation efforts. Historic preservation is not a set of restrictions meant to limit growth and progress. To the contrary, preservation efforts are designed to encourage community revitalization and new development.³ An attractive, well-maintained historic commercial district attracts new businesses, customers, and tourists—all of which lead to increased profits, jobs and tax revenues within the community.⁴ Historic preservation often improves property values by providing prestige, protection from demolition, financial incentives via tax credits, and being a catalyst for or district-wide improvements.⁵ The State of Oklahoma offers a number of incentives and resources to local historic preservation efforts. For example, if a community passes an ordinance satisfying the requirements provided by the State Historic Preservation Office (“SPHO”), the community may become a Certified Local Government (“CLG”) and be eligible to receive an annual matching grant from the SHPO to help strengthen the local preservation program and to take advantage of other benefits.^b

Sustainable design is a pillar of the Main Street approach—accordingly, it is one point of the “Four Point Approach.” Oklahoma Main Street’s current Green Initiative provides a great opportunity for program managers to introduce historic preservation into each town’s discussion. Contrary to popular conception, the greenest building is often the one already standing.⁶ “When you rehabilitate a historic building, you are reducing waste generation. When you reuse a historic building, you are increasing recycling. In fact, historic preservation is the ultimate in recycling.”⁷

A sample Historic Preservation Ordinance follows. Oklahoma Main Street’s primary goal is to provide a tool to help each Main Street Manager reintroduce historic preservation to the public forum. Commentary is included throughout in order to equip each Main Street Manager, city officials, and other stakeholders in each community with sufficient information to participate in an informed discussion.

^a Main Street Architect Larry Lucas will provide a thorough discussion of additional information and examples of successful and sustainable “green” techniques or approaches in the Oklahoma Main Street Design Guidelines.

^b The requirements for CLG status are provided in Appendix B.

Each community faces unique issues, has distinct needs, and operates within a political environment of its own. Accordingly, this sample HPO is presented in three tiers. Each tier, as discussed below, offers additional protection. At a minimum, each community should establish a historic preservation commission empowered to grant or deny demolition proposals (*Tier One*). Eliminating indiscriminate demolition within each Main Street community is vital. Ultimately, Main Street hopes that each community will establish a commission empowered to approve or deny demolitions, new construction, and any significant improvement or rehabilitation within a designated district through a specified review process. In addition, the commission should be empowered to impose enforceable affirmative maintenance requirements to address, among other things, issues presented by absentee ownership, unoccupied buildings, and/or instances of poor exterior maintenance. (*Tier Three*).

Overview

As mentioned above, this sample historic preservation ordinance is broken down into three tiers.^c The different tiers are composed as follows:

Tier One. Under Tier One, a community will adopt the Property Maintenance Code (IPMC) and establish a Demolition Review Board (the Commission). The IPMC addresses most of the aesthetic/maintenance issues facing Main St. districts—e.g., abandonment, neglect, and disrepair. In addition, the ordinance establishes the Commission, empowering it to designate historic districts and landmarks and regulate the demolition of such designated structures. Accordingly, the Commission has one primary duty—protect against, and provide alternatives to, demolition. The Oklahoma Main Street Center realizes that the political environments in some communities are very opposed to a far-reaching ordinance and a Commission with wide-ranging powers.^d While the long-term success of any preservation ordinance likely requires more than just demolition review, the adoption of Tier One is a step in the right direction. And it is far more beneficial than nothing. Accordingly, Oklahoma Main Street recommends Tier One as a bare minimum.

Tier Two. Tier two adds design review authority to Tier One. Under Tier Two, the Commission regulates any substantial work or improvements (new construction, rehabilitations, etc.) of designated structures through the outlined Certificate of Appropriateness process. Design review power is essential to a lasting and successful preservation effort, as it safeguards the district (or individual landmark) as a whole by protecting ensuring a compatible environment. Any Certificate of Appropriateness determination may be appealed to City Council. As in Tier One, the IPMC addresses abandonment, dilapidation and related issues caused by the neglect (intentional or otherwise) of property owners.

Tier Three. Tier Three creates a fully empowered Commission. In addition to the powers provided in Tiers One and Two, the ordinance also includes an affirmative maintenance provision. The Commission is empowered to regulate the maintenance of designated structures in order to protect structural soundness and aesthetic integrity of the district. The ordinance's affirmative maintenance

^c The Commission, like other local government bodies, will be subject to compliance with the Open Meetings Act. It is assumed that the local codes of each individual community will address this for all bodies, including the Commission.

^d Obviously, Oklahoma Main Street does not subscribe to or endorse such fears.

Sample HPO – Tier Three

provision will supersede the IPMC within a designated district. The Oklahoma Main Street Center recommends all communities adopt Tier Three.

Sample Historic Preservation Ordinance with Commentary

TIER THREE

§ 1: Title.

This article shall be known, cited, and referred to as the Historic Preservation Ordinance.

§ 2: Purpose.

It is hereby declared as a matter of public policy that the protection, enhancement, perpetuation and use of structures and districts of historical, architectural, geographic, cultural and aesthetic significance is a public necessity and is required in the interest of the health, prosperity, safety and welfare of the people.

❖ *The Ordinance should contain a purpose clause clearly establishing the municipality's reasons for enacting the Ordinance.⁸ Improper recitation (either providing irrelevant purposes or purposes outside the scope of the municipality's power) could invite an attempt to invalidate the Ordinance.⁹ Acceptable reasons for adopting a Historic Preservation Ordinance generally fall into the following four categories: economic, educational or cultural, social, and aesthetic.¹⁰*

The purpose of this chapter is to:

- 2.1 Preserve, protect, enhance and perpetuate certain resources which reflect elements of cultural, artistic, social, economic, political, architectural, engineering, historic or other heritage by reviewing the appropriateness of proposed alterations to existing resources, by controlling indiscriminate erection of new improvements and by fostering proper maintenance and repair of existing resources;
- 2.2 Promote the continuing use of such resources within the City, thereby serving as a stimulus and support to business and industry;
- 2.3 Promote and encourage continued private ownership and utilization of resources to the end that the objectives listed herein can be attained;
- 2.4 Safeguard the City's historic, aesthetic and cultural heritage, as embodied and reflected in such landmarks and districts;
- 2.5 Foster, preserve and encourage harmonious architectural styles and signage, reflecting the distinct history of the City;
- 2.6 Strengthen the economy of the City.

It is the sense of the council that the economic, cultural and aesthetic standing of this City cannot be maintained or enhanced by disregarding the historic, architectural and geographic heritage of the City and by ignoring the destruction or defacement of such cultural assets.

- ❖ *Oklahoma law offers limited guidance in the field of historic preservation. However, Historic Preservation Ordinances have successfully been adopted and enforced in Oklahoma. Further, cases from other states and the federal court system provide guidance for what an Oklahoma court will likely approve.*
- ❖ *Historic preservation is a valid exercise of a municipality’s police power for the general welfare.¹¹ Historic preservation furthers an economic objective by creating or enhancing business and jobs through renovation activities, increased retail traffic and tourism.¹² Preservation efforts also result in the improvement and stabilization of property values.¹³ In addition, historic preservation is culturally advantageous, increasing a community’s understanding and appreciation of its history.¹⁴ Such appreciation is a requisite to passing the community’s unique cultural and historic heritage to future generations.¹⁵ Historic preservation also results in the conservation and strengthening of the character of town’s commercial districts and neighborhoods, increasing quality of life and social fabric of community.¹⁶ Finally, preservation efforts can be pursued for aesthetic reasons, as they safeguard and improve the community’s beauty and livability.¹⁷*
- ❖ *While it is unlikely that an Ordinance will be struck down solely because of a deficient statement of purpose, the purpose statement remains very important.¹⁸ A well-crafted purpose clause serves as an important guide for the effective implementation of the Ordinance.¹⁹ The purpose clause establishes the foundation upon which the entire Historic Preservation Ordinance rests.*

§ 3: Area of Application.

3.1 This article shall apply to the following described property and the historic districts, landmarks, landmark sites and areas as may be added by the Historic Preservation Commission hereafter within the corporate limits of the City and subject to approval of the City Council. Boundaries of the [Main Street]^c Historic District are indicated on the map identified as Exhibit A and on file in the Office of the City Clerk.

- ❖ *The City Council may desire to designate a historic district simultaneously to adopting the Historic Preservation Ordinance. This may be a prudent and efficient course of action, as long as proper procedures ensuring due process are followed—all interested parties should be given adequate notice and an opportunity to be heard. Without designating a district, the Ordinance will be of no value.*
- ❖ *Similarly, the City Council may adopt the Ordinance and subsequently designate a landmark or historic district. This may be the most practical course—without*

^c Each Main Street Community should select a name for their Historic District. The name could simply be “Main Street Historic District”, or it could be customized or tailored to the specific community.

an established commission and designation procedures, it may be difficult to properly designate a district.

3.2 [Insert description of Main Street Historic District, if designated simultaneously.]

- ❖ *A clear, definite description of the landmark or district should be included. Boundaries must be carefully specified—the actual boundaries must coincide with those provided in the required notice prior to public hearings on the district’s designation.²⁰ Courts have given municipalities considerable discretion in designating boundaries of historic districts.²¹*

§ 4: Definitions

ADVERSELY AFFECT. Negatively changing the quality of the historical, architectural, or cultural significance of a resource, or the characteristics that qualify the resource as historically important.

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

ARCHITECTURAL RESOURCES. Districts, structures, buildings, monuments, sites, and landscaping that possess local interest or artistic merit, or which are particularly representative of their class or period, or represent achievements in architecture, engineering technology, design, or scientific research and development.

ARCHITECTURAL STYLE. A type of architecture distinguished by special characteristics of structure and ornament and often related in time; also, a general quality of distinctive character.

CERTIFIED LOCAL GOVERNMENTS PROGRAM. The Certified Local Governments (“CLG”) Program is designed to promote the participation of local governments in the nationwide historic preservation program. Under the CLG program, local governments that enforce appropriate historic preservation zoning ordinances are delegated certain SHPO responsibilities, receive federal matching funds for development of their local preservation program, and participate in the National Register of Historic Places nomination process.

CERTIFICATE OF APPROPRIATENESS. The official document issued by the Historic Preservation Commission approving any application for alteration, construction, reconstruction, relocation, or demolition of any structure or site designated under the authority of this article.

CERTIFICATE OF COMPLETION. The official document issued by the Historic Preservation Commission stating that the applicant has implemented a project in accordance with the issued Certificate of Appropriateness and any conditions thereof.

CERTIFICATE OF ECONOMIC HARDSHIP. The official document issued by the Historic Preservation Commission establishing unreasonable economic hardship for the applicant.

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

COMPATIBILITY. Capable of existing together in harmony.

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

CONTRIBUTING RESOURCE. A resource in an historic district or cluster that contributes to the district's or cluster's historical significance through location, design, setting, materials, workmanship and association, and which shall be afforded the same considerations as landmarks.

DEMOLITION. Any act or process that destroys or razes in whole or in part a building, object, site, or structure, or permanently impairs its structural integrity.

DESIGN GUIDELINES. Standards adopted by the Historic Preservation Commission intended for use by the Commission, property owners and tenants to ensure that rehabilitation and new construction respect the character of designated properties or districts.

ECONOMIC RETURN. A profit or capital appreciation from use or ownership of a building, object, site or structure that accrues from investment or labor.

ELEVATION. A "head-on" drawing of a building facade or object, without any allowance for perspective. An **ELEVATION** drawing will be in a fixed proportion to the measurement on the actual building.

EMERGENCY INSPECTION. An on-site examination of work in progress conducted by City staff, the purpose of which is to ensure that work in progress is authorized and/or conforms to the conditions of an issued Certificate of Appropriateness.

EXTERIOR. All outside surfaces of any building.

FACADE. The face or exterior surface of a building.

NONCONTRIBUTING RESOURCE. A building, object, site or structure which does not add to a district's or cluster's sense of time and place and historic development but may contribute in other aspects, such as contributing to the street wall.

GOOD REPAIR. A condition which not only meets minimum standards of health and safety, but which also guarantees the continued aesthetic integrity, structural soundness, and usefulness of a structure. Aesthetic integrity, structural soundness, and usefulness should be determined, in part, by compatibility with the Design Guidelines.

HISTORIC DISTRICT. A geographically definable area as designated by ordinance which may contain one or more significant landmarks and which may have within its boundaries other properties or structures, while not of such historic and/or architectural significance to be designated as landmarks, nevertheless contribute to the overall visual characteristics of the district and which merits designation for its historical and architectural significance and value.

HISTORIC RESOURCES. Sites, districts, structures, buildings, or monuments that represent facets of history in the locality, state or nation; places where significant historic or unusual events occurred; places associated with a personality or group important to the past.

INFILL CONSTRUCTION. Construction designed to occupy a vacant parcel of land within a developed area.

IMPROVEMENT. Any building, structure, place, parking facility, fence, wall, sign, work of art or other object, the addition or deletion of which constitutes a physical betterment of real property, or any part of such betterment of real property.

LANDMARK. A prominent building or feature officially designated as having special status and protection.

LANDMARK SITE. A parcel or part thereof on which is or was situated a landmark.

MAJOR FACADE CHANGES. Any act that has the potential to significantly alter the appearance of a resource.

MASS. The physical volume or bulk of a property or properties.

MATERIALS. The physical characteristics which create the aesthetic and structural appearance of the resource, including but not limited to a consideration of the texture and style of the components and their combinations, such as brick, stone, shingle, wood, concrete or stucco.

MINIMUM MAINTENANCE NOTICE. Official letter or memorandum sent by mail or delivered to property owners for the purpose of informing them that their property requires maintenance in order to comply with the minimum maintenance provisions of this article.

MINIMUM MAINTENANCE PLAN. A description of the approved activities to be implemented in order to maintain or rehabilitate a resource to retain structural soundness and aesthetic integrity.

OBJECT. A material thing of functional, aesthetic, cultural, historic, or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

ORDINARY MAINTENANCE OR REPAIR. Any work for which a building permit or any other City permit or certificate is not required and where the purpose of such work is stabilization, and further, where such work will not adversely affect the exterior appearance of the resource. Any work not satisfying all of the above requirements shall not be considered ordinary maintenance and repair.

PERMANENT SIGN. A sign intended to be used for a period greater than 30 days. Signs will be considered permanent when in materials or message maintain same general appearance.

PRESERVATION. The act or process of applying measures to sustain the existing form, integrity, and materials of a building or structure, and the existing form and vegetative cover of a site. It may include initial stabilization work, where necessary, as well as ongoing maintenance of the historic building materials.

PROPERTY. A parcel of land and any improvements thereon.

PROPERTY OWNER. Any individual, firm, partnership, limited liability company or corporation holding title to real estate that is either a landmark, a landmark site or within an historic district, or being considered for such status.

PROPORTION. The relative physical sizes within and between buildings and building components.

RECONSTRUCTION. The act or process of reassembling, reproducing, or replacing by new construction, the form, detail, and appearance of a property and its setting as it appeared at a particular period of time by means of the removal of later work, or by the replacement of missing earlier work, or by reuse of original materials.

REHABILITATION. The act or process of returning a property to a state of utility through repair, remodeling, or alteration that makes possible an efficient contemporary use while preserving those portions or, features of the property that are significant to its historic, architectural, and cultural values.

RELOCATION. Any change of the location of a building, object or structure from its present setting or to another setting.

RENOVATION. The act or process of returning a property to a state of utility through repair or alteration that makes possible a contemporary use.

RESOURCE. A building, object, site or structure.

RESTORATION. The act or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time by means of the removal of later work or by the replacement of missing earlier work.

RHYTHM. A regular pattern of shapes including, but not limited to, windows, doors, projects, and heights, within a building, structure, or monument, or a group of same.

SANDWICH BOARD SIGN. Any sign not affixed to a structure or to the ground.

SCALE. The harmonious proportion of parts of a building, structure, or monument to one another and to the human figure.

SETBACK. The distance from a given property line, established by the City's zoning ordinance, where a property owner is authorized to construct an improvement.

SETTING. The surrounding environment of a resource, including other buildings, structures, site features, landscaping and streets, which contributes to the aesthetic quality of the historic or architectural resource.

SIGN. A structure which consists of a device, light, letter, word, model, banner, pennant, trade flag, logo, insignia, or representation which advertises, directs, or announces a use conducted, goods, products, services, or facilities available, excluding window displays or merchandise.

SIGN GUIDELINES. Standards adopted by the Historic Preservation Commission intended for use by the Commission, property owners and tenants to ensure design and placement of permanent signs that respect the character of designated properties.

SIGNAGE, PROMOTIONAL. Signage which indicates a sale or promotion.

SIGNAGE, TEMPORARY AND BANNER. Signage that is put up for a maximum of 30 days, at which time permanent signage is approved and installed.

SIGNIFICANT CHARACTERISTICS OF THE RESOURCE. Those characteristics which are important to or expressive of the historic, architectural, aesthetic or cultural quality and integrity of the resource and its setting, and which include, but are not limited to, building material, detail, height, mass, proportion, rhythm, scale, setback, setting, shape, street accessories, and workmanship.

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

SPECIAL MERIT. A new building, object, site or structure having significant benefits to the City by virtue of exemplary architecture, specific features of land planning, or social, cultural or other benefits having a high priority for community services.

STABILIZATION. The act or process of applying measures designed to reestablish a weather-resistant enclosure and the structural stability of an unsafe or deteriorated property while maintaining the essential form as it exists at present.

STOP WORK ORDER. A written notice from the City that work on any building, structure or site must stop because it has been or is being implemented contrary to the provisions of this article, contrary to the conditions of an approved Certificate of Appropriateness, or in an unsafe and dangerous manner.

STREET ACCESSORIES. Those sidewalk or street fixtures which provide cleanliness, comfort, direction, or safety, and are compatible in design to their surroundings, and include, but are not limited to, trash receptacles, benches, signs, lights, hydrants, and landscaping, including but not limited to trees, shrubbery and planters.

STRUCTURAL INTEGRITY. The state of being unimpaired; sound.

STRUCTURE. Anything constructed or erected.

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

UNUSUAL AND COMPELLING CIRCUMSTANCES. Those uncommon and extremely rare instances, factually detailed, which would warrant a Commission recommendation for relief due to the evidence presented.

VISUAL FACADE CHANGES. Any modification to the appearance of a facade caused by alteration, construction or demolition.

WORKMANSHIP. Skill as a workman, craftsmanship or artistry or evidence of this skill in something produced.

§ 5: Historic Preservation Commission Established.

5.1 There is hereby established in the City a Historic Preservation Commission, which shall be referred to hereinafter as the Commission.

5.2 The Commission shall consist of at least five (5) appointed Members. When possible, the Members shall include persons with demonstrated special interest, training or experience in a preservation-related profession. Any vacancy, whether from expiration of term, resignation, or removal shall be filled as follows: Members shall be appointed by the Mayor and confirmed by the City Council. Available positions shall be advertised, and interested citizens shall be given the opportunity to complete an application. Appointments shall be made from the list of applicants available at the time of the appointment. Where such Member is required to have special qualifications, such vacancy shall be filled in the manner herein prescribed with a person having such qualifications. Appointed Members of the Commission shall be comprised as follows:

- ❖ *The Commission should be composed of an odd number of Members (5, 7, 9, etc.), in order to reduce the possibility of a tie or gridlock within the Commission. All Members should be required to demonstrate an interest in and knowledge of historic preservation.*²²
- ❖ *The National Historic Preservation Act requires that certain disciplines and interests be included on local commissions. Notably, the Act’s legislative history indicates that a “local [commission] is . . . expected to include individuals experienced and knowledgeable in the field of historic preservation who are able to make objective evaluations concerning the property’s historic significance.”*²³
- ❖ *Member appointment procedures are largely a political decision.*²⁴ *Whatever method is chosen, the procedures should be clearly specified in the Ordinance.*²⁵ *Authorizing the Mayor and City Council to control appointments to the commission lends legitimacy to the Commission and helps ensure that quality Members are chosen.*

5.2.1 To the extent possible, at least two (2) Members shall have special knowledge or background in the disciplines of architecture, history, architectural history, planning, archeology or related professions; and

- ❖ *It is important that several Members of the Commission have specified, preservation-related professional backgrounds. This helps to ensure that the Commission as a whole will possess the knowledge and experience to enable it to make careful and informed decisions.*²⁶
- ❖ *The Oklahoma Main Street Center recommends that the community’s Main Street Manager be selected as a Member. Each community’s Main Street Manager has the requisite qualifications and holds a vested interest in the protection, preservation, and perpetuation of the Main Street District. Members of the Main Street board or the chairperson of the Design Committee would be quality Commission Members as well. It should be noted, however, that selecting the Main Street Manager to serve on the Commission creates the possibility of certain conflicts and impartiality issues. These can be addressed by the Main Street Manager – and any other potentially conflicted Member – recusing themselves in any situation a direct, or even indirect, conflict of interest arises.*

- ❖ *It would also be prudent to include a member of the Municipal Planning Commission or similar governmental body. Including a member of the Municipal Planning, Community Development, Urban Development, or similar department provides a number of benefits to the commission, including encouraging a working relationship with other departments in the City.*
- ❖ *Courts have noted, with approval, the following: the “prudent tradition” of a “board based” commission whose membership included attorneys with experience in municipal government;²⁷ commissions with a “specif[ie]d composition . . . includ[ing] architects, historians, and business persons offering complementary skills, experience, and interests.”²⁸ The Commission’s composition “may weigh heavily in a[n] action concerned with alleged arbitrary enforcement of an otherwise valid Ordinance.”²⁹*
- ❖ *Among the most frequently required professionals from preservation ordinances across the country: architects, historians, real estate experts, attorneys, and engineers.³⁰*
- ❖ *In some small communities, it may not be practically possible to meet the broad, multi-disciplinary criteria. Such criteria are encouraged, but it is not absolutely essential. An informed, reasoned and neutral decision-maker is the objective.*

5.2.3 An attorney;

- ❖ *The commission is a quasi-judicial body—its legitimacy effectiveness depends upon understanding and fulfilling the duties and obligations required of such a body. It is important, then, that an attorney serves on the commission. In smaller communities, it may be difficult to include a qualified attorney. In such situations, it may be prudent to remove § 5.2.3 and include “an attorney” in § 5.2.2’s list.*
- ❖ *It may be prudent for the City Attorney to be a Member of the Commission; however, this may not always be practical or possible.*

5.3 City Council shall appoint one (1) of its members to serve as an ex-officio Member of the Commission.

- ❖ *A member of the City Council would provide a beneficial perspective to the Commission and lend further legitimacy to its proceedings.*

5.4 Members of the Commission appointed under subsections 5.2.1-5.2.3 need not be residents of the City although preference will be given to those residing in the City.

- ❖ *It is beneficial for Members to own property within the historic district. This helps establish the legitimacy of the commission in the eyes of the public by increasing the perception that the Members truly desire the best for the district. However, it is not essential. It is far more important that the commission benefits*

from the talents of qualified individuals who have a background in historic preservation or a related field, regardless of their residence.³¹

5.5 All Members shall serve without compensation.

- ❖ *It is unusual for Commission Members to receive any salary for service to the commission, although they are usually reimbursed for expenses.³²*

5.6 The appointment of Members to the Historic Preservation Commission shall be for three (3) year terms.

- ❖ *Term limits place a check on the Commission, protecting the property owners within the district (and, by extension, the City as a whole) from an overbearing or poor performing Commission. Term limits can act as an addition safeguard against arbitrary action by the Commission. Term limits may pose a problem to smaller cities—it may be counter-productive to force qualified Members off the Commission when the replacements will be difficult to find. As mentioned above, the primary goal is establishing an informed, reasoned and neutral decision-maker.*
- ❖ *Continuity is very important to Commission efficiency and perception: constant turnover could limit the Commission’s ability to act fairly and consistently.³³ A term limitation may be undesirable, especially in small communities.³⁴ Accordingly, each Member should be eligible for re-appointment upon the end of his or her three-year term.*
- ❖ *It may be prudent for Member’s terms to be staggered. Having to replace a number (or possibly even all) of Members in one year could be very detrimental to the Commission’s continuity.*
- ❖ *The Main Street Manager and ex-officio City Council person are permanent Members of the Commission—they should not be required to rotate off after a specific term.*

5.7 The Commission shall elect a chair and a vice-chair during the first meeting in January each year.

5.8 A vacancy shall be deemed to exist when a Commission Member dies, resigns, fails to attend three (3) consecutive or four (4) cumulative meetings in one year, is convicted of a felony or is otherwise legally disqualified, or upon the refusal of the City Council to extend a Member after expiration of the Member’s term. Council members may also remove Commission Members in accordance with appropriate provisions of the City Charter.

- ❖ *Commissioners must take their office seriously and dutifully perform their obligations. This includes, but is not limited to, attending regular meetings.*
- ❖ *It is important to provide for the removal of commissioners for conduct unbecoming of an officer of the City, in order to safeguard the legitimacy of the commission.*

§ 6: Powers and Duties of Commission.

The Commission established pursuant to this article shall have the following powers, duties and responsibilities:

- ❖ *The Ordinance should provide a list of the Commission’s powers, and should provide that the commission is the municipal agency responsible for developing and coordinating the municipality’s preservation efforts.³⁵ A municipality has wide discretion to confer necessary powers upon a local preservation commission.³⁶*
- ❖ *The Commission’s essential powers have all been upheld under the U.S. Constitution by various courts³⁷: the authority to deny an application for the demolition or alteration of a designated landmark,³⁸ power to regulate new construction or development within a designated district or the vicinity of a designated landmark,³⁹ and the power to impose affirmative maintenance requirements.⁴⁰*
- ❖ *Practical political considerations will often determine the extent of powers granted to the Commission as much as legal requirements. For example, if the primary issue facing a community is the preservation of exterior facades, the power to regulate interior changes is unnecessary and adds to the Commission’s burden; a Commission in a small town with limited resources and meeting opportunities may be overwhelmed by the duty to review every application for a building permit.⁴¹ A small community may find it beneficial to exempt certain alterations from the Certificate of Appropriateness process or allow City staff to evaluate applications for minor alterations as defined by the Commission (this may not work in situations where any exterior alteration may be detrimental).⁴²*
- ❖ *Most importantly, the Commission should be given adequate power to protect designated landmarks or districts. Essential to any effective protection is the authority to approve or forbid an alteration or demolition.⁴³*

6.1 To establish such rules and procedures as are necessary for the efficient conduct of the business of the Commission;

- ❖ *It is much more efficient to amend the Commission’s rules of procedure than to amend the creating ordinance—permitting the Commission to adopt rules of procedure will give the Commission necessary operating flexibility.⁴⁴ In order to be effective, any rules or procedures adopted must be consistent with the letter and spirit of the Ordinance. The Commission should draft and adopt rules of procedures as soon as possible.⁴⁵*

6.2 To adopt specific guidelines for selection of landmarks, landmark sites and historic districts, which guidelines shall be adopted subject to the approval of the City Council;

- ❖ *As stated above, it's easier and more efficient for the Commission to adopt and amend guidelines than it is to amend the Ordinance. Each community should adopt criteria customized to their City.*

6.3 To adopt specific Design Guidelines to use in making decisions for approval or denial of Certificates of Appropriateness;

- ❖ *Again, it is easier and more efficient for the Commission to adopt and amend guidelines than it is to amend an ordinance. Design Guidelines should be catered to the characteristics of each individual community or historic district. It is recommended that the Oklahoma Design Guidelines be tailored to the needs of each specific City or historic district and adopted by each commission. No community's cultural or structural history is the same—accordingly, no set of design guidelines will be the perfect for all communities.*
- ❖ *Any design guidelines adopted by a commission must be consistent with the letter and spirit of this Ordinance as well as the "Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" ("Standards for Rehabilitation").*

6.4 To conduct a survey of local properties within the boundaries of the City complying with all applicable standards and criteria of the Oklahoma Statewide Survey undertaken by the State Historic Preservation Office;

- ❖ *Identifying landmarks and districts of historical importance is a required step of any preservation effort.⁴⁶ Surveys are useful to ensure (1) that the Commission makes objective designation decisions and (2) the Commission considers and evaluates the resources of the entire community.⁴⁷ An objective and recorded professional survey will be a valuable tool if the designation of a building or district is challenged in court. The Commission should coordinate and work with the State Historic Preservation Office and other preservation agencies to share information, etc.⁴⁸*
- ❖ *The commission should have explicit authority to conduct surveys so that any time and resources spent conducting a survey can be questioned or challenged.⁴⁹*
- ❖ *Surveys should be conducted by an appropriately qualified professional and be consistent with the Secretary of Interiors Standards for Identification and Evaluation*

6.5 To establish and maintain a detailed inventory of property within historic districts and of landmarks and landmark sites within the City;

- ❖ *The inventory will be helpful in considering future designation, determining the compatibility of pending Certificate of Appropriateness applications. It will also provide a record in the case of a challenge. The commission should be*

empowered to make future surveys, and maintain a detailed inventory from such surveys.

6.6 To recommend to the City Council properties for designation as a landmark or landmark site or a historic district;

❖ *The Commission’s responsibility to make recommendations for designation to the City Council should be specified in order to clarify that such recommendations are not binding until ratified by the City Council.⁵⁰*

❖ *A formal report can be beneficial to (1) educate the property owner and community of the property’s significance; (2) help the Commission monitor changes to landmark or district after designation; and (3) provides a permanent record in the case of a challenge or litigation.⁵¹ Courts will give great weight and deference to any Commission decision reasonably based on recorded evidence.⁵²*

6.7 To regulate new construction within a historic district and exterior alterations to landmarks, landmark sites and properties within defined historic districts in the manner described herein;

❖ *An essential power of the Commission. Successful preservation efforts are significantly limited if the Commission cannot regulate new construction.*

6.8 To regulate the design and placement of all permanent signs within a historic district and on landmarks and landmark sites;

❖ *Permanent signs affect the historic fabric and aesthetic integrity of historic districts. The Commission should be empowered to regulate sign placement as well as new construction or rehabilitation.*

6.9 To recommend to City Manager to direct staff to stop work on projects that do not have the proper authorization by the Commission or do not conform to the conditions of issued Certificates of Appropriateness;

❖ *The Commission should be empowered to take action in an effort to enforce the Ordinance. An unenforceable ordinance provides little value.*

6.10 To prepare and place on landmarks and landmark sites a suitable plaque or other marker declaring that such resource is a designated landmark. Such plaque shall be installed with the owner’s permission and shall contain information deemed appropriate by the Commission. Any expenditure of funds provided for this purpose by the City shall be subject to the approval of the City Council;

❖ *The Commission should be empowered to memorialize certain landmarks if it so desires.*

6.11 To request funds from City Council and other funding organizations through the City and to recommend expenditure of such funds in order to accomplish the stated purpose of the Commission;

- ❖ *The commission should have the authority to request and accept donations from a variety of sources.⁵³ Commission should attempt to ensure that the funds raised from private sources can be added to the Commission’s existing budget and will not displace already existing funding or be added to a governmental unit’s general fund.⁵⁴*
- 6.12 To recommend to City Council specific application fees and other related fees;
 - ❖ *The commission should have the authority to make recommendations regarding application fees. The commission reviews the applications and knows the time and resources required to adequately review and rule on them.*
- 6.13 To prepare and present an annual report on the Commission’s activities to City Council;
 - ❖ *The preparation and presentation of annual reports will help increase efficiency within the Commission’s activities, fees, and processes. The Commission should be empowered to make such reports.*
- 6.14 To recommend to City Council for contracting with the county, state or federal government or any agency or division of the governments or with any other organization, which contract is necessary or advisable for the accomplishment of the goals of the Commission;
 - ❖ *If contracting with another political sub-division is necessary for the Commission to accomplish its goals and carry out its duties, it should be empowered to do so.*
- 6.15 To cooperate with federal, state, county and local governments in the pursuit of the objectives of historic preservation and to work with City departments on projects or departmental plans that have the potential to impact historic resources;
 - ❖ *In order for Commission to function effectively and efficiently, it should be empowered (and required) to cooperate with other political sub-divisions and state-wide preservation efforts.*
- 6.16 To promote and conduct educational and interpretive programs on historic properties;
 - ❖ *Community investment and support is essential to the long-term success of any preservation effort. Accordingly, the Commission should be empowered to conduct activities to raise awareness and education within the community.*
- 6.17 To prepare a historic preservation plan for the City and to prepare a historic preservation chapter for inclusion in the City’s comprehensive plan;
 - ❖ *The Commission is the municipal agency responsible for developing and coordinating the municipality’s historic preservation activities. Part of that development is the preparation of a City’s preservation plan and the inclusion of such plan within the City’s comprehensive plan.*

- 6.18 To retain consultants and conduct additional studies as deemed desirable or necessary by the Commission, except that any expenditure of City funds or of any funds administered by the City, shall be subject to the prior approval of the City Council;
- ❖ *In some complex cases, it may be to the Commission’s benefit to consult with experts. Such consultation may help the Commission avoid or protect itself from litigation. Suggested outside advisors include, but are not limited to, the following: the National Trust for Historic Preservation, State Historic Preservation Office, Preservation Society, regional planning authority, Oklahoma Historical Society, the American Institute of Architects (AIA), state preservation architects, and preservation attorneys.*⁵⁵
- 6.19 To perform all other duties, responsibilities and other functions enumerated in this article.
- ❖ *The Commission should have some flexibility to take actions required, within reason, to effectuate its duties and responsibilities.*
- 6.20 To employ staff, if necessary, to carry out the responsibilities of the Commission.
- ❖ *Authority to employ staff provision should be included whenever the Commission’s budget can be expected to be large enough to permit the commission to hire an executive director or secretary. Many commissions operate with staff assigned to them from other municipal agencies such as the planning department or a community development agency.*⁵⁶
 - ❖ *Staff enables the Commission to focus its time and resources on important activities.*
- 6.21 To keep a public record of any Commission resolution, proceeding and action.
- ❖ *It is essential that the commission keeps careful records of its actions—it is particularly necessary when a Commission has denied a Certificate of Appropriateness. The Commission must act consistently. To do so, records must be kept of decisions and the reasons behind them. Recorded minutes should state clearly the actions taken by the Commission at each of its meetings, and ideally will indicate by reference to the Ordinance the authority under which each action was taken. A court more likely to overturn a Commission action in the absence of a reasoned, evidence-based decision.*⁵⁷
- 6.22 The Commission shall be subject to all conflict of interest laws set forth in Oklahoma statutes and the laws of the local municipality.
- ❖ *Members should always disclose the possibility of any potential direct or indirect conflict related to a Commission determination.*⁵⁸ *If there is any doubt, full disclosure of all possible conflicts is crucial. A Commission Member should recuse himself in the case of direct pecuniary interest in the matter before the Commission.*⁵⁹

- ❖ *In addition to direct conflicts, Members of the Commission should take precautions to avoid ex parte conflict with applicants. Any such communication should be disclosed to the Commission, and may be grounds for recusal.*

§ 7: Landmark Designation.

7.1 Any property within the City may be designated as a landmark or landmark site and thus be covered by this article if the City Council determines, pursuant to procedures set forth in this section, that the property meets the following criteria:

- 7.1.1 It exemplifies or reflects elements of the cultural, social, economic, engineering, political, or other heritage of the City;
- 7.1.2 It has any special aesthetic or artistic interests or values;
- 7.1.3 It is identified with any historic persons or important events in the history of the City, the state, Indian Territory and Oklahoma Territory, or the nation in general;
- 7.1.4 It embodies distinguished architectural characteristics which are valuable for a study of any period, style, or method of construction; or if it is a valuable example of the use of native or indigenous materials or craftsmanship; or
- 7.1.5 It is representative of a notable work of a master builder, designer, or architect.

- ❖ *Courts have given communities significant latitude in designating both landmarks and districts.⁶⁰ Generally, designation decisions are upheld as long as reasonably clear standards are articulated prior to government action and applied in the governmental body's decision-making process.⁶¹ An Ordinance with broad criteria might be challenged as insufficiently specific. However, too specific a set of criteria may make it impossible for certain types of neighborhoods or commercial districts to be protected—consider the local potential for historic district; don't create criteria that cannot be met.⁶²*

- ❖ *In designating a landmark or district, some general guidelines should be followed: follow sound survey techniques,⁶³ draft acceptable designation standards,⁶⁴ economic factors should be considered but not give too much precedence.⁶⁵ The following should also be considered: (1) age alone should not be a determining factor;⁶⁶ (2) a landmark is not required to be of extraordinary significance to be worthy of protection;⁶⁷ (3) the need to regulate non-landmark buildings (or, say, an entire district) has been recognized;⁶⁸ (4) some level of arbitrariness may be necessary;⁶⁹ and (5) an owner's consent is probably not required.⁷⁰*

7.2 Landmarks and landmark sites shall be designated in the following manner:

- 7.2.1 Any owner of a proposed landmark or landmark site may request such designation by submitting an application to the Commission. In the event the Commission or the City

Council believes such a designation to be appropriate, they may also initiate such proceedings before the Commission.

- ❖ *The Ordinance may permit property owners within a potential historic district or the owners of possible landmarks to apply to have their properties designated. Such a provision is desirable to prevent the Commission from overlooking an area whose residents wish to have their properties designated. The Commission should welcome this—it will foster community buy-in and help ease the survey burden. The Commission may require a reasonable filing fee.⁷¹*

7.2.2 The Commission shall conduct or cause to be conducted a written study of the proposed designation based on the criteria described in this section.

- ❖ *A written study is extremely important—it will provide the Commission with support in the designation hearing as well as a record should a decision be challenged.*

7.2.3 The Commission shall schedule a public hearing for a date within 30 days of receipt of the study.

- ❖ *The Commission must supply adequate notice to all interested parties.*

7.2.4 Notice of the date, time and purpose thereof shall be in writing and shall be filed with the Planning Department and the City Clerk. At least 15 days prior to the date of the public hearing, notice of the date, time, and purpose thereof shall be given by mail to the property owner and advertised five (5) consecutive days in a daily newspaper of general circulation.

- ❖ *Owner consent is not required.⁷² Still, notice should be provided and an attempt to obtain approval should be made—the Commission should explain designation procedures carefully to owners of potential landmarks or property within historic districts and may need to meet several times with some owners to be sure that the commission’s objectives are understood.⁷³ Community understanding, involvement, and investment are essential for the long-term success of historic preservation.*

7.2.5 Within 60 days of the date of the public hearing, the Commission shall, in writing, make a recommendation to City Council, setting forth those findings of fact which constitute the basis for its decision.

- ❖ *The Commission should be required to make a recommendation within a reasonable time. Property owners should not have to wait for an extended time period while their property is in limbo. Further, the validity of the “freeze” (see: 7.2.10 below) depends, in part, on a reasonable time period for designation.*

7.2.6 The City Council within 30 days of receipt of the recommendations of the Commission shall by ordinance approve the application or shall by motion disapprove it in its entirety.

- ❖ *Similarly, the City Council should act promptly as well.*
- 7.2.7 Notice of the Council’s decision to approve or deny the application for designation shall be given by mail to the property owner and published in a daily newspaper of general circulation.
- ❖ *The property owner should be informed of the City Council’s decision in writing. If historic landmark or district designation was granted, a reasonable effort should be made to educate the property owner on the consequences of designation. This education should include, among other things, information on the “Standards for Rehabilitation” and the Oklahoma Main Street Design Guidelines.*
- 7.2.8 The City may effect the amendment or rescission of any designation of a landmark and landmark site in the same manner and procedure described in this article for designation.
- ❖ *A property owner’s due process rights could potentially be violated by the subsequent rescission or amendment of historic designation. Consequently, the designation procedures must be followed for any amendment or rescission.*
 - ❖ *Comment?*
- 7.2.9 In the event any application for designation is denied by the City, no new application for such designation substantially in the form of the previous application which was denied shall be made within 12 months subsequent to the effective date of such denial, unless it can be shown that the conditions under which such denial was made have substantially changed. In the event any application for designation is approved by the City, no application for rescission will be considered within six (6) months subsequent to the effective date of such approval.
- 7.2.10 No permit for any alteration, demolition or relocation involving the property or properties in question shall be issued while the designation process is in progress, subject to the exceptions found in §§ 15 and 16. Nor shall such property or properties in question be afforded the privileges of designation until an ordinance has been approved by the City Council.
- ❖ *The Ordinance should create a temporary ban or moratorium that would revoke an already-issued building permit or stop demolition pending a survey or the completion of the designation process. Courts generally uphold such provisions for a reasonable time, realizing that surveys, studies, and ordinance drafting cannot be done overnight.⁷⁴ Once the Commission has begun to consider the designation of a possible landmark or historic district, the Commission may want to “freeze” the status of the involved property or buildings.⁷⁵ A demolition moratorium would be especially beneficial. Buildings owners, it should be noted, could still obtain demolition permits by appealing to the City council and proving hardship or showing definite plans to construct new buildings on the sites being cleared.*

- ❖ *A freeze provision implicates two major issues: the due process⁷⁶ and vested rights of property owners.⁷⁷*

§ 8: Historic District Designation.

- 8.1 Any area within the City may be designated a historic district and thus be covered by this article if the City Council determines, pursuant to procedures set forth in this section, that the area possesses special cultural, artistic, social, aesthetic, economic, political, architectural, engineering, or historic significance to the City.
- 8.2 The designation of historic districts shall be completed in the following manner:
- ❖ *Historic district designation follows the same procedures detailed above in sections 7.2.1-7.2.10.*
- 8.2.1 Any owner of property within the proposed historic district may request the designation of an historic area for ordinance protection by submitting to the Commission an application for such designation. The Commission or the City Council may initiate such proceedings before the Commission on their own motion.
- 8.2.2 The Commission shall conduct or cause to be conducted a written study of the proposed designation based on the criteria described in this section.
- 8.2.3 The Commission shall schedule a public hearing for a date within 30 days of receipt of the study.
- 8.2.4 Notice of the date, time and purpose thereof shall be in writing and shall be filed with the Planning Department and the City Clerk. At least 15 days prior to the date of the public hearing, notice of the date, time, and purpose thereof shall be given by mail to the applicant and to all the property owners within the proposed historic district and advertised five (5) consecutive days in a daily newspaper of general circulation.
- 8.2.5 Within 60 days of the date of the public hearing, the Commission shall, in writing, make a recommendation to City Council, setting forth those findings of fact which constitute the basis for its decision.
- 8.2.6 The City Council within 30 days of receipt of the recommendations of the Commission shall by ordinance approve the application or shall by ordinance modify the application or shall by motion disapprove it in its entirety.
- 8.2.7 Notice of the Council's decision to approve, modify or deny the application for designation shall be given by mail to the applicant and to all the property owners within the proposed historic district and published in a daily newspaper of general circulation.
- 8.2.8 The City may effect the amendment or rescission of any designation of a historic district in the same manner and procedure described in this article for designation.

- 8.2.9 In the event any application for designation is denied by the City, no new application for such designation substantially in the form of the previous application which was denied shall be made within six (6) months subsequent to the effective date of such denial, unless it can be shown that the conditions under which such denial was made have substantially changed. In the event any application for designation is approved by the City, no application for rescission will be considered within six (6) months subsequent to the effective date of such approval.
- 8.2.10 No permit for any alteration, demolition or relocation involving the property or properties in question shall be issued while the designation process is in progress. Nor shall such property or properties in question be afforded the privileges of designation until an ordinance has been approved by the City Council.

§ 9: Ordinary Maintenance or Repair.

Nothing in this article shall be construed to prevent the ordinary maintenance or repair of the exterior of any landmark or property within a historic district when the maintenance or repair does not involve a change in design, material, or external appearance thereof.

- ❖ *An ordinary maintenance or repair provision removes the Certificate of Appropriateness requirement for “ordinary maintenance”—diminishing both the burden on the Commission and the potential negative perception of Ordinance. The purpose of the Ordinance is not to be burdensome, but to safeguard the City’s historic resources.⁷⁸ A loose definition of ordinary maintenance may remove certain types of alteration from the review powers of the Commission. Careful wording is necessary—e.g., a replacement that necessitates a change in material, though not a change in appearance should require a Certificate of Appropriateness.⁷⁹*
- ❖ *Any change in the design, material or external appearance of a resource should require Commission approval and a Certificate of Appropriateness. Even alterations to currently incompatible materials should not be allowed without prior approval. However, property owners should be free to conduct ordinary maintenance and repair that does not change or alter the design, material, or external appearance of the resource.*

§ 10: Work Requiring Review by the Preservation Commission

- 10.1 A Certificate of Appropriateness is required before beginning the process to apply or remove paint on any landmark or property within a historic district, except when such work satisfies the requirements for ordinary maintenance and repair as defined in § 9. Applications to apply or remove paint may be approved by staff as an administrative approval. A list of all administrative approvals shall be provided to the full Commission at its regular monthly meeting for its review.
- 10.2 In the following instances, a Certificate of Appropriateness from the Commission shall be required before the commencement of work upon any landmark, landmark site or property within a historic district:

- ❖ *The essential provision in any Historic Preservation Ordinance is a requirement that the proposed alterations to existing structures within a designated historic district or to designated landmarks be reviewed and approved by the Commission. No other provision is so fundamental.*⁸⁰

10.2.1 Whenever such work requires a permit issued by the City and involves work on the building exterior, except when such work satisfies ordinary maintenance or repair as defined in § 9.

- ❖ *Work that implicates building codes and requires a permit is likely sufficiently substantial to merit Certificate of Appropriateness review. The Commission should have the authority to review and approve or deny proposed plans for new construction within a historic district—an incompatible new building may do more to alter the character of a historic district than a number of small alterations to existing structures. New construction should not be denied simply because it is contemporary. In fact, compatible buildings with contemporary style may be a more desirable addition to a historic district than a mediocre adaption of a more traditional style.*⁸¹

10.2.2 Whenever such work includes the restoration, rehabilitation, alteration, construction, reconstruction, excavation, relocation, or demolition to the exterior of any resource that is listed as a landmark or landmark site or is located within a historic district, except when such work satisfies all the requirements for ordinary maintenance or repair as defined in § 9.

- ❖ *The Commission should have the authority to review and approve all changes affecting the exterior design, material or appearance of a landmark or structure within a historic district.*⁸² *The requirement for Commission approval should not be tied solely to building codes/permits or a threshold cost amount.*⁸³

10.2.3 Whenever such work includes permanent signs.

- ❖ *A permanent sign can have a significant impact upon the character and aesthetic integrity of a historic district just as rehabilitation or new construction. Accordingly, permanent signs should be subject to Certificate of Appropriateness review.*

10.3 The provisions of this article shall likewise apply to any resource that is designated a landmark or a landmark site or located within a historic district which is owned or leased by a public entity to the extent permitted by law.

- ❖ *The Commission should be authorized to regulate both historic and non-historic buildings within a designated historic district.*⁸⁴

§ 11: Certificate of Appropriateness

11.1 *Application requirements.*

11.1.1 Applications for the construction, alteration, restoration or removal of any sign, including sandwich board signs, affecting any property within a historic district or any landmark or landmark site shall be accompanied by the following materials:

11.1.1.1 Elevation or photograph of the facade or site in question showing placement of each proposed sign to scale;

11.1.1.2 Detailed drawings of the proposed sign(s) showing sign dimensions and design, size and type of lettering, proposed means of illumination, materials, textures and colors; and

11.1.1.3 Manufacturer's color samples of all proposed sign colors.

11.1.2 All other applications for Certificates of Appropriateness shall be accompanied by the following documents, when relevant. City staff and/or the Commission will determine which documents are relevant to the application in question.

11.1.2.1 An elevation of all sides of the existing or proposed improvement(s) which can be seen from a street or alley, to scale, with all materials, textures and colors to be used identified and shown. All other elements shall be shown, including light standards and fixtures, screens for mechanical equipment or trash, meters and meter boxes and such other details as may exist on an improvement.

11.1.2.2 Samples of all materials, including paint chips of proposed exterior colors.

11.1.2.3 Photographs showing existing topography, vegetation, improvements, and adjacent development and a site plan to scale indicating proposed changes. The site plan shall indicate any construction that will obstruct the view or vista from a public street or sidewalk, including but not limited to satellite dishes and antennae.

11.1.2.4 Drawings or photographs of non-stationary structures, amenities, furniture or equipment to be placed upon parcels of public or private land within a district or on a landmark site including but not limited to fences, lighting standards, planters, benches, or vending machines.

11.1.2.5 Copies of old photographs or historic records if available, which pertain to the existing resource(s).

❖ *The Ordinance should require that an applicant submit his proposed plans in sufficient detail for the Commission to have full knowledge of the requested alteration. For simple projects a brief description of the proposal with paint chips or samples of materials to be applied may be sufficient. For more complicated or large scale projects full architectural and engineering documents may be required. The applicant should provide enough information to enable the Commission to*

*understand the relationship of the proposed work to the adjacent buildings, and to make an informed decision.*⁸⁵

11.2 General provisions and procedures.

11.2.1 No permit for building, sign, demolition or house moving shall be issued by the City for any resource located within a historic district or designated as a landmark or landmark site until the application for such permit has been reviewed by the Commission and a Certificate of Appropriateness approved by the Commission. Electrical, plumbing, mechanical or any other permit shall require a Certificate of Appropriateness only if the proposed work will alter the exterior of a property within a historic district, landmark or landmark site.

❖ *Interior alterations/additions/work should not require a Certificate of Appropriateness—unless exterior is altered. The Ordinance should not extend indiscriminately into the interior of private property. It is also important to tie the action of the City to the Commission—the City should not be able to approve or supply permits that undermine the Commission’s work or objectives.*

11.2.2 When applying for such a permit, the applicant shall furnish one copy of the application and required accompanying documents as defined in § 11.1 to City staff no later than eight (8) days prior to the proposed hearing date. Any applicant may request a meeting with City staff for consultation before submitting an application. City staff shall forward such application with staff report and recommendations to the Commission no later than five (5) days before the Commission’s regularly scheduled meeting.

❖ *Early consultation eases the burden on the Commission. In addition, it is beneficial to the applicant—the pre-application procedure is designed, in part, to warn an applicant of probable commission denial.*⁸⁶

❖ *The Commission acts as a trustee for an entire historic district or for a designated landmark. The Commission’s approval or denial of Certificates of Appropriateness, then, should be done openly.*

11.2.3 Five (5) days before the date of the public hearing, the City staff shall publish the agenda for the hearing in a newspaper of general circulation. At the hearing, the Commission shall receive testimony from all persons interested in the application.

❖ *Due process requires that interested parties be afforded adequate opportunity to be heard. Both proponents and opponents of the pending Certificate of Appropriateness should have an opportunity to present their views to the Commission. The Commission should prepare to conduct its meetings in anticipation of opposition. The Commission must be careful to comply with notice requirements before holding a public hearing; otherwise, the decision is vulnerable to attack on due process grounds.*⁸⁷

11.2.4 Upon review of the application the Commission shall determine whether the proposed work is of a nature that will adversely affect any historic or architectural resource and whether such work is appropriate and consistent with the spirit and intent of this article. The Commission shall be guided by the following criteria in determining approval or denial of Certificates of Appropriateness:

❖ *The Commission’s criteria for review should be clearly stated. But even broad review standards have been upheld.*⁸⁸

11.2.4.1 The purpose and intent of this article.

❖ *The purpose statement should act as a guide to Commission activity—any approval or denial should be made in furtherance of the Ordinance’s purpose statement.*

11.2.4.2 The degree to which the proposed work may destroy or alter all or part of a resource.

❖ *The degree of change should not be a deciding factor, but it should be considered. A substantial change could be acceptable. However, the overall proposal could appear much differently if a borderline alteration (or almost-compatible addition) alters the majority of the resource.*

11.2.4.3 The degree to which the proposed work would serve to isolate the resource from its historic or architectural surroundings, or would introduce visual, audible, vibratory, or polluting elements that are out of character with the resource and its setting, or that adversely affect the physical integrity of the resource.

❖ *This is a fundamental element of the Ordinance. New construction, rehabilitation, reconstruction and the like must be compatible with the surrounding district. The Commission is designed to safeguard the historic, architectural and aesthetic character of the district.*

11.2.4.4 The compatibility of the building materials with the aesthetic and structural appearance of the resource, including but not limited to the consideration of texture, style, color, or the components and their combinations of elements such as brick, stone, concrete, shingle, wood, or stucco.

❖ *The proposed work’s compatibility should be evaluated both in relation to the historic district as a whole and the individual resource.*

11.2.4.5 The compatibility of the proposed design to the significant characteristics of the resource, including but not limited to a consideration of a harmony of materials, details, height, mass, proportion, rhythm, scale, setback, shape, street accessories and workmanship.

11.2.4.6 The “Secretary of the Interior’s Standards for Rehabilitation”.

- ❖ *The “Standards for Rehabilitation” are the foundation upon which all design guidelines are built. They are also a central requirement for Certified Local Government eligibility. See: Appendix A for the “Secretary of Interior’s Standards for Rehabilitation.”*

11.2.4.7 Sign guidelines and design guidelines adopted by the Commission.

- ❖ *It is recommended that the commission adopt the Oklahoma Main Street Center’s “Oklahoma Design Guidelines”.*

11.2.5 The Commission may approve or deny applications for Certificates of Appropriateness subject to certain conditions.

- ❖ *The Commission’s possible responses to a Certificate of Appropriateness application should be specified in the Ordinance. Normally, a commission may approve, deny, or approve in modified form. The Commission should have authority to approve an application in amended form subject to the acceptance of the amendment by the application—if applicant rejects the proposed amendment or modification, the application is denied.⁸⁹*

11.2.6 Commission Members must disclose any pecuniary or personal interests related to the consideration of any Certificate of Appropriateness application.

- ❖ *The Commission’s use of specialized expertise, interest or experience, as required by the Ordinance, can raise interesting legal issues. Without question, a Commission Member should recuse himself or herself in the case of direct pecuniary interest in the matter before the Commission.⁹⁰*
- ❖ *The impact of an indirect interest is not as clear. Some zoning decisions have been invalidated simply because of the possibility of a conflict of interest.⁹¹ Members should always disclose the possibility of any potential direct or indirect conflict related to a Commission determination.⁹² If there is any doubt, full disclosure of all possible conflicts is crucial.*
- ❖ *A Commission Member’s personal knowledge should not be a disqualification as long as that knowledge is noted in the record.⁹³*
- ❖ *In addition to pecuniary or personal conflicts, Members should disclose any ex parte communications with applicants to the Commission. It may be proper for a Member to recuse himself or herself if ex parte communication occurs before a public hearing. If there is any doubt, the potentially conflicted Member should be recused.*
- ❖ *As discussed above, inclusion of a Main Street manager or board member may present a number of potential conflicts. As with ex parte*

communications, if there is any doubt, the potentially conflicted Member should be recused.

- ❖ *Each community will face unique problems—smaller communities, for example, may have a more difficult time insulating the Commission from contact with potential applicants. The Commission should consult with the City Attorney to ensure that its procedures for dealing with ex parte communications and other similar conflict issues are appropriate and sufficiently protect the Commission from future challenges.*

11.2.7 No change shall be made to the approved work after issuance of a Certificate of Appropriateness without resubmission to the Commission and approval thereof in the same manner as provided above.

- ❖ *The Certificate of Appropriateness is final. Any work on the designated resource must be conducted in accordance with the Certificate of Appropriateness. Absent extraordinary circumstances, which may be addressed through the resubmission of the plan according the procedures designated above, the property owner is bound to complete the work proposed to and approved by the Commission.*

11.2.8 If the Commission denies such a Certificate of Appropriateness, no permit shall be issued. Within ten (10) working days of the hearing, the Commission shall mail to the applicant the reasons for such denial by citing the section of the ordinance violated and may include suggestions regarding actions the applicant might take to secure the approval of the Commission as to the issuance of a Certificate of Appropriateness.

- ❖ *The time requirement serves to prevent the Commission from “sitting” on an application and informs the property owner of the time period within which he can expect a decision.*
- ❖ *The Commission’s decision should be delivered in writing. It is particularly important to many judges that the reviewing body give reasons for its decision—even if not required by state law, providing written reason is prudent.⁹⁴ Requiring the Commission to cite the Ordinance section violated or the specific violation of the Design Guidelines helps ensure that Commission action was based on permissible standards. Any commission decision may be overturned for impermissible considerations or an omission of a required finding.⁹⁵*

11.2.9 Work performed pursuant to the issuance of a Certificate of Appropriateness shall conform to the requirements of such certificate. In the event that such work is not in compliance upon inspection, the City shall issue a stop work order.

- ❖ *While the Ordinance contains both enforcement and penalty provisions, it is useful to include a provision permitting non-conforming work to be halted*

before its completion. Authorization for this type of immediate action may be the most effective way to get the Commission's directions followed.⁹⁶

11.2.10 The City may make an emergency inspection of any unauthorized work in progress. In the event that such work required but did not receive Commission approval, the City shall issue a stop work order to be in effect until a Certificate of Appropriateness has been properly applied for and issued.

❖ *Authority to make emergency inspections is essential to ensuring that all work done is in accordance with the Certificate of Appropriateness. A stop work order or injunction is the most beneficial remedy—it ensures protection of the landmark.*

11.2.11 The work sanctioned by the granting of the Certificate of Appropriateness shall commence within six (6) months of its issuance and shall be completed within one year of its issuance. An extension of no more than 12 months may be granted upon proper contact from the applicant.

❖ *Work done in accordance with a Certificate of Appropriateness should be timely.*

11.2.12 The City shall inspect the work for completion at the end of the time limit set forth by the Commission and issue a certificate of completion if the work is in compliance with the Certificate of Appropriateness.

❖ *As part of the Commission's authority to inspect ongoing work, work completed in compliance with a Certificate of Appropriateness should be certified as so. In addition to regulating the work done by property owners, this can help facilitate an owner's tax credit application.*

11.2.13 It shall be a violation of this article to commence unauthorized work or to disregard a stop work order.

❖ *While somewhat self-explanatory, this is a necessary provision. To allow unauthorized work would defeat the entire purpose of the Ordinance.*

11.2.14 It is not the intent of this section to limit new construction to any one period or architectural style, but to preserve the integrity of historic and architectural resources. It is the intent of this section to ensure compatibility of new construction by approving only new or infill construction that is compatible to adjacent properties and approving only additions to existing resources that are compatible with the property in question.

❖ *The Ordinance is not designed to limit property owners, but protect to protect their property. Contemporary architecture is not per se incompatible with historic buildings—the Commission should be encouraged to recognize that some contemporary buildings will be more compatible or harmonious than others.⁹⁷*

11.2.15 The Commission shall develop such guidelines as it may find necessary to supplement the provisions of this section and to inform owners, residents, and general public of those standards which are considered proper for undertaking work relating to historic and architectural resources.

- ❖ *Adopted design guidelines need to be sufficiently definite to prevent Members of the Commission from exercising unbridled discretion.⁹⁸ A Commission determination (a Certificate of Appropriateness approval or denial) should be based upon a “standard capable of objective determination.”⁹⁹*
- ❖ *It is recommended that Oklahoma Main Street Center’s “Oklahoma Design Guidelines” be adopted.*

§ 12: Minimum Maintenance.

12.1 In order to prevent public hazards and to maintain the structural and aesthetic integrity of the City’s historic resources, every owner or other person having legal custody and control of a landmark, landmark site or property in a historic district shall keep in good repair:

- ❖ *The Oklahoma Design Guidelines are applicable to new construction, rehabilitation and good repair. An owner should not be required to receive a Certificate of Appropriateness for minimum maintenance or daily upkeep, but structures within the designated historic district are required to be maintained at a level consistent with the Oklahoma Design Guidelines. A property owner should not be able to compromise the district’s aesthetic integrity through intentional neglect any more than he or she could through reconstruction. In addition to aesthetic concerns, the minimum maintenance provision safeguards the structural soundness of the landmark or district. Most local municipal building and health codes allow landmarks to be torn down despite opposition from the local preservation review body on the ground that the buildings have fallen into such disrepair that they are a threat to public safety.¹⁰⁰*
- ❖ *The following issues point to the importance of an effective minimum maintenance requirement: (1) seemingly complex Certificate of Appropriateness procedures may lead property owners to avoid the perceived hassle of repairs and upkeep;¹⁰¹ (2) in many situations, property owners may intentionally allow a structure to fall in to such disrepair that it is demolished by neglect;¹⁰² (3) current City building and health codes, such as the International Property Maintenance Code, may encourage demolition of structures that are dilapidated or a threat to public safety.¹⁰³*
- ❖ *Courts across the country have upheld minimum maintenance requirements.¹⁰⁴ However, a minimum maintenance provision may be found to be invalid if its application is overly burdensome.¹⁰⁵*

- 12.1.1 All of the exterior portions of such resources including but not limited to roofs, foundations or floors, exterior walls including windows and doors, awnings or canopies, and permanent signage and lighting, to ensure the resources are structurally safe and maintain the aesthetic integrity of the district.
- 12.1.2 All interior portions thereof which, if not so maintained, may cause or tend to cause the exterior portions to become public hazards or structurally unsound.
- 12.2 When a property is found to be in need of maintenance as specified in (1) or (2) above, the City staff shall notify the owner(s) of the property. The owner shall within 30 days present a proposed plan to the Commission describing how and when the identified work will be completed. By owner request with reasonable justification, the Commission may grant the owner a 30-day extension in order to provide more time to prepare the plan. The Commission shall approve the owner's plan as presented or approve the plan subject to certain conditions.
- ❖ *In order to ensure compliance with the approved work plan, the Commission should perform periodic inspections.*
 - ❖ *The Fourth Amendment's prohibition against unreasonable searches and seizures applies to administrative actions as well.¹⁰⁶ In order to ensure compliance with the progress of the identified work of an approved plan, the Commission may conduct a search after obtaining the owner's consent or an administrative warrant.¹⁰⁷ All periodic inspections by the Commission or staff should be conducted according to predetermined standards in order to dispel any Fourth Amendment claims.¹⁰⁸*
- 12.3 Failure to respond to the minimum maintenance notice, to submit a plan, or to implement the approved plan will constitute a violation of this article.

§ 13: Demolition of a Landmark, a Resource on a Landmark Site or Contributing Resource within a Historic District.

- 13.1 Demolition of a landmark, other resource on a landmark site or contributing resource within a historic district constitutes an irreplaceable loss to the quality and character of the City. Therefore, no permit shall be issued for demolition of a landmark, landmark site, or contributing resource within a historic district unless the applicant demonstrates clear and convincing evidence of unreasonable economic hardship as defined in § 15 or unusual and compelling circumstances as defined in § 16 and presents an acceptable post-demolition plan for the site according to the criteria provided in § 11.
- ❖ *Demolition review is an essential provision of an effective ordinance. In almost every circumstance, demolition offers the worst possible outcome for a historic landmark or district. Without question, demolition should be the last possible course of action. It is important that the Commission has the authority to deny a demolition—a Commission empowered to deny demolitions is far more effective in maintaining the existing integrity of a*

community's historic resources than one with only the authority to delay demolitions for specified periods of time.¹⁰⁹

- ❖ *The Commission should not, if possible, grant a demolition request without a review of the plans for the building that would replace the demolished structure.¹¹⁰ The post-demolition plans should be held to the same criteria as those for new construction or exterior alteration. As a reflection of the dire consequences of demolition, the applicant's burden is raised: he must establish entitlement to demolition by clear and convincing evidence.*
- ❖ *Providing the Commission with clearly defined criteria to consider when evaluating a requested demolition permit will help the Commission make a sound, defensible decision. The Commission, then, will be able to justify its decision should the property owner wish to appeal the Commission's denial.¹¹¹*

13.2 It will be a violation of this article to demolish any landmark, other resource on a landmark site or any property located within a historic district without a permit. If less than 50% of the property has been demolished at the time work is stopped, the owner or person having legal custody or control of the property in question will be required to rebuild the demolished portion of the resource. If 50% or more of the resource in question has been demolished, the owner or person having legal custody or control of the resource will be fined in accordance with this article for each day of violation until the total fines collected equal the greater of the following:

13.2.1 The appraised value of the property on record with the County Assessor's Office at time of demolition; or

13.2.2 The fair market value of the resource, as determined by the average of at least two (2) independent appraisals made by appraisers licensed by the state.

- ❖ *This section extends significant authority to the Commission and provides for harsh penalties to violating property owners. Both are necessary, however. Indiscriminate demolition of a historic resource is debilitating to the district: it is the most serious danger a district faces, and it is the only violation that results in irreparable harm. Every possible step, including harsh punishments, should be taken to eliminate indiscriminate demolition.*

13.3 The fines collected will be used to further preservation efforts in the City.

§ 14: Negotiations Prior to Demolition Application Hearing.

14.1 Whenever an application for a permit for the demolition of a landmark, other resource on a landmark site or contributing resource within a historic district shall be submitted to the Commission, the Commission shall not hold a public hearing on the application for 60 days from the date the application is received by the City. This time period is intended to permit City staff to discuss the proposed demolition informally with the property owner, other City officials, and preservation organizations to see if an alternative to demolition can be found before a formal

consideration of the application by the Commission. City staff shall prepare a report to the Commission analyzing alternatives to demolition, and request from other City departments or agencies information necessary for the preparation of this report.

❖ *Demolition is a last-resort. Every possible measure should be explored before a landmark is demolished. It is crucial, then, for the City, property owner, and Commission to work together to evaluate alternatives. During this time, the Commission should do everything in its power to negotiate with the property owner in an attempt to discourage demolition.*¹¹²

- 14.2 If within this 60-day period either of the following two (2) events shall occur or be known to have occurred prior to the application, the Commission may defer hearing the application for six (6) months and it shall be considered to have been withdrawn by the applicant during such six-month period: the owner enters into a binding contract for the sale of the property; approved arrangements are made for the resource to be relocated to an approved new location. If within the 60-day period neither of the two (2) events summarized above shall have occurred, the Commission will schedule a hearing on the demolition application at its next regularly scheduled meeting following the expiration of the 60-day period, shall request all knowledgeable parties to comment at the hearing on the proposed demolition, and shall make its written recommendation within 30 days after hearing the request for demolition. The Commission may also secure an engineer's report on the state of repair and structural stability of the resource for which an application to demolish has been filed. Such report shall become part of the administrative record on the application.

§ 15: Certificate of Economic Hardship.

- 15.1 Application on forms prescribed by the Commission for certificate of economic hardship may be made by an owner or his agent who has been denied a Certificate of Appropriateness for major facade changes, new construction, demolition or a minimum maintenance plan. When a claim of unreasonable economic hardship is made due to the effect of this article, the owner must prove that he cannot realize a reasonable return upon the value of this property or that he cannot make reasonable use of his property. The public benefits obtained from retaining the resource must be analyzed and duly considered by the Commission.

❖ *The Ordinance should make allow for the possibility of undue economic hardship. An economic hardship can occur when for no fault of the owner there is no reasonable economic use of the landmark or when zoning laws, the Ordinance, or a Commission decision precludes necessary renovations.*¹¹³

❖ *An economic hardship provision makes the Ordinance more palpable to the community by creating an avenue in which unduly harsh results can be avoided; strengthens a Commission's position in possible litigation (helps provide a more thorough record and encourages reasonable bases for Commission decisions); provides protection from a takings argument.*¹¹⁴

- 15.2 In determining the existence of an unreasonable economic hardship, the Commission will base its decision on the information submitted by the applicant and any other information that the Commission may deem relevant. The deteriorated condition of a resource attributable to the

owner's failure to provide proper maintenance over an extended period of time will not be considered a relevant factor in evaluations of economic hardship. Hardship that is attributable to a resource being allowed to deteriorate by past or current owners will be considered self-imposed; restoration costs incurred to remediate such neglect will not be considered. This provision will not be affected by any transfer of ownership by means including, but not limited to, sale, inheritance or gift.

❖ *The Ordinance should note allowable evidence in the Commission's evaluation of an economic hardship review.*

15.3 Applications for certificates of economic hardship shall be accompanied by the following documents, when relevant. The Commission will determine which documents are relevant to the application in question.

❖ *All relevant evidence should be provided to the Commission. The property owner has the burden of proof (clear and convincing evidence)—any missing information or evidence should be construed against the applicant.*

15.3.1 An estimate of the cost of the proposed construction, alteration, demolition, or removal and an estimate of any additional cost that would be incurred to comply with the recommendations of the Commission for changes necessary for the issuance of a Certificate of Appropriateness.

15.3.2 The estimated market value of the property in its current condition, after completion of the proposed construction, alteration, demolition or removal, and after completion of work that would incorporate any changes recommended by the Commission.

15.3.3 The current fair market value of the property, as determined by the average of at least two (2) independent appraisals made by appraisers licensed by the state.

15.3.4 All appraisals obtained within the previous two (2) years by the owner or applicant in connection with his purchase, financing or ownership of the property.

15.3.5 Amount paid for the property, 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, including a description of the relationship, if any, between the owner of record or applicant and the person from whom the property was purchased, and any terms of financing between the seller and buyer.

15.3.6 Maintenance records for the property for the previous two (2) years.

15.3.7 Annual debt service, if any, for the previous two (2) years.

15.3.8 Any listing of the property for sale or rent, price asked and offers received, if any within the previous two (2) years.

15.3.9 Any consideration by the owner as to profitable adaptive uses for the property.

- 15.3.10 A report from a licensed engineer or architect in the state with rehabilitation experience as to the soundness of any resources on the property and their suitability for rehabilitation. Such engineer or architect shall be pre-approved by the Commission.
- 15.3.11 A description of the applicant's plans for the property if demolition or removal is approved and the appropriateness of same in relation to the City's zoning code and the current guidelines for new construction in a historic district.
- 15.3.12 Replacement plans for the property in question. Replacement plans for this purpose will include, but shall not be limited to, preliminary elevations and site plans.
- 15.3.13 In addition, the owner may provide proof that the owner has the financial ability to complete the replacement project. Providing such proof is optional.
- 15.4 The Commission shall be guided in its decision to approve a Certificate of Appropriateness for demolition by balancing the cultural, artistic, aesthetic, social, economic, political, architectural, engineering or historic value of the property to be demolished against the special merit of the proposed use of the property following demolition.
- 15.5 The applicant shall submit all necessary materials at least 15 days prior to the Commission meeting in order that staff may review and comment and/or consult on the case. Staff and/or professional comment shall be forwarded to the Commission for consideration and review and made available to the applicant for consideration prior to the meeting.
- ❖ *The applicant has the right to sufficient notice and an opportunity to be heard. Accordingly, the applicant has the right to prepare a case—any and all findings or comments of the staff or outside professionals should be forwarded with ample time to review and prepare before the hearing.*
- 15.6 The Commission may require that an applicant furnish such additional information that is relevant to its determination of unreasonable economic hardship. The Commission or staff may also furnish additional information as the Commission believes it relevant. The Commission shall also state which form of financial proof it deems relevant and necessary to a particular case.
- ❖ *The Commission may ask for any additional evidence it deems necessary—a refusal or inability to provide may be construed against the applicant. The Commission should clearly indicate what it deems relevant and what its decision is based upon.*
- 15.7 In the event that any of the required information cannot be obtained by the applicant, the applicant shall file a statement of the information which cannot be obtained and shall describe reasons acceptable to the Commission why such information cannot be obtained.
- ❖ *Again, any refusal or inability to provide relevant information may be construed against the applicant. It is up to the applicant to convince the Commission otherwise.*

15.8 After the application for certificate of economic hardship has been submitted, the applicant shall have the opportunity to address the Commission with regard to the case for economic hardship.

❖ *The applicant must be provided with a sufficient opportunity to present his case.*

15.9 The Commission shall review all of the evidence and information required of any applicant for a certificate of economic hardship and make a determination within 45 days of receipt of the application whether the denial of a Certificate of Appropriateness has deprived, or will deprive, the owner of the property of reasonable use of, or reasonable economic return on, the property. If the Commission disapproves such certificate of economic hardship, the applicant shall proceed with work only when issued a Certificate of Appropriateness as provided in § 11. If the Commission approves such certificate of economic hardship, the applicant and Commission shall agree on the work to be completed, and the certificate of economic hardship shall be issued along with the Certificate of Appropriateness with the necessary conditions specified.

❖ *The Commission should make a timely decision. It is important to note that the Commission has ultimate authority in the matter—it can reject any application for demolition or economic hardship. As will be provided for below, any Commission decision may be appealed to the City Council and ultimately the courts.*

§ 16: Unusual and Compelling Circumstances and Demolition of a Landmark, a Resource on a Landmark Site or a Contributing Resource within a Historic District.

16.1 When an applicant fails to prove unreasonable economic hardship in the case of a landmark, other resource on a landmark site or contributing resource within a historic district, the applicant may provide to the Commission additional information which may show unusual and compelling circumstances in order to receive Commission recommendation for demolition of the landmark, other resource on a landmark site or contributing resource within a historic district.

❖ *Here, the Ordinance provides another avenue for the property owners and the Commission to avoid an unduly oppressive result. As with the economic hardship provision, this further strengthens any ultimate decision made by the Commission.*

16.2 The Commission, using criteria set forth in this article, shall determine whether unusual and compelling circumstances exist and shall be guided in its decision in such instances by the following additional considerations:

❖ *Any determination made upon a demolition application should include an evaluation of these factors.*

16.2.1 The significance of the resource as defined in §§ 8 and 9;

16.2.2 The importance of the resource to the integrity of a historic district, an area, or a cluster;

- 16.2.3 The difficulty or the impossibility of reproducing such a resource because of its design, texture, material, detail, or unique location;
- 16.2.4 Whether the resource is one of the last remaining examples of its kind in the neighborhood, the county, or the region;
- 16.2.5 Whether there are definite plans for reuse of the property if the proposed demolition is carried out, and what effect such plans will have on the character of the surrounding area, as well as the economic impact of the new development;
- 16.2.6 Whether reasonable measures can be taken to save the resource from further deterioration, collapse, arson, vandalism or neglect; and
- 16.2.7 Whether the resource has become so damaged or dilapidated that it is declared unsafe or dangerous by the City as provided for in § 19.

§ 17: Treatment of Site Following Demolition.

Following the demolition or removal of a landmark, other resource on a landmark site or any property located in an historic district, the owner or other person having legal custody and control thereof shall remove all traces of previous construction, including foundation; grade, level, sod and seed the lot to prevent erosion and improve drainage; and repair at his own expense any damage to public rights-of-way, including sidewalks, curbs, and streets, that may have occurred in the course of removing the resource(s).

- ❖ *All efforts should be made to avoid demolitions. However, in some instances, a demolition may be unavoidable. It is important that the Ordinance impose post-demolition requirements upon property-owners (in addition to the post-demolition plan approval requirement), in order to limit the negative effects of a demolition upon the district.*

§ 18: Public Safety Hazards and Emergency Securing Measures.

None of the provisions of this article shall be construed to prevent any measures of construction, alteration, or demolition necessary to correct or abate the unsafe or dangerous condition of any resource, other feature or part thereof, where such condition has been declared unsafe or dangerous by the City, and where the proposed measures have been declared necessary to correct the said condition; provided, however, that only such work as is reasonably necessary to correct the unsafe or dangerous condition may be performed pursuant to this section. In the event any resource or other feature shall be damaged by fire or other calamity, or by Act of God, to such an extent that in the opinion of the aforesaid City it cannot reasonably be repaired and restored, it may be removed in conformity with normal permit procedures and applicable laws. The Commission shall work closely with the proper City officials when an emergency arises, and it may schedule an emergency meeting to act on work that is necessary.

- ❖ *A public safety provision should require that the City work with the Commission on the proposed demolition or reconstruction of a hazardous structure before any alteration takes place.¹¹⁵ It is crucial that the Commission have both the opportunity and the authority to be involved with the property owner and relevant municipal agencies in order to avert the necessity of the landmark's*

demolition.¹¹⁶ An effective affirmative maintenance provision will reduce the likelihood that the public safety exclusion will be invoked against a landmark.¹¹⁷

§ 19: Signs.

19.1 Neon signs.

19.1.1 Neon signs may be permitted within the Historic District, subject to Commission approval. The Commission shall approve neon signage on a case-by-case basis, according to adopted sign guidelines. New neon signage may be proposed, and approved by the Commission, according to the procedures detailed in § 11. Ensuring compatibility with and retaining the aesthetic integrity of the Historic District are of the utmost importance. However, the following shall not be permitted:

- ❖ *It is recommended that each community adopt Main Street’s Oklahoma Design Guidelines as a guide to determine what types of signage should be permitted. Each individual community should adopt sign guidelines that are consistent and compatible with their unique historic resources.*
- ❖ *The National Park Service’s Preservation Brief 25 is a beneficial resource, offering information and guidance to communities’ signage regulation efforts.*

19.1.1.2 No running or flashing lights or signs shall be allowed.

19.1.1.3 No back-lit signs shall be allowed.

19.1.2 Approved neon signs are not transferable from one address to another.

19.2 Promotional, temporary and banner signs.

19.2.1 *Promotional signage requirements.* All promotional signage must conform to the existing City laws and regulations. [***Insert: relevant, if any, provisions of current City ordinance.***] The font and colors used must be approved by the Commission, in accordance with the sign guidelines.

- ❖ *The adopted sign guidelines should include recommended acceptable fonts and colors for promotional signs. It is recommended that the Oklahoma Main Street Design Guidelines be adopted.*

19.2.2 *Temporary and banner signage requirements.* All temporary and banner signage must conform to existing City laws and regulations. [***Insert appropriate provision.***]

19.2.3 *Promotional signage bond.* No bond is required.

19.2.4 *Temporary and banner signage bond.* A bond of \$75 must be paid at the time of request for temporary or banner signage. If the temporary or banner signage is not taken down or replaced with the approved permanent signage within 30 days, the bond will be

forfeited. The Code Enforcement Office may grant one extension, not to exceed 15 days if all appropriate fees have been received.

§ 20: Appeals.

- 20.1 Any action of the Commission may be appealed to the City Council.
- 20.2 Any interested person may appeal by filing a notice of appeal with the City Council not later than ten (10) days after the written decision of the Commission has been filed with the City. Upon receipt of the notice of appeal and applicable fee(s), the City Council shall schedule a public hearing to be conducted not later than 30 days after the notice of appeal is filed, and shall render its decision within 30 days of the hearing date.
- 20.3 The City Council’s consideration of an appeal of a Commission decision shall be based upon:
 - 20.3.1 The record established in the Commission’s consideration of the matter in question; and
 - 20.3.2 The testimony and evidence presented in the public hearing provided in subsection (2) above.
- 20.4 Notwithstanding division (C), the City Council may remand any matter to the Commission for reconsideration and/or rehearing.

❖ *An appeals provision is likely required for a Historic Preservation Ordinance to be constitutionally valid. The Ordinance should clearly indicate (1) the time period within which notice of an appeal must be filed, (2) the court or municipal entity to which appeal may be made, and (3) whether or not the body to hear the appeal will be able to take new evidence or must reach a decision based upon the evidence presented originally to the preservation commission.¹¹⁸ The appeal provision should permit appeals by interested parties other than the owner-applicant—e.g., adjacent or nearby property owners.¹¹⁹*

§ 21: Affirmation of Existing Zoning

Nothing in this Ordinance shall be constructed as to exempt property owners from complying with existing City building and zoning codes, nor prevent any property owner from making any use of this property not prohibited by other statutes, ordinances or regulations.

❖ *This Ordinance is intended to function as an overlay—it will not supersede any existing consistent zoning codes.*

§ 22: Injunctive Relief.

The City Attorney may maintain an action for injunctive relief to restrain or enjoin or to cause the correction or removal of any violation of this article, or for a permanent injunction in an appropriate case.

- ❖ *Injunctive relief often provides the most effective remedy to violation of the ordinance. The Commission has a number of remedies at its disposal: fines, stop-work orders or injunctions, court-ordered receivership, court-sanctioned entry and repair by the Commission.¹²⁰ Fines work best when coupled with the equitable remedies.¹²¹ The foundational purpose should be remembered: protection of the landmark or historic district. Receivership or entry by commission both work in furtherance of that purpose.*

§ 23: Violation and Penalties.

Any person who violates any part or provision of this article shall be guilty of an offense and upon conviction thereof shall be punished as provided in City Code. [*Insert appropriate provision or citation.*] Each day of continuing violation may be deemed a separate offense.

- ❖ *An enforcement provision should address both remedies for noncompliance and administration.¹²² As the scope of preservation controls broaden (ranging from control over demolition in Tier One to control of day-to-day upkeep in Tier Three), the issue of remedies increases in importance.¹²³ It is important to note that the purpose of an enforcement provision is not punitive.¹²⁴ The Commission’s goal is not to throw people in jail, but to protect historic landmarks and districts by securing compliance with the Ordinance.¹²⁵ Fines may be necessary, but they shouldn’t be the primary form of enforcement—the commission should rely primarily on injunctive relief to halt illegal demolition or alterations.¹²⁶*
- ❖ *An effective Ordinance requires consistent enforcement. Similarly, remedies must be consistently enforced as well. It is important that the Commission keep accurate records on designated property and property owners—an informed Commission is most likely to consistently apply and enforce the Ordinance, and thorough and accurate documentation greatly increases the likelihood that a Commission action will be upheld by the City Council or a court.¹²⁷*

Appendix

A: Secretary of Interior’s Standards for Rehabilitation

The Standards for Rehabilitation are central to any preservation effort, the foundation of Main Street’s Oklahoma Design Guidelines, and an essential component of CLG status and the available Federal tax credit.

The “Secretary of Interior’s Standards for Rehabilitation” are as follows:

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historic development, such as adding conjectural features or elements from other historic properties, will not be undertaken.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.
6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
10. New additions and adjacent or related new construction will be undertaken in a such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

B: Certified Local Governments

In order to become a Certified Local Government in Oklahoma, the local government must^f:

1. Enforce appropriate state or local legislation for the designation and protection of historic properties.
2. Establish an adequate and qualified historic preservation review commission by state or local legislation.
3. Maintain a system for the survey and inventory of historic properties consistent with the system of the SHPO.
4. Provide for adequate public participation in the local historic preservation program including the process of recommending properties for nomination to the National Register of Historic Places.
5. Satisfactorily perform the responsibilities delegated to it under the certification agreement.

The local historic preservation ordinance must contain:

1. A statement of purpose.
2. Definitions.
3. Membership requirements for the review commission and duties of that body.
4. Procedures for designation of local districts and landmarks.
5. Criteria for evaluation of local districts and landmarks.
6. Provision for public review of designations.
7. Provision for mandatory review of alterations, demolitions, or new construction affecting listed properties in historic districts or individual landmarks. These decisions must be binding, and a system of appeals must be provided.
8. Adoption of specific guidelines to be used in the review of projects which involve listed properties, consistent with the “Secretary of the Interior’s Standards for Rehabilitation.”
9. Set specific time frames for project review.
10. Establish penalties for non-compliance.

The benefits of CLG designation include:

1. A direct role in the recommendation of properties for nomination to the National Register of Historic Places.
2. Eligibility for a share of the State’s annual Historic Preservation Fund grant award.
3. A direct role in the responsibilities of the State Historic Preservation Office as may be delegated.

^f All information in this Appendix taken from SHPO Fact Sheet #5, which can be found at the Oklahoma State Historic Preservation Office website: <http://www.okhistory.org/shpo/clgguidelines.htm>. Beyond the very beneficial CLG program, the SHPO is an invaluable resource for any or local or statewide preservation efforts.

Endnotes

¹ Oklahoma historic commercial districts include but are not limited to: Enid Downtown Historic District; Durant Downtown Historic District; Newkirk Historic Commercial District; Perry Courthouse Square Historic District; Shawnee’s Bell Street Historic District; Sayre Historic Commercial District; and the Historic Downtown Sulphur Historic District. The current list of CLG communities includes: Anadarko, Ardmore, Cordell, Enid, Grandfield, Guthrie, Muskogee, Norman, Oklahoma City, Okmulgee, Ponca City, Sapulpa, and Tulsa.

² *Tomorrow’s Legacy: Oklahoma’s Statewide Preservation Plan*, Oklahoma Historical Society, State Historic Preservation Office, 2010, p. 35-38.

³ *Tomorrow’s Legacy*, p. 14.

⁴ *Tomorrow’s Legacy*, p. 14.

⁵ *Economic Impacts of Historic Preservation in Oklahoma*, Preservation Oklahoma, Inc.

⁶ Donovan Rypkema, *Economic Benefits of Preservation: Sustainability and Historic Preservation*, 3/10/2007

⁷ Donovan Rypkema, *Economic Benefits of Preservation: Sustainability and Historic Preservation*, 3/10/2007

⁸ Stephen. Dennis, *Recommended Model Provisions for a Preservation Ordinance, with Annotations*, National Trust for Historic Preservation (1980), p. 5.

⁹ Dennis, *Recommended Model Provisions*, p. 5.

¹⁰ *Handbook on Historic Preservation Law*, ed. Christopher Duerkson, The Conservation Foundation and The National Center for Preservation Law (1983), “Local Preservation Law”, Duerkson, *Handbook*, p. 63-64.

¹¹ *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104, 128 (1978) (the “objective of preserving structures and areas with special historic, architectural, or cultural significance is an entirely permissible governmental goal”); *Berman v. Parker*, 348 U.S. 26, 32 (1954) (“It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled”); *Figarsky v. Historic District Commission of City of Norwich*, 368 A.2d 163, 170 (Conn. 1976) (“We cannot deny that the preservation of an area or cluster of buildings with exceptional historical and architectural significance may serve the public welfare.”).

¹² *Bohannon v. City of San Diego*, 106 Cal. Rptr. 333, 336-37 (Cal. 1973) (historic preservation, through its “encouragement of tourism[,] is of general economic value”); Duerkson, *Handbook*, p. 64.

¹³ Duerkson, *Handbook*, p.63-64; *See also* Preservation Oklahoma Economic Impact Study.

¹⁴ Deurkson, *Handbook*, p. 64; *Bohannon v. City of San Diego*, 106 Cal. Rptr. 333, 336-37 (Cal. 1973) (historic preservation “contributes to the general welfare” and provides “educational and cultural advantages”).

¹⁵ *Id.*; *Hall v. Village of Franklin* (No. 69-52580), Oakland County Cir. Ct., Mich., Feb. 10, 1972), at 3 (historic preservation “is essential to a full and adequate education of the people”).

¹⁶ Deurkson, *Handbook*, p. 64; *Lafayette Park Baptist Church v. Scott*, 553 S.W.2d 856, 861 (Mo. 1977) (historic preservation “serve[s] an important public function in protecting and preserving definable neighborhoods”, thereby “provid[ing] viability and strength to the urban community as a whole.”

¹⁷ Deurkson, *Handbook*, p. 64. The United States Supreme Court and the majority of states uphold a state’s ability to legitimately exercise its police powers for “aesthetic” regulation, including HP designation. *Agins v. City of Tiburon*, 47 U.S. 255 (1980); *City of New Orleans v. Dukes*, 427 U.S. 297 (1976); *Village of Belle Terre v. Boraas*, 416 U.S. 1, 9-10 (1974); *City of Santa Fe v. Gamble-Skogmo, Inc.*, 380 P.2d 13, 17 (N.M. 1964); *A-S-P Associates v. City of Raleigh*, 258 S.E.2d 444, 450 (N.C. 1979); *John Donnelly & Sons, Inc. v. Outdoor Advertising Board*, 339 N.E.2d 709 (Mass. 1975). Further, Oklahoma appears to have recognized aesthetic zoning as a legitimate exercise of the police power. *Mid-Continent Life Ins. Co. v. City of Oklahoma City*, 701 P.2d 412, 415 (Okla., 1985).

¹⁸ Deurkson, *Handbook*, p. 64.

¹⁹ Deurkson, *Handbook*, p. 64; *Groch v. City of Berkeley*, 173 Cal. Rptr. 534 (1981) (purpose clause provided sufficient guidance for historic preservation commission’s actions, even in the absence of sufficient design guidelines or other Commission limitations).

²⁰ Dennis, *Recommended Model Provisions*, p. 42

²¹ Dennis, *Recommended Model Provisions*, p. 42. The California Supreme Court held that “the city council is authorized to determine the boundaries of the [historic district], and the court should not interfere with its determination absent a clear showing of abuse of its authority.” *Bohannon v. City of San Diego*, 106 Cal.Rptr. 333, 336 (Cal. 1973).

²² Dennis, *Recommended Model Provisions*, p. 21-22.

²³ H.R. Rep. No. 96-1457, 96th Cong., 2d Sess. 26 (1980).

²⁴ Dennis, *Recommended Model Provisions*, p. 18.

²⁵ Dennis, *Recommended Model Provisions*, p. 18.

²⁶ Deurkson, *Handbook*, p. 69.

²⁷ *Penn Central*, at 110.

²⁸ *Maher v. New Orleans*, 516 F.2d 1051, 1062 (5th Cir. La. 1975).

²⁹ *South of Second Associates v. Georgetown, CO*, 580 P.2d 807, 808-9, n. 1 (Colo. 1978).

³⁰ Dennis, *Recommended Model Provisions*, p. 21-22.

³¹ Dennis, *Recommended Model Provisions*, p. 17.

³² Dennis, *Recommended Model Provisions*, p. 19.

³³ Dennis, *Recommended Model Provisions*, p. 18-19.

³⁴ Dennis, *Recommended Model Provisions*, p. 18-19.

³⁵ Dennis, *Recommended Model Provisions*, p. 25.

³⁶ *City of New Orleans v. Pergament*, 5 So.2d 129, 131 (La. 1941) (City of New Orleans was empowered to confer upon a local preservation commission “all such powers and duties as the municipal council might deem fit and necessary to carry out the main purpose of preserving the architectural and historical value of the buildings” within the historic district).

³⁷ Deurkson, *Handbook*, p. 70

³⁸ *Penn Central*, 438 U.S. at 136-37.

³⁹ *A-S-P Associates v. City of Raleigh*, 258 S.E.2d 444, 451 (N.C. 1979) (“It is widely recognized that preservation of the historic aspects of a district requires more than simply the preservation of those buildings of historical and architectural significance within the district . . . This ‘tout ensemble’ doctrine, as it is now often termed, is an integral and reasonable part of effective historic district preservation.”).

⁴⁰ *Maher*, 516 F.2d at 1067.

⁴¹ Deurkson, *Handbook*, p. 71.

⁴² Deurkson, *Handbook*, p. 71.

⁴³ Deurkson, *Handbook*, p. 72.

⁴⁴ Dennis, *Recommended Model Provisions*, p. 29-30.

⁴⁵ Dennis, *Recommended Model Provisions*, p. 20.

⁴⁶ *Penn Central*, 438 U.S., at 110 (1978) (the “function . . . of identifying properties and areas” with architectural or historical significance is “critical to any landmark preservation effort”).

⁴⁷ Dennis, *Recommended Model Provisions*, p. 33.

⁴⁸ Dennis, *Recommended Model Provisions*, p. 35.

⁴⁹ Dennis, *Recommended Model Provisions*, p. 33-35.

⁵⁰ Dennis, *Recommended Model Provisions*, p. 35.

⁵¹ Dennis, *Recommended Model Provisions*, p. 35.

⁵² Assuming there was not a clear abuse of discretion, and “the architectural, historical and aesthetic value of the improvement was fully established, . . . the court may not substitute its judgment for that of the administrative agency.” *Manhattan Club v. New York City Landmarks Preservation Commission*, 273 N.Y.S.2d 848, 851 (1966).

⁵³ Dennis, *Recommended Model Provisions*, p. 29-30.

⁵⁴ Dennis, *Recommended Model Provisions*, p. 29-30.

⁵⁵ Dennis, *Recommended Model Provisions*, p. 82.

⁵⁶ Dennis, *Recommended Model Provisions*, p. 28.

⁵⁷ Dennis, *Recommended Model Provisions*, p. 32.

⁵⁸ Deurkson, *Handbook*, p. 103. See *Buell v. City of Bremerton*, 495 P.2d 1358 (Wash. 1972).

⁵⁹ Deurkson, *Handbook*, p. 103. See *Crall v. Leonmister*, 284 N.E.2d 610 (Mass. 1972); *Olley Valley Estates, Inc. v. Fussell*, 208 S.E.2d 801 (Ga. 1974).

⁶⁰ Deurkson, *Handbook*, p. 80.

⁶¹ *Manhattan Club v. New York City Landmarks Preservation Commission*, 273 N.Y.S.2d 848, 851 (1966); Deurkson, *Handbook*, p. 80.

⁶² Dennis, *Recommended Model Provisions*, p. 39

⁶³ Professional surveys are not legally required. If a designation decision is challenged, a court will likely uphold the designation if the structure or district was designated according to the criteria of architectural or historic significance as defined in the ordinance. Any sort of survey strengthens the local government's position that its action was objective and reasonable. Deurkson, *Handbook*, p. 81.

⁶⁴ It is prudent to articulate designation standards before making any designation decisions. Designation standards should provide property owners with a fair indication of what criteria the Commission will apply in making a designation determination. Deurkson, *Handbook*, p. 82-83. Standards and designation criteria have been struck down for vagueness. *Texas Antiquities Commission v. Dallas Country Community College District*, 554 S.W.2d 924 (Tex. 1977) (automatically protecting all state-owned buildings of "historical interest" was too vague); *Historic Green Springs, Inc. v. Bergland*, 497 F.Supp. 839 (E.D. Va. 1980) (absence of any clear formal standards).

⁶⁵ If considered, economic impact should be only one element, not an overriding one, and the inquiry should be made in the economic impact on the community, not an individual owner.

⁶⁶ Deurkson, *Handbook*, p. 85.

⁶⁷ Deurkson, *Handbook*, p. 85; See *Society for Ethical Culture v. Spatt*, 416 N.Y.S.2d 246, 250 (1979), aff'd 415 N.E.2d 922 (N.Y. 1980).

⁶⁸ *A-S-P*, at 451; *Figarsky v. Historic District Commission of City of Norwich*, 368 A.2d 163 (Conn. 1976); *Faulkner v. Town of Chesterton*, 428 A.2d 879 (Md. 1981).

⁶⁹ The “fact that in this respect an established [Historic Preservation District boundary] line is somewhat arbitrary does not render a zoning ordinance invalid.” *Mid-Continent*, at 415 (quoting *Bevridge v. Harper & Turner Oil Trust*, 168 Okla. at 609, 35 P.2d 435).

⁷⁰ *Kruse v. Town of Castle Rock*, 192 P.3d 591 (Colo. App., 2008).

⁷¹ Dennis, *Recommended Model Provisions*, p. 52-53.

⁷² *Kruse v. Town of Castle Rock*, 192 P.3d 591 (Colo. App., 2008).

⁷³ Dennis, *Recommended Model Provisions*, p. 50.

⁷⁴ Deurkson, *Handbook*, p. 120. Six months to two years has generally been considered reasonable. *City of Dallas v. Crownrich*, 506 S.W.2d 654 (Tex. Civ. App. 1974) (six-month moratorium was essential to protecting landmarks while the city was developing a preservation plan). But see *Southern National Bank of Houston v. City of Austin*, 558 S.W.2d 229 (Tex. Civ. App. 1979) (open-ended ban on demolition during designation hearings was invalidated).

⁷⁵ *Crownrich v. City of Dallas*, 506 S.W.2d 654 (1974).

⁷⁶ Deurkson, *Handbook*, p. 118. However, a governmental body may take temporary emergency action so long as affected persons will be provided sufficient process before such action becomes final. *Ewing v. Mytinger & Casselberry, Inc.*, 339 U.S. 594, 599 (1950) (“It is sufficient, where only property rights are concerned, that there is at some stage an opportunity for a hearing and a judicial determination.”); *New Motor Vehicle Board v. Orrin W. Fox Co.*, 434 U.S. 1345 (1977). Deurkson, *Handbook*, p. 118. A property owner should be afforded an opportunity to be heard and contest the freeze (demolition or alteration ban) as soon as possible. Deurkson, *Handbook*, p. 119.

⁷⁷ “Although there is no such thing as a “vested right” under the U.S. Constitution, most state courts recognize it in some form.” (Deurkson, *Handbook*, p. 119.) e.g.: This issue arises when a developer, relying on existing law, spends money in anticipation of demolishing a building of landmark quality—it may be difficult to enforce an emergency demolition ban while the designation process is pending. If a developer has signed a contract with a demolition company and has spent funds to plan for a new development prior to the emergency demolition ban, “vested rights” may be present. If the developer has already started construction (or demolition) the chances of stopping the demolition are slim. A majority of jurisdictions hold that until actual construction of a project has begun, developers have no vested right to continue, despite the fact that they may have obtained the required permits and spent money in reliance thereon. Other states are more liberal in the developer’s favor. The ordinance should “establish an administrative proceeding that places the burden on developers to produce evidence that they should be allowed to proceed” —much like an economic hardship proceeding. Deurkson, *Handbook*, p. 119.

⁷⁸ Dennis, *Recommended Model Provisions*, p. 117.

⁷⁹ Dennis, *Recommended Model Provisions*, p. 118.

⁸⁰ Dennis, *Recommended Model Provisions*, p. 66.

⁸¹ Dennis, *Recommended Model Provisions*, p. 66

⁸² Dennis, *Recommended Model Provisions*, p. 66

⁸³ Dennis, *Recommended Model Provisions*, p. 66.

⁸⁴ The “purpose of the ordinance is not only to preserve the old buildings themselves, but to preserve the antiquity of the whole [historic district], the tout ensemble, so to speak . . . Preventing or prohibiting eye sores in such a locality is within the police power and within the scope of this municipal ordinance.” *City of New Orleans v. Pergament*, 5 So.2d 129, 131 (La. 1941).

⁸⁵ Dennis, *Recommended Model Provisions*, p. 77.

⁸⁶ Dennis, *Recommended Model Provisions*, p. 78.

⁸⁷ Dennis, *Recommended Model Provisions*, p. 79.

⁸⁸ See *A-S-P Associates* (finding that the standard of “incongruity”, a “contextual standard”, is sufficient if the “conditions and characteristics of the Historic District’s physical environment [are] sufficiently distinctive and identifiable to provide reasonable guidance” to the Commission); *Town of Deering v. Tibbetts*, 105 N.H. 481, 202 A.2d 232 (1964) (finding that facially broad standards can “[take] clear meaning from the observable character of the district to which it applies”); *Gamble-Skogmo*; *Groch v. City of Berkeley*, 173 Cal. Rptr. 534 (1981).

⁸⁹ Dennis, *Recommended Model Provisions*, p. 78.

⁹⁰ Deurkson, *Handbook*, p. 103. See *Crall v. Leonmister*, 284 N.E.2d 610 (Mass. 1972); *Olley Valley Estates, Inc. v. Fussell*, 208 S.E.2d 801 (Ga. 1974).

⁹¹ Deurkson, *Handbook*, p. 103. See *Tuxedo Conservation and Taxpayers Association v. Town Board of Tuxedo*, 418 N.Y.S.2d 638 (App. Div. 1979) (“Like Caesar’s wife, a public official [serving in a quasi-judicial capacity] must be above suspicion”).

⁹² Deurkson, *Handbook*, p. 103. See *Buell v. City of Bremerton*, 495 P.2d 1358 (Wash. 1972).

⁹³ Deurkson, *Handbook*, p. 104. See *Ohio Bell Telephone Co. v. Public Utilities Commission*, 301 U.S. 292 (1937); *Russo v. Stevens*, 7 App. Div. 2d 575, 184 N.Y.S.2d 981 (1959)

⁹⁴ See *Figarsky; Historic Green Springs*, 497 F.Supp. 839, 851 (E.D. Va. 1980).

⁹⁵ *Gumley v. Board of Selectmen of Nantucket*, 358 N.E.2d 1011 (Mass. 1977) (HPC decision overturned because it was based upon open space considerations rather than on “external architectural features” as specified in the HPO); *Dempsey v. Boys’ Club of the City of St. Louis*, 558 S.W.2d 262 (Mo. 1977) (HPC

decision overturned because of a lack of evidence to make a finding regarding the practicability of rehabilitation as required by the HPO).

⁹⁶ Dennis, *Recommended Model Provisions*, p. 95.

⁹⁷ Dennis, *Recommended Model Provisions*, p. 71.

⁹⁸ Deurkson, *Handbook*, p. 92-94. See *South of Second Associates v. Georgetown*, 580 P.2d 807, 811 (Colo. 1978) (design guidelines should contain “sufficient standards to advise ordinary and reasonable men as to the type of construction permitted, permits reasonable application by the commission, and limits the commission’s discretionary powers”); *A-S-P Associates v. City of Raleigh*, 258 S.E.2d 444 (N.C., 1979) (the ordinance’s “incongruity” standard was a sufficient limitation); *Faulkner v. Town of Chesterton*, 428 A.2d 879 (Md. 1981).

⁹⁹ *Bittenbender v. Tibbetts*, 202 A.2d 232, 235-36; see *City of Santa Fe v. Gamble-Skogmo, Inc.*, 389 P.2d 13, 19 (“it would be impossible to rigidly and literally set forth every detail without impairing the underlying purpose . . . [commission should have discretion to allow/approve] some variances consistent with the public interest and the purpose of the overall zone plan”).

¹⁰⁰ A city’s over-willingness to demolish is a chief problem posed by the International Property Maintenance Code. In contrast, a minimum maintenance requirement enforced by the Commission is built upon the guiding purpose of safeguarding the historical character of the landmark or district. The Commission will be willing to work with property owners to achieve the best possible solution for the landmark. The city, on the other hand, may be motivated by finding a quick, easy fix to a structural, health or aesthetic problem—from that potential dangerous view, demolition can be an attractive (even if ultimately catastrophic) option.

¹⁰¹ Deurkson, *Handbook*, p. 107-08.

¹⁰² Deurkson, *Handbook*, p. 108.

¹⁰³ Deurkson, *Handbook*, p. 108.

¹⁰⁴ Deurkson, *Handbook*, p. 109. The principle case upholding an affirmative maintenance requirement is *Maher*, 516 F.2d at 1066-67. (Note: *Maher* held that an affirmative maintenance requirement, on its face, is valid. But it left open the possibility that certain requirements may be so overly burdensome as to invalidate the provision. *Maher*, 516 F.2d at 1067.)

¹⁰⁵ See, e.g., *Kaukus v. City of Chicago*, 27 Ill. 2d 197, 188 N.E.2d 694 (1963); *City of Chicago v. Kutil*, 43 Ill. App.3d 826, 357 N.E.2d 200 (1976); *State v. Larsen Transfer and Storage, Inc.*, 246 N.W.2d 176 (Minn. 1976); *Maher*, 516 F.2d at 1067.

¹⁰⁶ Deurkson, *Handbook*, p. 110; *Camara* ..

¹⁰⁷ *Camara v. Municipal Court*, 387 U.S. 523, 538-39 (1967) (“administrative probable cause” required for an issuance of a warrant); *See v. City of Seattle* ?

¹⁰⁸ *Camara*. See Ga. L. Rev. vol 15: 233 (1978); *Burkart Randall v. Marshall*, 625 F.2d 1313 (7th Cir. 1980); *Marshall v. Barlow's Inc.*, 436 U.S. 307 (1978); *Hanna v. Drobnick*, 514 F.2d 393 (6th Cir. 1975).

¹⁰⁹ Dennis, *Recommended Model Provisions*, p. 99.

¹¹⁰ Dennis, *Recommended Model Provisions*, p. 100

¹¹¹ Dennis, *Recommended Model Provisions*, p. 102-3.

¹¹² Dennis, *Recommended Model Provisions*, p. 105.

¹¹³ Deurkson, *Handbook*, p. 104

¹¹⁴ James K. Reap, *Demolition by Neglect and Economic Hardship*, Alliance Review, National Alliance of Preservation Commissions. For further information on economic hardship evaluation see: *Zaruba v. Village of Oak Park*, 695 N.E.2d 510 (Ill. App. 1998); *City of Pittsburgh v. Weinberg*, 676 A.2d 207 (Pa. 1996); *Kalorama Heights Ltd. Partnership v. District of Columbia*, 655 A.2d 865 (D.C. App. 1995); "Assessing Economic Hardship Claims" 18 Preservation law Reporter 1069 (1999); "Providing for Economic Hardship Relief in the Regulation of Historic Property" 15 PLR 1129 (1996).

¹¹⁵ Dennis, *Recommended Model Provisions*, p. 122.

¹¹⁶ Dennis, *Recommended Model Provisions*, p. 122-23.

¹¹⁷ Dennis, *Recommended Model Provisions*, p. 123.

¹¹⁸ Dennis, *Recommended Model Provisions*, p. 134.

¹¹⁹ Dennis, *Recommended Model Provisions*, p. 134. See *Zartman v. Reisem*, 399 N.Y.S. 2d 506 (App. Div., 1977).

¹²⁰ Deukson, *Handbook*, p. 122.

¹²¹ Deukson, *Handbook*, p. 122.

¹²² Deukson, *Handbook*, p. 121.

¹²³ Deukson, *Handbook*, p. 121.

¹²⁴ Deukson, *Handbook*, p. 121.

¹²⁵ Deukson, *Handbook*, p. 121.

¹²⁶ Deukson, *Handbook*, p. 122.

¹²⁷ Deukson, *Handbook*, p. 122.