



## 17 HISTORIC PRESERVATION

### 17.1 PURPOSE

The purpose of this article is to promote the educational, cultural, economic, and general welfare of the City of Portland by:

- A. Creating a mechanism to identify, preserve and enhance distinctive areas, sites, structures, and objects that have historic, cultural, architectural, and archaeological significance.
- B. Providing a resource of information and expertise to help those interested in rehabilitation or new construction in a district or restoring a landmark.
- C. Applying review standards in a reasonable and flexible manner to prevent the unnecessary loss of the community's historical features and to ensure compatible new construction and rehabilitation in historic districts while not stifling change and development or forcing modern recreations of historic styles.
- D. Fostering civic pride in the city's history and development patterns as represented in such distinctive areas, sites, structures, and objects.
- E. Protecting and enhancing neighborhood character.
- F. Stabilizing and improving the values of designated properties and areas.
- G. Protecting and enhancing the attractiveness of the city to its home buyers, home owners, residents, tourists, visitors, businesses and shoppers.
- H. Fostering and encouraging preservation, restoration, and rehabilitation that respects the historic, cultural, architectural, and archaeological significance of distinctive areas, sites, structures, and objects.

### 17.2 DEFINITIONS

**Alteration.** Any act or process requiring a building permit and any other act or process not requiring a building permit but specifically listed in this article as a reviewable action, including without limitation the repair, reconstruction, demolition, or relocation of any structure or object, or any part of a structure or object.

**Certificate of Appropriateness.** A certificate issued by the Planning Authority evidencing approval of specific plans for alteration of a structure, site, or designated historic landscape or new construction on a site in accordance with this article.

**Certificate of Economic Hardship.** A certificate issued by the Planning Authority evidencing a hardship variance approved by the Zoning Board of Appeals in accordance with Article 2.

**Certificate of Non-Applicability.** A certificate issued by the Planning Authority evidencing a determination that specific plans for alteration of a structure, site, or designated historic landscape or new construction on a site do not require approval under this Article.

**Contributing.** A classification applied to a site, structure, or object within a historic district signifying that it contributes generally to the qualities that give the historic district cultural, historic, architectural, or archaeological significance as embodied in the criteria for designating a historic district.

**Demolition.** Any act or process that partially or totally destroys a structure or object.



**District.** A historic district or historic landscape district.

**Historic district.** A geographically definable area possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history.

**Historic landscape district.** A geographically definable area possessing a significant concentration, linkage, or continuity of landscape components which are united by human use and past events or aesthetically by design, plan or physical development.

**Historic Resources Design Manual.** A manual including guidelines for meeting historic preservation ordinance review standards and other information.

**Landmark.** Any property, site, structure, or object of particular historic, architectural, or archaeological significance to Portland, the State of Maine and/or the United States relating to its cultural, social, economic, political, or architectural heritage, or which is associated with historic persons, important events or themes in local, state, or national history.

**New construction.** The adding to a structure by an addition, the erection or placement of any new structure on a lot or property, or the comprehensive redesign/renovation of an existing structure.

**Noncontributing.** A classification applied to a site, structure, object, or portion thereof, within a historic district signifying that: 1) it does not contribute generally to the qualities that give the historic district cultural, historic, architectural, or archaeological significance as embodied in the criteria for designating a historic district; 2) was built within 50 years of the date of district designation unless otherwise designated in the historic resources inventory; or 3) where the location, design, setting, materials, workmanship, and association have been so altered or have so deteriorated that the overall integrity of the site, structure, or object has been irretrievably lost. A portion of an otherwise contributing or landmark structure may be determined by the Historic Preservation Board to be non-contributing if it meets one or more of the above conditions.

**Object.** Anything constructed, fabricated, or created, the use of which does not require permanent or semi-permanent location on or in the ground.

**Ordinary maintenance.** Acts of maintenance or repair which do not include a change in the design, material, or outer appearance of a structure, including without limitation repainting, replacement of materials or windows of the same scale, texture and color, and landscaping other than within an historic landscape district.

**Preservation.** The act or process of applying measures necessary to sustain the existing form, integrity, and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic



materials and features rather than the extensive replacement and new construction.

**Rehabilitation.** The act or process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the property which are significant to its historical, architectural, and cultural value.

**Relocation.** Any removal or relocation of a structure on its site or to another site.

**Restoration.** The act or process of accurately depicting the form, features, and character of the property as it appeared at a particular period of time by means of the removal of features from other period in its history and reconstruction of missing features from the restoration period.

**Site.** The location of a significant event, an archaeological site, a landscape or traditional cultural property, or a building or structure, whether standing, ruined or vanished, where the location itself maintains historical or archaeological value regardless of the value of any existing structure.

### 17.3 ADMINISTRATIVE PROCEDURES

#### 17.3.1 Costs

**A.** Any project may be subject to fees as established by the City Council to cover administrative costs and the costs of Historic Preservation Board review. Applicants shall also pay a fee to cover the professional and administrative costs for analysis associated with project review, including but not limited to planning, legal, or other services. The fee shall

be based on the hours of review and processing time and prevailing hourly rate for reimbursement of City costs. The City shall periodically invoice the applicant for such costs incurred by the City, which invoice shall be paid promptly by the applicant.

- B.** Every applicant shall bear the entire expense of giving notice by mail and publication in accordance with this article.
- C.** No Certificate of Appropriateness, building, demolition, or other permit shall issue until all current charges due under this article have been paid. The balance of any remaining review and administrative costs invoiced or incurred after a permit has been issued shall be paid in full by the developer prior the issuance of any temporary or permanent certificate of occupancy.

#### 17.3.2 Notice of public meeting

- A.** For all Certificate of Appropriateness applications that are subject to Historic Preservation Board review, the applicant shall be responsible for posting a notice of public meeting sign on the property where the development is to occur. The dimensions, construction, and content of the sign shall be in accordance with standards established by the Planning Authority.
- B.** The sign shall be posted at least 10 days prior to the public workshop or hearing date, and shall be removed from the site no more than three days following the date of the meeting.
- C.** Once the required notice of public meeting signage is posted, the applicant shall submit a completed certification of posting form to the Planning Authority.



- D. In the event that a required notice of public meeting sign is knocked over or made illegible, it shall be the responsibility of the applicant to promptly reset or replace the sign, though failure to do so shall not invalidate the review.

### 17.3.3 Notices and public comment

- A. Except as provided in Subsection 17.7.5, notice of proceedings upon any application for a Certificate of Appropriateness shall be given only when the proposed activity otherwise constitutes major site plan. Notice of such proceedings also shall be furnished to any persons interested in historic preservation who have registered with the Planning Authority, and to the Historic Preservation Board and/or the Planning Board when the proceeding is pending before a different body. The failure to give any notice required by this article shall not affect the validity of any action taken.
- B. The Historic Preservation Board, the Planning Board, the Board of Appeals, and the City Council shall each invite public comment at a public meeting in accordance with their respective rules, prior to any final action being taken under this article.
- C. The Planning Authority shall advise the Historic Preservation Board and the Planning Board of any demolition permit application received by the Planning Authority as to structures or objects that have been classified as noncontributing within nominated or designated districts, but there shall be no Historic Preservation Board review of such permit applications.

## 17.4 CATEGORIES AND CRITERIA FOR DESIGNATION

### 17.4.1 Minimum criteria for designation

- A. The Historic Preservation Board shall limit its consideration to the following criteria in making a determination on a proposed nomination of an area, site, structure, or object for designation by ordinance as a landmark or district:
1. Its value as a significant example of the cultural, historic, architectural, archaeological, or related aspect of the heritage of the City of Portland, State of Maine, New England region, or the United States.
  2. Its location as a site of a significant historic or prehistoric event or activity which may have taken place within or which involved the use of any existing structure on the property.
  3. Its identification with a person or persons who significantly contributed to the cultural, historic, architectural, archaeological, or related aspect of the development of the City of Portland, State of Maine, New England region, or the United States.
  4. Its exemplification of a significant architectural type, style, or design distinguished by innovation, rarity, uniqueness, or overall quality of design, detail, materials, or craftsmanship.
  5. Its identification as the work of an architect, designer, engineer, or builder whose individual work is significant in the history or development of the City of Portland, the State of Maine, the New England region, or the United States.



6. Its representation of a significant cultural, historic, architectural, archaeological, or related theme expressed through distinctive areas, sites, structures, or objects that may or may not be contiguous.
- B.** In the case of a nominated historic district, the Historic Preservation Board shall also determine whether there is an interrelationship of resources within it which creates an identifiable entity, even if composed of a wide variety of resources. A district must convey a visual sense of the overall historic environment or be a grouping of historically or functionally related properties. A historic district can comprise both individually distinctive historic resources and historic resources that may lack individual distinction but which contribute to the significance and visual character of the district as a whole.
  - C.** In the case of a nominated historic landscape district, the Historic Preservation Board shall also consider its significance as a geological, natural, or designed landscape associated with the development, heritage, or culture of the City of Portland, State of Maine, New England region, or the United States.
  - D.** The Planning Board and City Council shall apply the criteria of (A), (B), and (C) above as well as historic preservation goals included in the Comprehensive Plan, but shall also consider the effect of such designation on other aspects of the Comprehensive Plan of the City.

#### **17.4.2 Integrity of landmarks and historic districts**

Any area, structure, or object that meets the criteria in Section 17.4.1 must also have sufficient integrity of

location, design, condition, materials, and workmanship to make it worthy of preservation or restoration.

#### **17.4.3 Designation of historic landscape districts**

An historic landscape district may be nominated and considered for designation only if the entire area of the district is owned by a unit of federal, state, or local government, or any combination of such ownership.

### **17.5 NOMINATION, CONSIDERATION AND DESIGNATION**

#### **17.5.1 Procedure**

The provisions of this section shall govern the nomination, consideration, and designation of landmarks and districts.

#### **17.5.2 Initiation of nomination**

- A.** Nomination of an area, site, structure, or object for consideration of designation as a landmark, historic district, or historic landscape district shall be submitted to the Planning Authority by the following:
  1. Any two members of the Historic Preservation Board on their own initiative, by written notice to the Planning Authority, or
  2. By written petition of any owner, in the case of a landmark, or
  3. By written petition of one or more owners of affected property in the case of a district, provided two members of the Historic Preservation Board must sponsor the petition.
- B.** A nomination shall be completed and filed with the Planning Authority with all required signatures for the nomination to be pending.



- C. Upon nomination, the Planning Authority shall notify the owner or owners of the nomination and shall transmit the nomination to the Historic Preservation Board for its preliminary consideration at a scheduled meeting, which in no event shall be held later than 60 days following nomination.
- D. If documentation and analysis that is necessary for the consideration of a given designation has not been provided at the time of nomination, such documentation shall be completed prior to further consideration by the Historic Preservation Board of the nominated landmark, district, or historic landscape.
- E. At any time after a complete nomination is filed for an historic district, the owner of a structure who seeks a permit for demolition may apply to the Historic Preservation Board for a determination that the structure to be demolished is noncontributing and eligible for a demolition permit. The determination of the Historic Preservation Board that the structure is eligible for a permit shall be conclusive.

#### 17.5.3 Notification of nomination and public hearing

- A. A public hearing on the nomination shall be held by the Historic Preservation Board following one or more preliminary workshops of the Historic Preservation Board.
- B. The hearing shall be conducted in accordance with procedures adopted by the Historic Preservation Board. The Historic Preservation Board shall consider all testimony or evidence relating to the designation criteria in Section 17.4 from any person who makes written submissions or appears at the public hearing. The owner of a nominated landmark or of

property within a nominated district shall be allowed reasonable opportunity to present testimony or evidence concerning the applicability of the designation criteria in Section 17.4.

#### 17.5.4 Recommendation by Historic Preservation Board

- A. Within 45 days following the close of the public hearing, the Historic Preservation Board shall make recommendation to the City Council in the case of a landmark, or to the Planning Board in the case of a district, upon the evidence as to whether the nominated landmark or district meets the criteria for designation in Section 17.4. Such recommendation shall be approved by at least four members of the Historic Preservation Board and shall be accompanied by a report to the City Council and/or Planning Board containing the following information:
  1. Explanation of the significance or lack of significance of the nominated landmark or district as it relates to the criteria for designation.
  2. Explanation of the integrity or lack of integrity of a nominated landmark or historic district.
  3. Proposed design guidelines for review of alteration or construction may be recommended. The specific design guidelines may provide explanation by text and/or schematic examples of visual compatibility for purposes of complying with Section 17.8.
  4. Relationship of the nominated landmark or district to the ongoing effort by the Historic Preservation Board to identify and



nominate areas, sites, structures, and objects that meet the criteria for designation.

5. A map showing the location of the nominated landmark and/or the boundaries of the nominated district.
  6. A list, including the address, of every site, structure, and object in each nominated historic district indicating their degree of cultural, historic, architectural, or archaeological significance by classification as a landmark, contributing, or noncontributing.
- B.** Where a motion either in favor of a recommendation or in opposition to a recommendation results in a vote of fewer than four members, the item shall automatically be tabled to the next regularly scheduled meeting.

#### **17.5.5 Notification of Historic Preservation Board recommendation**

- A.** The recommendation of the Historic Preservation Board, including a copy of the report, shall be transmitted to the City Council in the case of a landmark and to the Planning Board in the case of a district. Notice of the recommendation shall be sent by mail to the owner of a nominated landmark and to all owners within a nominated district within 14 days following adoption of the recommendation and report.
- B.** If the recommendation of the Historic Preservation Board is that the property or district not be designated, the nomination process shall terminate and no new nomination shall be submitted for the identical property or area for a period of one year from the date of termination, except upon a showing of

substantial and material newly discovered information.

#### **17.5.6 Determination by Planning Board**

- A.** The Planning Board, upon receipt of a recommendation and a report from the Historic Preservation Board concerning nomination of a district, may hold one or more workshops pursuant to the provisions of Article 2. After review of the Historic Preservation Board recommendation and report, the Planning Board shall hold a public hearing.
- B.** All meetings, hearings, and deliberations of the Planning Board to consider the recommendation and report of the Historic Preservation Board shall be held in conformity with Article 2.
- C.** The Planning Board may request the chair of the Historic Preservation Board, or a member designated by the chair, to appear at any meeting, hearing or deliberation to explain any recommendation or report.
- D.** A public hearing shall be scheduled within 30 days of the Planning Board's final workshop. At the conclusion of the public hearing, the Planning Board shall make its final determination including written findings as to whether the nominated district meets the criteria for designation in Section 17.4. A copy of the determination of the Planning Board shall be sent by regular mail to all owners within a nominated district within 14 days following the determination.

#### **17.5.7 Planning Board recommendation to City Council**

The recommendation of the Planning Board regarding a nominated district shall be filed with the



City Clerk within 14 days. It shall be accompanied by a copy of the report and recommendation of the Historic Preservation Board, including any specific proposed design guidelines applicable to the nominated landmark or district. The recommendation of the Planning Board may include proposed changes in other City ordinances, policies, infrastructure, or recommendations with respect to the Comprehensive Plan of the City relating to the proposed designation.

#### **17.5.8 Action by City Council**

- A.** Within 60 days after the filing of a Planning Board recommendation, or Historic Preservation Board recommendation in the case of a landmark, on the nomination with the City Clerk pursuant to Section 17.5.6, the City Council shall designate the landmark or district or reject designation. Any designation may include specific design guidelines for the designated landmark or district.
- B.** Designation of a district shall be accompanied by a list, including the address, of every site, structure and object in the district. Every site, structure, or object shall be assigned a classification of landmark, contributing, or noncontributing, indicating their degree of cultural, historic, architectural, or archaeological significance. This list may be amended thereafter by the City Council upon recommendation from the Historic Preservation Board and Planning Board under the same procedures as set forth above. Where there are no express findings by the City Council in the designation ordinance, there shall be a presumption that the City Council found that all requirements of Section 17.4 were met.

- C.** Notice of the proposed action of the City Council shall be provided by mail to the nominator and the owner of the nominated landmark and/or of all properties adjacent thereto prior to City Council action.
- D.** Notice of City Council action to the same persons shall be sent within 14 days following the City Council action. A copy of each designation and any design guidelines shall be sent to the Planning Board, the Historic Preservation Board, and the Planning Authority.
- E.** A complete schedule of all landmarks and districts, including design guidelines and a listing of landmark and contributing structures, shall be maintained by the Planning Authority and shall be available online or for public inspection and copying during ordinary business hours.

#### **17.5.9 Amendment or rescission of designation**

Amendment or rescission of any designation shall be upon the request of a person or persons authorized to nominate the property or properties affected, or upon request of the City Council, and shall follow the procedure set forth in Section 17.5 for designation. The City Council may rescind or amend a designation only after all of these procedures have been followed. The standards for rescission or amendment applied by the Historic Preservation Board, Planning Board, and City Council shall be limited to those provided in Subsections 17.4.1(A) and (B) and Subsection 17.4.2. Amendments may include reclassification of a portion of a contributing property to noncontributing status, refinement or correction of design guidelines, maps, and other parts of any designation.



#### **17.5.10 Time limits**

If any time limit in the nomination and designation process as provided in Sections 17.4 or 17.5 is not met, the validity of any designation and the interim protection provided by Section 17.6 shall not be affected, provided the Historic Preservation Board, Planning Board or City Council announce the delay and the basis for such in a public meeting, as well as the date to which the matter will be rescheduled.

### **17.6 INTERIM PROTECTION FOR NOMINATIONS**

#### **17.6.1 Nominated landmarks and districts**

- A.** From the time of nomination until the Historic Preservation Board acts upon such nomination, a site, structure, object or area nominated but not yet designated as a landmark or district shall be subject to all of the provisions of Sections 17.9 and 17.10 governing demolition and minimum maintenance, to the same extent as if designated. Upon final action of the Historic Preservation Board recommending designation, the site, structure, object, or area nominated shall be subject to all of the protections of this article until a final decision on designation by the City Council becomes effective. If the City Council rejects designation or fails to designate a property, that property shall no longer be subject to the provisions of Sections 17.9 and 17.10 of this article.
- B.** Alteration or new construction commenced pursuant to a building permit issued prior to nomination shall not require a Certificate of Appropriateness, unless such permit has expired, been canceled or revoked. No project for which any application is pending and which has received substantive review by the Planning Board prior to nomination shall be affected by nomination. Substantive review, as used in this

paragraph, shall include workshop review of any completed application under Article 14 and Article 15 of the Land Use Code.

#### **17.6.2 National Register of Historic Places**

Upon notice to the City that a property or area has been listed in the national register after the adoption of this article, a nomination shall be deemed submitted to the Historic Preservation Board for designation of such property or area as a landmark, historic district, or historic landscape district under this article, and the procedures of Section 17.6 shall be applicable thereto.

#### **17.6.3 Properties eligible for listing on national register or for local designation**

A Certificate of Economic Hardship shall be obtained prior to demolition of any structure which has not been designated in accordance with this article but which has been determined by the Maine Historic Preservation Commission as eligible for listing in the National Register of Historic Places under the criteria established by 16 U.S.C. Section 470(a) or its successor statute and/or regulations made thereunder or which has been determined to be eligible for local listing under the criteria for designation of this article. The determination of eligibility for listing shall be made by the Planning Authority, which may refer such a determination to the Historic Preservation Board, and by the Board of Appeals if an appeal is taken. Upon determination of eligibility, the structure so determined shall also be subject to the provisions of Section 17.10 until a final decision by the City Council on designation becomes effective. If the City Council rejects designation or fails to designate a structure which has been determined to be eligible under the terms of this section, that structure shall no longer be



subject to the provisions of Sections 17.9 and 17.10 of this article.

## **17.7 CERTIFICATES OF APPROPRIATENESS AND NON-APPLICABILITY**

### **17.7.1 Certificate of Appropriateness**

- A.** Except as provided in Subsections 17.7.2 and 17.7.3, a Certificate of Appropriateness shall be required before the following actions affecting any landmark, contributing or noncontributing structures, objects, sites, or property in a district may be undertaken and shall be a condition precedent to the issuance of any permit authorizing such work:
1. Any exterior alteration or new construction requiring a building permit from the City of Portland, including, but not limited to the following:
    - a. Removal and replacement of architectural detailing including, but not limited to, porch spindles and columns, railings, window moldings, and cornices.
    - b. Moving of structures or objects on the same site or to another site.
    - c. Construction of rooftop additions or decks.
    - d. Alteration of accessory structures such as garages.
    - e. Porch replacement or new construction of porches.
    - f. Installation of exterior access stairs.
    - g. Window or door replacement requiring enlargement of openings.
    - h. Installation of antennas and satellite receiving dishes.
    - i. Installation of solar collectors.

2. Any exterior alteration that does not require a building permit but which involves any one of the following activities:
  - a. Installation or replacement of either roofing or gutters where the roofing or gutters are a significant and integral feature of the structure including, but not limited to, mansard roofs, cupola roofs, ornamental slate roof features, and built-in gutter systems and the installation or replacement of siding.
  - b. Window and door replacement whether or not it requires enlargement of openings.
  - c. Masonry work including, without limitation, tuckpointing, sandblasting, chemical cleaning.
  - d. Site features other than vegetation including, without limitation, fencing, walls, paving, and grading. However, required review for alterations to cemeteries designated under this article shall not include review of alterations to headstones made for the purpose of recognition of additional decedents or installation of grave markers and/or tombs.
  - e. Streetscape and pedestrian improvements within historic districts, including but not limited to installation of pedestrian lighting, alteration to road or intersection alignment, installation of public signage (other than public-safety-related signage).
  - f. Landscaping within an historic landscape district.
  - g. Exterior lighting where proposed in conjunction with commercial and



- institutional signage or awnings or architectural lighting.
      - h. Exterior utilities including mechanical, HVAC, plumbing, and electrical, where placed on elevations readily visible from a public way.
    - 3. Installation or alteration of any exterior sign.
    - 4. Any relocation of a landmark or contributing structure within a district.
  - B. There shall be a rebuttable presumption that all structures within a district shall be contributing unless the designation report and Historic Resources Inventory expressly identifies otherwise. Where the Planning Authority or the owner believes that the identification is erroneous, the Historic Preservation Board shall determine whether the structure is noncontributing.

#### 17.7.2 Exceptions to requirement of Certificate of Appropriateness

A Certificate of Appropriateness is not required:

- A. Where a Certificate of Non-Applicability has been issued within the previous 12 months.
- B. Where the work consists solely of ordinary maintenance and/or restoration, provided that there is no substitution of materials or alteration of architectural details.
- C. Where the work consists solely of emergency repair of a temporary nature.
- D. Where a Certificate of Economic Hardship has been issued and remains valid.
- E. In the case of either alteration of a structure (other than a landmark) or of new construction within a district, a Certificate of Appropriateness shall not be required where the Planning Authority determines that the

proposed exterior changes to a structure are not readily visible at pedestrian heights from any public way or public open space. Where a Certificate of Appropriateness is required for such changes, it shall be limited to those portions of the structure or structures so visible.

#### 17.7.3 Alterations or new construction within historic landscape districts

A Certificate of Appropriateness shall be obtained before any site alteration or new construction within a historic landscape district may be undertaken, except where a Certificate of Non-Applicability has been issued or where construction or alteration is pursuant to a master plan approved by a prior Certificate of Appropriateness within five years of commencement and where the master plan is sufficiently detailed to guide the specific work

#### 17.7.4 Applications for Certificate of Appropriateness

- A. Application for a Certificate of Appropriateness shall be made on a form prepared by the City and shall be submitted to the Planning Authority along with the applicable fee. Upon receipt of an application, the Planning Authority shall determine whether the application is complete. The Planning Authority shall determine whether the scope, nature, or scale of the proposed project requires review by the Historic Preservation Board or whether it is a minor or routine project that is appropriately reviewed at the administrative level.
- B. If the Planning Authority determines that the project should be reviewed by the Historic Preservation Board, the item shall be scheduled for the next available Historic Preservation



Board meeting, provided that the notice requirements of this article can be met prior to that meeting. The Planning Authority shall transmit a copy of the complete application to the Historic Preservation Board at least four days prior to their next scheduled meeting. The Planning Authority shall not issue or act upon the application until the Historic Preservation Board has completed its review and approval process. An application for a Certificate of Appropriateness shall be treated as an application for a Certificate of Economic Hardship under Section 17.9 whenever the Historic Preservation Board or the Planning Board, as applicable, determines that the proposed alteration includes any demolition which would:

1. Have the effect of causing the structure to no longer meet the criteria for designation of Section 17.4, or
  2. Materially impair the significance and integrity of the structure.
- C.** Where a determination under (B) above is made by the Historic Preservation Board, the Planning Board shall review that decision as a preliminary matter, whether the Historic Preservation Board has taken final action with respect to the application or not. Upon any final determination that an application for a Certificate of Appropriateness is required to be treated as an application for a Certificate of Economic Hardship, no further action shall be taken with respect to the application until that certificate is applied for and is granted.
- D.** Where the applicant has done work or caused work to be done on a structure or a property for which a Certificate of Appropriateness is sought and such work is either not done in

compliance with an approval received under this article or was performed without the approvals required under this article, no application for such structure or property shall be considered by the Planning Authority or by the Historic Preservation Board until the work done without approval is brought into compliance with the requirements of this article. The Historic Preservation Board may waive this requirement if the Historic Preservation Board determines that the work does not alter the essential character of the structure or district and one or more of the following standards are also met:

1. The work was needed to bring a building into conformance with any building or safety code.
  2. The applicant can demonstrate a good faith belief that necessary approvals had been received for the work at issue prior to the commencement of the work.
  3. The applicant can demonstrate a good faith belief that the work done was not subject to review under this article.
- E.** Review of any application by the Planning Authority or by the Historic Preservation Board shall not constitute waiver of any future claims by the City concerning violations and shall not stop the City from prosecuting any violation.
- F.** Once a completed application has been submitted, it shall be diligently pursued. Failure of an applicant to attend two or more Historic Preservation Board meetings at which an application is scheduled for review shall cause the application to expire and to be deemed null and void, unless the Planning Authority determines that good cause is shown for the failure to attend. Where good cause is shown



for a failure to attend, the Historic Preservation Board shall table an application to a date mutually agreed upon in writing.

- G.** In determining the existence of the circumstances specified in this article, the Historic Preservation Board, Planning Board, or Board of Appeals may require such additional documentation or evidence as they may respectively determine to be necessary, including plans, drawings, and elevations, and notwithstanding any time limit for action or decision specified in this article, it may continue a proceeding for such additional time as it reasonably takes an applicant or any other party to comply with the request for additional relevant documentation or evidence and may draw a negative inference with regard to the content of any material evidence not produced upon reasonable request.
- H.** Prior to issuance of any Certificate of Appropriateness, any applicant shall demonstrate sufficient right, title, or interest in the property, technical capacity, and financial capacity to complete any change proposed to be undertaken under the Certificate of Appropriateness, upon reasonable request of the Planning Authority. If the Planning Authority determines that the applicant has failed or refused to demonstrate an ability to complete the proposed activity, it shall refer the issuance to the Planning Board which shall make a final determination as to whether the applicant has demonstrated a sufficient capability to complete the proposed activity. Notwithstanding any other provision of this article, the Historic Preservation Board or Planning Board may include reasonable conditions, including the provision of adequate

financial security, to ensure that actions taken under a Certificate of Appropriateness will be successfully prosecuted to completion, as approved, in a timely manner.

#### **17.7.5 Review process for Certificate of Appropriateness**

The process for review of an application for a Certificate of Appropriateness shall be as follows, except to the extent specifically provided elsewhere in this Section 17.7:

- A. For administrative-level reviews.** An application for a Certificate of Appropriateness for installation or alteration of any exterior sign; minor or routine alterations; and temporary alterations, construction, or improvements shall be reviewed by the Planning Authority for compliance with the standards of Section 17.8 and the *Historic Resources Design Manual*. Where staff determines that such an application meets these requirements, the Certificate of Appropriateness shall be issued by staff without presentation to the Historic Preservation Board for approval. Staff shall provide the Historic Preservation Board with written notice of staff approvals on a quarterly basis.
1. If staff approves an application with conditions, the applicant may request review by the Historic Preservation Board. The application shall then be subject to review by the Historic Preservation Board pursuant to Subsection 17.7.5(B).
  2. Staff may elect to forward to the board an application found by staff to meet review standards but for which board confirmation is sought. The application shall be placed upon the next consent



agenda of the Historic Preservation Board. Any member of the Historic Preservation Board may remove an application from the consent agenda for the purpose of giving it a public hearing.

3. If the Planning Authority determines that the application does not meet the requirements of Section 17.8 and the *Historic Resources Design Manual*, the application shall be scheduled for review by the Historic Preservation Board pursuant to Subsection 17.7.5(B), unless the applicant withdraws the application.
4. For purposes of this subsection only, temporary is defined as either a one-time occurrence that does not exceed 30 days or as an annual occurrence that does not exceed one 30-day period each year. Minor or routine alterations are defined as incidental changes or additions to a building, site features, or exterior utilities which require building permits but will neither result in substantial changes to any significant historic features nor obscure such features. In no event shall any change be deemed minor when, in the opinion of the Planning Authority, such change shall alter the historic character of the building or site.

**B. For Historic Preservation Board-level reviews.** The Planning Authority shall review the application and prepare a report for the Historic Preservation Board's consideration which addresses the proposed project's compliance with the review standards in Section 17.8. The Planning Authority may schedule one or more preliminary workshops on the application prior to a public hearing.

1. Following any preliminary workshop(s) and upon determination by the Historic Preservation Board that the application is complete, the application shall be scheduled for a public hearing at the next available meeting of the Historic Preservation Board which allows for adequate notice.
2. Following a public hearing, the Historic Preservation Board shall make a decision on the application.
3. The Historic Preservation Board shall enter findings of fact concerning the relationship between the application and the applicable standards of Section 17.8 immediately following a denial or conditional approval of any Certificate of Appropriateness. Written notice of the determination of staff or the Historic Preservation Board on the application, including a copy of the findings of fact, shall be sent by regular mail to the applicant.

**C. Review process involving major site plans.**

The process for review of an application for alteration or new construction that is also a major site plan as defined in Article 14 shall be as follows:

1. Site plan review by the Planning Board and historic preservation review by the Historic Preservation Board shall, to the extent feasible, proceed concurrently. Any proposed major site plan required to obtain a Certificate of Appropriateness under this article shall be exempt from the design standards included in Article 14, and shall comply with the applicable design standards listed within Article 17.



2. Upon receipt of the application for a Certificate of Appropriateness, the Planning Authority shall review the application and schedule a workshop for preliminary review by the Historic Preservation Board. The Planning Authority shall prepare an analysis of the application based upon the standards in Section 17.8 for consideration at the workshop. Additional workshops may be scheduled by the Historic Preservation Board with the consent of the applicant.
3. Following preliminary workshop(s) and upon determination by the Historic Preservation Board that the application is complete, the Historic Preservation Board shall conduct a public hearing and make a final decision on the application.
4. If the Historic Preservation Board finds that the application meets the applicable standards of Section 17.8, it shall issue a Certificate of Appropriateness, with or without conditions. If the action by the Historic Preservation Board is a denial or conditional approval, the Historic Preservation Board shall make findings of fact concerning the relationship between the application and the applicable standards of Section 17.8.
5. Written notice of the determination of the Historic Preservation Board on the application, including a copy of the findings of fact, if any, shall be sent by regular mail to the applicant within 14 days following its determination.

#### **17.7.6 Issuance of Certificate of Appropriateness**

- A. The Planning Authority shall issue the Certificate of Appropriateness within 14 days following a proposed affirmative decision by the Historic Preservation Board becoming final.
- B. Unless work authorized by a Certificate of Appropriateness shall be commenced within six months of the date of issuance of the Certificate of Appropriateness, the Certificate of Appropriateness shall expire and shall become null and void. The Planning Authority may approve additional extensions of this six-month period, not to exceed a total of two years, provided that a written request for extension is received prior to the expiration date of the Certificate of Appropriateness. In the event of litigation arising out of the granting of a Certificate of Appropriateness, the certificate shall remain valid until one year after the entry of final judgment in the litigation or until the end of the two-year period, whichever is later.
- C. An approval shall expire and become null and void upon the expiration of the authorization for the work, or for the development, under the applicable provisions of Chapter 6 of this Code of Ordinances or Articles 14 or 15.

#### **17.7.7 Certificate of Non-Applicability**

- A. The Planning Authority shall issue a Certificate of Non-Applicability as to property subject to this article when requested to do so when:
  1. The Planning Authority determines that none of the proposed work requires a Certificate of Appropriateness.
  2. The Planning Authority determines that all of the proposed work is ordinary



maintenance, restoration, or a combination thereof.

3. In the case of the alteration of a structure other than a landmark or of new construction within a district, where the Planning Authority determines that the proposed exterior changes to a structure are not readily visible at pedestrian heights from any public way. Where a Certificate of Appropriateness is required for such changes, a Certificate of Non-Applicability shall be issued upon request for those portions of the structure or structures not visible at such heights, provided, however, this paragraph shall not apply to alteration of a landmark or to any demolition.
  4. After any appeal where the Historic Preservation Board, Planning Board or any court determines that paragraphs (1), (2) or (3) of this subsection are applicable.
- B.** The Planning Authority shall act upon any application for a Certificate of Non-Applicability within 14 days of receiving a complete written description of all work to be undertaken.

#### **17.7.8 Amendments to approved certificates of appropriateness**

- A.** If at any time before or during work approved under the procedures set forth in this Section 17.7 the applicant requests minor amendments to approved work, the Planning Authority may approve such minor amendments under the procedures set forth in Subsection 17.7.5, provided that such amendments will not result in a waiver or substantial alteration of the approval or any condition attached to the approval. The applicant shall supply a written statement of the proposed amendment and

amended plans or drawings to the Planning Authority. The decision of the Planning Authority as to whether an amendment may be reviewed under this subsection shall be final.

#### **17.7.9 Review process for demolition of landmarks or contributing structures within a district**

- A.** Any applicant seeking demolition of a landmark or contributing structure must apply for a Certificate of Economic Hardship to the Board of Appeals in accordance with Section 17.9 of this article. Said application must be approved by the Board of Appeals before a demolition permit can be issued.
- B.** Any applicant seeking demolition of a noncontributing building as defined in this article may apply directly for a demolition permit without receiving approval from the Historic Preservation Board or a Certificate of Economic Hardship from the Board of Appeals.
- C.** Any applicant seeking demolition of a portion of a contributing or landmark structure may request that the Historic Preservation Board make a determination as to whether such portion of the structure is noncontributing based on the definition of that classification contained in this article. If the board determines the portion to be noncontributing, the applicant may apply directly for a demolition permit.

#### **17.8 STANDARDS FOR REVIEW OF APPLICATION FOR CERTIFICATE OF APPROPRIATENESS**

##### **17.8.1 *Historic Resources Design Manual***

- A.** The Historic Preservation Board may provide further guidance on how to meet the standards



of this article in the *Historic Resources Design Manual*, which shall supplement this article. The *Historic Resources Design Manual* may include but need not be limited to maps and descriptions of landmarks and districts, a listing of properties which have been determined to be eligible for listing on the national register or for local designation, a glossary of terms and architectural styles, descriptions, and illustrations of how the standards of this article will be interpreted, and all designation ordinances, reports, and design guidelines. All provisions of the *Historic Resources Design Manual* shall be consistent with the standards of this article and any designation ordinance adopted hereunder.

- B. Amendments to the *Historic Resources Design Manual* shall be forwarded to the City Council as a communication and shall become effective 45 days from the date on which said amendments are sent to the City Council, unless the City Council takes official action disapproving the amendments, in whole or in part, prior to the expiration of the 45-day period.
- C. The *Historic Resources Design Manual* shall be maintained by the Planning Authority.

#### 17.8.2 Standards for review of alteration

In considering an application for a Certificate of Appropriateness involving alteration, the Historic Preservation Board and the Planning Board shall apply the following general standards, as further described in the *Historic Resources Design Manual*, and any design guidelines accompanying the specific designation:

- A. Every reasonable effort shall be made to provide a compatible use for a property which

requires minimal alteration to the character defining features of the structure, object, or site and its environment or to use a property for its originally intended purpose.

- B. The distinguishing original qualities or character of a structure, object, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- C. All sites, structures, and objects shall be recognized as products of their own time, place, and use. Alterations that have no historical basis or create a false sense of historical development, such as adding conjectural features or elements from other properties, shall be discouraged.
- D. Changes which may have taken place in the course of time are evidence of the history and development of a structure, object, or site and its environment. Changes that have acquired significance in their own right shall not be destroyed.
- E. Distinctive features, finishes, and construction techniques or examples of skilled craftsmanship which characterize a structure, object, or site shall be treated with sensitivity.
- F. Deteriorated historic features shall be repaired rather than replaced wherever feasible. Where the severity of deterioration requires replacement of a distinctive feature, the new feature should match the feature being replaced in composition, design, texture, and other visual qualities and, where possible, materials. Repair or replacement of missing historic features should be based on accurate duplications of features, substantiated by documentary, physical, or pictorial evidence



rather than on conjectural designs or the availability of different architectural elements from other structures or objects.

- G. The surface cleaning of structures and objects, if appropriate, shall be undertaken with the gentlest means possible. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be undertaken.
- H. Every reasonable effort shall be made to protect and preserve significant archaeological resources affected by or adjacent to any project. If resources must be disturbed, mitigation measures shall be undertaken.
- I. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant cultural, historical, architectural, or archaeological materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the size, scale, color, material, and character of the property, neighborhood or environment.
- J. Wherever possible, new additions or alterations to structures and objects shall be undertaken in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the historic property would be unimpaired.

### 17.8.3 Standards for review of new construction

In considering an application for a Certificate of Appropriateness involving new construction, the Historic Preservation Board and the Planning Board shall apply the following general standards as may be applicable to the context of the proposed construction. The intent and application of the

following standards are further described in the *Historic Resources Design Manual* and shall guide the board in its review.

#### A. Scale and form

1. *Height.* The proposed height shall be visually compatible with surrounding structures when viewed from any street or open space and in compliance with any design guidelines.
2. *Width.* The width of a building shall be visually compatible with surrounding structures when viewed from any street or open space and in compliance with any design guidelines.
3. *Proportion of principal facades.* The relationship of the width to the height of the principal elevations shall be visually compatible with structures, public ways, and open spaces to which it is visually related.
4. *Roof shapes.* The roof shape of a structure shall be visually compatible with the structures to which it is visually related.
5. *Scale of a structure.* The size and mass of structures in relation to open spaces, windows, door openings, porches, and balconies shall be visually compatible with the structures, public ways, and places to which they are visually related.
6. *Applicability to Congress Street Historic District.* In the Congress Street Historic District, for new construction within the B-3 zone, the Historic Preservation Board shall not impose conditions more restrictive than the dimensional requirements of the B-3 zone.
7. *Applicability to India Street Historic District.* For new construction within the



India Street Historic District, the Historic Preservation Board shall not impose conditions more restrictive than the dimensional requirements of the IS-FBC zone, except for in the case of a building addition which proposes to change the height of a contributing historic structure.

8. *Applicability to the Portland Company Historic District.* For new construction within the Portland Company Historic District, the height requirements of the B-6 Building Height Overlay & Building Envelopes map shall be controlling and the Historic Preservation Board shall not impose conditions more restrictive than the building height requirements of the B-6 zone.

#### **B. Composition of principal facades**

1. *Proportion of openings.* The relationship of the width to height of windows and doors shall be visually compatible with structures, public ways, and places to which the building is visually related.
2. *Rhythm of solids to voids in facades.* The relationship of solids to voids in the facade of a structure shall be visually compatible with structures, public ways, and places to which it is visually related.
3. *Rhythm of entrance porch and other projections.* The relationship of entrances and other projections to sidewalks shall be visually compatible with the structures, public ways, and places to which they are visually related.
4. *Relationship of materials.* The relationship of the color and texture of materials (other than paint color) of the facade shall be visually compatible with the predominant

materials used in the structures to which they are visually related.

5. *Signs.* Any new sign, and any change in the appearance of an existing sign located on a landmark, within a historic district, or within an historic landscape district, which is readily visible from any street or open space shall not be incongruous to the historic character of the landmark or district and shall comply with the criteria and guidelines specified in the *Historic Resources Design Manual*.

#### **C. Relationship to street**

1. *Walls of continuity.* Facades and site structures, such as masonry walls, fences, and landscape masses, shall, when it is a characteristic of the area, form cohesive walls of enclosure along a street to ensure visual compatibility with the structures, public ways, and places to which such elements are visually related.
2. *Rhythm of spacing and structures on streets.* The relationship of a structure or object to the open space between it and adjoining structures or objects shall be visually compatible with the structures, objects, public ways, and places to which it is visually related.
3. *Directional expression of principal elevation.* A structure shall be visually compatible with the structures, public ways, and places to which it is visually related in its directional character, whether this be vertical character, horizontal character, or nondirectional character.
4. *Streetscape, pedestrian improvements.* Streetscape and pedestrian improvements and any change in the appearance thereof



located adjacent to or on a landmark, within a historic district, or within a historic landscape district which is readily visible from any street or open space shall not be incongruous to the historic character of the landmark or district and shall comply with the criteria and guidelines specified in the *Historic Resources Design Manual*.

#### D. Other standards

1. *Compatible use.* Every reasonable effort shall be made to provide a compatible use for a property which requires minimal alteration to the character defining features of the structure, object, or site and its environment or to use a property for its originally intended purpose.
2. *Distinguishing original character.* The distinguishing original qualities or character of a structure, object, or site and its environment shall not be destroyed. The alteration of any historic material or distinctive architectural features should be avoided when possible.
3. *Archeological resources.* Every reasonable effort shall be made to protect and preserve significant archaeological resources affected by or adjacent to any project. If resources must be disturbed, mitigation measures shall be undertaken.
4. *Contemporary design.* Contemporary design for additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant cultural, historical, architectural, or archaeological materials that characterize the property. The new work shall be differentiated from the old and

shall be compatible with the size, scale, material, and character of the property, neighborhood and environment.

5. *Additions.* Wherever possible, new additions to structures and objects shall be undertaken in such a manner that, if such additions were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

#### 17.8.4 Standards for review of alterations to or redesign of noncontributing structures

- A. In considering an application for a Certificate of Appropriateness involving alteration(s) to a noncontributing structure the standards for review of alterations set forth in Subsection 17.8.2 shall apply as applicable. The intent of the review shall be to ensure no further erosion of any existing architectural character of the subject structure determined to be significant by the Planning Authority or Historic Preservation Board and, where practicable, to guide projects toward a more compatible relationship with the surrounding context.
- B. In considering an application for a Certificate of Appropriateness involving comprehensive redesign of a noncontributing structure, the standards for review of construction set forth in Subsection 17.8.3 shall apply.

#### 17.8.5 Standards for review of relocation

In acting upon an application for a Certificate of Appropriateness involving relocation, the Historic Preservation Board and the Planning Board shall apply the following general standards and any design guidelines in the ordinance designating the landmark or district:



- A. Whether the historic or urban design character and aesthetic interest of the structure or object contribute to its present setting.
  - B. If located within a district, whether there are definite plans for the area to be vacated and what the effect of those plans is on the character of the surrounding area. In such cases, consideration of additional design guidelines for construction to be imposed as a condition of approval is appropriate.
  - C. Whether the relocation of the structure or object can be accomplished without significant damage to its physical integrity.
  - D. Whether the proposed relocation area is compatible with the cultural, historical or architectural character of the structure or object.
- B. The Planning Authority shall transmit a copy of the application to the Board of Appeals, with copies to the Planning Board and the Historic Preservation Board, within 14 days following receipt of a properly completed application.

#### 17.9.2 Standard to be applied

#### 17.8.6 Standards for review of signage

In considering an application for a Certificate of Appropriateness involving the installation or modification of sign(s), including awning(s) which incorporate signage, signs shall be compatible with the subject building and its surrounding context as detailed in the signage design guidelines included in the *Historic Resources Design Manual*. If there is a conflict between this standard and the requirements of Article 20, the stricter standard shall apply.

### 17.9 CERTIFICATE OF ECONOMIC HARDSHIP

#### 17.9.1 Applicability

- A. Any applicant seeking demolition of a landmark or a contributing structure within a district may make application for a Certificate of Economic Hardship from the Board of Appeals. The application shall be submitted to the Planning Authority, together with the applicable fee.
- A. The Board of Appeals shall approve an application for a Certificate of Economic Hardship only upon a determination that the denial of approval of the proposed activity or of the proposed demolition will result in the loss of all reasonable use of the structure as required by Subsections 17.9.5 and 17.9.7.
  - B. In applying this standard, the Board of Appeals shall consider among other things any evidence presented concerning the following:
    1. Any opinions from a licensed engineer or architect with experience in renovation, restoration, or rehabilitation as to the structural soundness of the structure and its suitability for continued use, renovation, restoration, or rehabilitation.
    2. Any estimates of the cost of the proposed alteration, construction, demolition, or removal and an estimate of any additional cost that would be incurred to comply with the recommendations of the Planning Board for changes necessary for it to be approved.
    3. Any estimates of the market value of the property in its current condition; after completion of the proposed alteration, construction, demolition, or removal; after any expenditures necessary to comply with the recommendations of the Planning Board for changes necessary for it to approve a Certificate of Appropriateness;



and in the case of a proposed demolition, after renovation of the existing structure for continued use.

4. In the case of a proposed demolition, any estimates from architects, developers, real estate consultants, appraisers, or other real estate professionals experienced in rehabilitation as to the economic feasibility of restoration, renovation, or rehabilitation of any existing structures or objects.

#### **17.9.3 Information to be supplied by applicant**

- A.** The applicant shall submit by affidavit the following information for an application to be considered to be complete:
  1. The assessed value of the property and/or the structure in the case of a demolition for the two most recent assessments.
  2. Real property taxes paid for the previous two years.
  3. The amount paid for the property by the owner, the date of purchase, and the party from whom purchased, including a description of the relationship, if any, between the owner and the person from whom the property was purchased.
  4. The current balance of any mortgages or any other financing secured by the property and the annual debt service, if any, for the previous two years.
  5. All appraisals obtained within the previous two years by the owner or applicant in connection with purchase, offerings for sale, financing, or ownership of the property, or state that none were obtained.
  6. All listings of the property for sale or rent, price asked and offers received, if any,

within the previous four years, or state that none were obtained.

7. All studies commissioned by the owner as to profitable renovation, rehabilitation, or utilization of any structures or objects on the property for alternative use, or a statement that none were obtained.
  8. For income-producing property, itemized income and expense statements from the property for the previous two years.
  9. Estimate of the cost of the proposed alteration, construction, demolition, or removal and an estimate of any additional cost that would be incurred to comply with the recommendations of the Planning Board for changes necessary for it to approve a Certificate of Appropriateness.
  10. Form of ownership or operation of the property, whether sole proprietorship, for profit or not for profit corporation, limited partnership, joint venture, or other.
- B.** In the event that the information required to be submitted by the applicant is not reasonably available, the applicant shall file with the affidavit a statement of the information that cannot be obtained and shall describe the reasons why such information is unavailable.
  - C.** Notwithstanding the submission of the above information, the Board of Appeals may require additional evidence as provided in Subsection 17.7.4(G).

#### **17.9.4 Public hearing**

- A.** The Board of Appeals shall hold a public hearing on the application within 30 days following receipt of the completed application form. Where the application requests the demolition of a landmark or a contributing



structure within a district, the public hearing shall not be held less than 90 days following receipt of the completed application, unless the applicant makes a clear showing that the delay will result in undue hardship of a unique or exceptional character which could not reasonably be or have been avoided. Upon such a showing, the Planning Authority may waive all or any part of the 90-day period and schedule the hearing before the board. Undue hardship shall not include mere inconvenience or incidental financial loss. No such waiver shall be granted without the Planning Authority giving best practical notice to all persons entitled to notice of the hearing.

- B.** Where the application requests the demolition of a landmark or a contributing structure within a district, the Planning Authority shall promptly notify any persons interested in historic preservation, who have registered in writing with him or her, give notice by mail to all owners of property within 500 feet of the structure, and shall require that the applicant immediately place a notice, to be supplied by the building official, in a prominent place on the structure and to maintain it there at all times during the pendency of the demolition application. The notice shall state that the structure has been proposed to be demolished by its owner and provide contact information for further information. The failure to give any notice required hereunder shall not affect the validity of any action taken by the Planning Authority or the Board of Appeals.
- C.** The Planning Board may provide a report or any other information, documentation or evidence or request the Historic Preservation Board to assist the Board of Appeals in

considering the extent of variance necessary, an appropriate incentive plan, or reasonable condition to be imposed.

- D.** The Board of Appeals may continue a proceeding for such additional time as it reasonably takes an applicant, any other interested person, the Historic Preservation Board, or the Planning Board to comply with a request for additional information or evidence. The applicant shall be afforded the right to present rebuttal evidence.

#### **17.9.5 Determination by the Board of Appeals**

- A.** The determination by the Board of Appeals shall be made within 45 days following close of the public hearing and submission of all information, documentation, or evidence requested by the board. The determination shall be accompanied by findings of fact.
- B.** The Board of Appeals shall not grant approval of an application involving demolition unless the board determines, upon clear and convincing evidence, that one or more of the following circumstances apply:
  1. The structure is not subject to this article.
  2. Denial of a demolition permit would result in a hardship to the property owner so great that it would effectively deprive the owner of all reasonable use of the structure. The extent of any demolition permitted shall be limited to the amount necessary to allow reasonable use of the structure. Where the condition of the structure is claimed to prevent any reasonable use, the applicant shall establish that such condition is not the result of the acts or neglect of the owner or his



predecessors in title occurring in whole or in part after August 1, 1988.

#### 17.9.6 Disapproval by Board of Appeals

If the determination of the Board of Appeals is to disapprove the application for a Certificate of Economic Hardship, the applicant shall be notified within five business days. The notice shall include a copy of the findings of fact and report.

#### 17.9.7 Determination of no reasonable use

- A. If the determination of the Board of Appeals is that the denial of the Certificate of Appropriateness has resulted in the denial of all reasonable use of the structure, or the entire property in the case of new construction, then the Certificate of Economic Hardship shall be issued by the Planning Authority 90 days following the determination unless during that time the City Council approves an incentive plan pursuant to Subsection 17.9.8.
- B. A copy of the determination of the Board of Appeals, together with the findings of fact, shall be mailed to the applicant and filed with the City Clerk, the Planning Board, and the Historic Preservation Board within 14 days following the determination of economic hardship.

#### 17.9.8 Incentive plan

The purpose of an incentive plan is to provide a mechanism to allow a reasonable use without the demolition of the complete structure or important architectural elements. The Planning Board, in cooperation with the Historic Preservation Board and the owner, may prepare a report and recommend to the Board of Appeals an incentive plan to assure reasonable use of the structure. This incentive plan may include, but is not limited to,

loans or grants from the City of Portland or other public or private sources; acquisition by purchase or eminent domain; building and safety code modifications to reduce cost of maintenance, restoration, rehabilitation, or renovation; changes in applicable zoning regulations, including a transfer of development rights; or relaxation of the provisions of this article sufficient to allow reasonable use of the structure.

#### 17.9.9 City Council consideration of incentive plan

- A. Upon receipt of a report from the Board of Appeals recommending an incentive plan to assure reasonable use of the property, the City Council shall give prompt consideration to the determination of economic hardship and the report of the board, including the recommended incentive plan. The City Council shall approve or disapprove the incentive plan determined by the Board of Appeals to allow reasonable use of the structure within 90 days following the determination by the Board of Appeals.
- B. A copy of the ordinance enacted by the City Council, together with the incentive plan, if any, shall be mailed to the applicant and transmitted to the Board of Appeals, the Planning Board, and the Historic Preservation Board within five business days following the enactment of the ordinance.

#### 17.9.10 Issuance of Certificate of Economic Hardship

- A. Upon receipt by the Board of Appeals of a copy of City Council action disapproving an incentive plan, or upon failure of the City Council to act to either approve or disapprove an incentive



plan within the time specified, the Board of Appeals shall approve a Certificate of Economic Hardship to the applicant within 30 days. The certificate may be subject to conditions including design guidelines for subsequent new construction not inconsistent with the standards set forth in this article and the *Historic Resources Design Manual*. The Certificate of Economic Hardship shall be valid for a period of 120 days from approval by the Board of Appeals, except as provided in Subsection 17.9.7 where an incentive plan has been proposed. Certificates of Economic Hardship shall not be transferable from the applicant to another subsequent owner of the same property.

- B. Upon presentation by the applicant of a valid Certificate of Economic Hardship to the Planning Authority, the Certificate of Appropriateness shall be issued to the applicant within 14 days.

## 17.10 MAINTENANCE

### 17.10.1 Preservation of protected structures

- A. All landmarks, and all contributing structures located in an historic district, shall be preserved against decay and deterioration by being kept free from the following structural defects by the owner and any other person or persons who may have legal custody and control thereof:
  1. Deteriorated or inadequate foundation which jeopardizes its structural integrity.
  2. Defective or deteriorated floor supports or any structural members of insufficient size to carry imposed loads with safety which jeopardize its structural integrity.
  3. Members of walls, partitions, or other vertical supports that split, lean, list, or buckle due to defective material or deterioration which jeopardize its structural integrity.
  4. Structural members of ceilings and roofs, or other horizontal structural members, which sag, split, or buckle due to defective materials or deterioration or are of insufficient size to carry imposed loads with safety which jeopardize its structural integrity.
  5. Fireplaces or chimneys which list, bulge, or settle due to defective material or deterioration or are of insufficient size or strength to carry imposed loads with safety which jeopardize its structural integrity.
  6. Lack of weather protection which jeopardizes the structural integrity of the walls, roofs, or foundation.
- B. The owner or such other person shall repair such building, object, or structure within a specified period of receipt of a written order to correct defects or repairs to any structure as provided by (A) above, so that such structure shall be preserved and protected in accordance with the purposes of this article.
- C. Any such order shall be in writing, shall state the actions to be taken with reasonable particularity and shall specify dates for compliance, which may be extended by the Planning Authority for reasonable periods to allow the owner to secure financing, labor or materials.



## 17.11 PENALTIES

### 17.11.1 Fines for violation

Failure to perform any act required by this article or performance of any act prohibited by this article or of any conditions or any certificate issued hereunder shall constitute a violation and be subject to a fine as provided in 30 A M.R.S. §4452. Each day on which there is failure to perform a required act or on which a violation exists shall constitute a separate violation for purposes of this section.

### 17.11.2 Additional penalties for willful violation or gross negligence

- A.** In addition to the penalties authorized by Subsection 17.11.1, a violation which is intentional, or occurs through gross negligence, shall be subject to the following provisions:
1. No permit shall be issued under Chapter 6 of this Code of Ordinances for any alteration or new construction affecting such property for a period of five years following the last date of the violation, other than permits necessary to correct the violation. However, upon presentation of evidence satisfactory to the Planning Authority that the violation has been corrected, any remaining portion of the five-year prohibition on issuance of a permit may be waived.
  2. For a period of 25 years, any alteration or new construction on the property shall be subject to this article, whether or not any remaining structure or object on the property continues to have the cultural, historical, architectural, or archaeological character and integrity that caused it to be nominated or designated as a landmark or part of a district.

3. As a condition for any new land use approval, the owner may be required to rebuild, reconstruct, restore, or replicate the structure or object on the property.

- B.** Paragraphs (A)(1) and (2) above shall not apply to violations which are limited to noncontributing structures.

### 17.11.3 Other remedies

Notwithstanding the provisions of Subsections 17.11.1 and 17.11.2, the City may institute appropriate proceedings in law and equity to prevent or remedy any violation of this article.

### 17.11.4 Liberal construction of article

This article shall be liberally applied and construed to effectuate the purpose of preservation set forth in Section 17.1.

### 17.11.5 Exception for dangerous buildings

This article shall not apply to any structure which has been ordered demolished by the municipal officers or a court, in accordance with 17 M.R.S. § 2851 et seq., its equivalent, as it may be amended from time to time, or to any structure which has been partially destroyed and is determined by the Planning Authority to represent an immediate hazard to the public health or safety, which hazard cannot be abated by reasonable measures specified by the Planning Authority, including without limitation securing apertures and/or erecting fencing.

## 17.12 APPEALS

The applicant, or any person who has participated in opposition to the application and demonstrates a particularized harm caused by the approval of any



application associated with this article, may appeal that decision in accordance with Article 2.