

NSB Alliance Recommended Changes Highlighted

Chapter 50 HISTORIC PRESERVATION¹

ARTICLE I. IN GENERAL

Sec. 50-1. Intent. (Section Deleted)

- (a) The city commission finds there are buildings, landmarks, and sites within the city that have specific historic or aesthetic significance, and that the loss of these sites would cause an irreplaceable loss to the citizens of the city. It is declared as a matter of public policy that protection, enhancement, perpetuation and use of such sites of special historic or aesthetic interest or value is a public necessity and is required in the interests of the health, prosperity, safety and welfare of the people.
 - (b) The recognition, protection, enhancement and use of such resources is a public purpose and is essential to the health, safety, morals, and economic, educational, cultural and general welfare of the public, since these efforts result in the enhancement of property values, the stabilization of neighborhoods and areas of the city, the increase of economic benefits to the city and its inhabitants, the promotion of local interests, the enrichment of human life in its educational and cultural dimensions serving spiritual as well as material needs, and the fostering of civic pride in the beauty and noble accomplishments of the past.
 - (c) The city commission desires to take advantage of all available state and federal laws and programs that may assist in the development or redevelopment of the city.
 - (d) The federal government has established a program of matching grants in aid for projects having as their purpose the preservation for public benefit of properties that are significant in American history, architecture, archeology and culture as well as other programs providing moneys for projects involving the rehabilitation of existing districts, sites, buildings, structures, objects and areas.
 - (e) The policy of the city is to conserve the existing housing stock and extend the economic life of each housing unit through the rehabilitation of such units under housing and neighborhood development programs in selected areas.
 - (f) Inherent in the enactment and implementation of these federal programs is the policy of the United States government that the spirit and direction of the nation are founded upon and reflected in its historic past; that the historical and cultural foundations of the nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people; that in the face of the ever-increasing expansions of urban centers, highways, and residential, commercial and industrial developments, the present governmental and nongovernmental programs and activities are inadequate to ensure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our nation.
 - (g) It is the will of the people of the state as expressed in Fla. Const., art. II, § 7, that the state's natural resources and scenic beauty be conserved and protected.
 - (h) It is the will of the state legislature as expressed in F.S. ch. 267, that the state's historic sites and properties, buildings, artifacts, treasure troves and objects of antiquity that have scientific or historic value, or are of interest to the public, be protected and preserved.
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Sec. 50-21. Purpose and Intent.

The city commission declares its intention to comply with the rules, regulations, and guidelines of the certified local government program established by the State Division of Historical Resources. The purpose of this chapter is to promote the health, morals, economic, educational, aesthetic, cultural and general welfare of the public through the:

- (1) Preservation of buildings, landmarks, and sites within the city that have specific historic or aesthetic significance; and ~~Identification, protection, enhancement, perpetuation and use of districts, sites, buildings, structures, objects and areas that are reminders of past eras, events and persons important in local, state or national history, or that provide significant examples of architectural styles of the past, or that are unique and irreplaceable assets to the city and its neighborhoods, or that provide this and future generations examples of the physical surroundings in which past generations lived; and~~
- (2) ~~Enhancement of property values, the stabilization of neighborhoods and business centers of the city, the increase of economic and financial benefits to the city and its inhabitants, and the promotion of local interests; and~~
- (32) Preservation and enhancement of varied architectural styles, reflecting the city's cultural, social, economic, political and architectural history; and
- (43) Use of all available state and federal laws and programs that may assist in the development or redevelopment of the city to preserve such buildings, structures, or sites. Enrichment of human life in its educational and cultural dimensions in order to serve spiritual as well as material needs by fostering knowledge of the living heritage of the past.

Sec. 50-23. Definitions.

For the purpose of this chapter, certain words and terms used herein shall be interpreted to have the meanings as defined below, except where the context clearly indicates a different meaning. Where words or terms are not defined in this section, they shall assume the meaning as indicated in Merriam-Webster's Collegiate Dictionary, as amended. Words used in the present tense include the future; the singular number includes the plural and the plural includes the singular. The word "shall" is mandatory and the word "may" is permissive. The word "used" or "occupied" includes the words "intended, designated or arranged to be used or occupied." The word "land" includes the word "marsh," "water" or "swamp."

Alteration means any act that changes the exterior features of a locally designated property, including relocation and demolition.

Archaeological resource means any prehistoric or historic district, site building, object, or other real or personal property of historical, architectural or archaeological value. The resources may include, but are not limited to, monuments, memorials, Native American habitations, ceremonial sites, abandoned settlements, sunken or abandoned ships, engineering works, artifacts, or other objects with intrinsic historical or archaeological value, or any part thereof relating to the history, government, and culture of the city, the State of Florida, or the United States of America.

Archaeological site means a location which has yielded or may yield information on history or pre-history. Archaeological sites may be found within archaeological zones, historic sites, historic districts and other areas of the city, as determined by the City archaeologist. Archaeological sites are evidenced by the presence of artifacts and features above or below the ground surface indicating the past use of a location by people.

Archaeological zone means a geographical area which has or may reasonably be expected to yield information on local history based upon broad prehistoric or historic settlement patterns, as determined by the City archaeologist.

Artifact means objects which are the product of human modification or objects which have been transported to a site by people.

Assessed value means the total value of a tax parcel, excluding the value of land, as determined by the Property Appraiser for the County of Volusia.

Board means the Historic New Smyrna Beach Preservation Board.

Building means any combination of materials capable and intended of being used as a shelter for persons for residential or non-residential purposes.

Certified local government means a municipal government that has made historic preservation a public policy through the passage of a historic preservation ordinance and has been certified by the National Park Service under 36-CFR 61.6.

Certificate of appropriateness means a permit, issued by the City allowing for specified alterations, demolition, new construction, or other work to a locally designated building, site, or structure.

City archaeologist means the individual or group with the educational background, training, and expertise to assess ~~in charge of assessing~~ the archaeological resources of New Smyrna Beach and directing or coordinating, monitoring, testing and salvage excavations of these resources. The individual may either be a city employee, or may be an individual or corporation employed on a contract basis to perform the duties of the city archaeologist.

Contributing structure means a building, property, or site which, pursuant to standards promulgated by the Board and approved by the City Commission, is determined to add to the historical architectural qualities, historic associations, or archaeological values for which a locally designated historic district is significant because (1) it was present during the period of significance and possesses historic integrity reflecting its character at that time, (2) is capable of yielding important information about the period, or (3) it independently meets the National Register of Historic Places criteria for evaluation set forth in 36 CFR Part 60.4.

Curation means the long-term management and preservation of archaeological materials and their associated documentation.

Curation facility means a designated repository for archaeological materials which can provide accountable, professional curation of collections in a secure, climate-controlled environment on a long-term basis.

Demolition means the act of pulling down, destroying, removing or razing a building or commencing the work of total or substantial destruction within a local designated historic district. Removing portions of a building that destroy the original character of the building also constitutes demolition.

Demolition by neglect means the absence of work in maintaining, repairing, or securing a contributing building or structure in a locally designated historic district that results in deterioration of an exterior feature of the building or structure or the loss of the structural integrity of the building or structure.

Disturbance means the digging, excavating, or other such ground altering activities on or below the ground surface, which impact more than 25 square feet either separately or cumulatively.

Documentation means photographs, slides, drawings, plans or written descriptions.

Emergency situation means any case where the city building official determines that there are emergency situations or conditions dangerous to life, health, or property. In such situations, the official may order the remedying of the situation or condition. The city building official shall promptly notify the city archaeologist and the city manager if such a situation or condition occurs.

Historic Preservation Officer means the Development Services Director or their designee that would enforce the provision of this chapter as it pertains to historic preservation.

Local landmark means a building, structure, object, landscape feature, or other real or personal property of historical, architectural, or archaeological value and designated as such by the City Commission.

Local historic district means a geographically definable area created pursuant to the process set forth in Section 50-56. designated as such by the city commission.

Local Register of Historic Places means the list of locally designated landmarks and districts.

Monitoring means observation of disturbances to determine if archaeological resources exist in an area, or when such resources are known to exist, the observation, recording and incidental recovery of site features and materials to preserve a record of the affected portion of the site. When monitoring indicates that a site has little archaeological significance, no further archaeological excavation shall occur. However, if monitoring indicates that a site is archaeologically significant, further excavation shall occur.

Museum means a permanent, nonprofit organization, serving an educational or aesthetic purpose, which acquires, interprets and cares for tangible objects, and prepares exhibits for the public on a regular basis.

National Register of Historic Places means the official listing of culturally significant buildings, structures, objects, sites and districts in the United States maintained by the U.S. Department of Interior.

Non-contributing ~~structure~~ property means a building, ~~property~~ object, or site ~~or structure that does not add to a district's historical significance that has not been determined to add to the historical architectural qualities, historic associations, or archaeological values for which a locally designated historic district is significant.~~

Person with standing means a person or party that can show an injury in fact, causation, or redressability to a claim.

Premises means the parcel of land upon which a demolished significant building was located and all abutting parcels of land under common ownership or control on or before the date the demolition was approved.

Preservation exemption covenant means an executed Florida DOS Form No. HR3E111292, providing for covenants on properties that have benefitted from the tax exemption to maintain the architectural historical integrity of the building or structure for the duration of the tax exemption period.

Qualifying improvement means any change in the condition of an eligible property brought about by the expenditure of labor and purchase that results in restoration, renovation or rehabilitation of said property in keeping with the design criteria established for the purposes of this exemption. This shall include, specifically, interior or exterior work, and the construction of additions or accessory buildings or structures.

Repository means a place used for the permanent curation of archaeological collections that provides, at a minimum, (1) physical security, (2) climate control, (3) fire suppression, (4) collection monitoring, and (5) access by qualified researchers. The repository must have adequate space and resources dedicated to the purpose of curation, and must be organized to allow controlled access, efficient collection and retrieval, and optimum preservation. Professional staff and disaster management plans are essential. Collections should be isolated from work areas and people to the greatest extent possible. In New Smyrna Beach, the Southeast Volusia Historical Society, Inc. will act as the repository for all archaeological artifacts discovered on public property.

Salvage archaeology means the archaeological excavation of a site prior to its destruction by construction, erosion, vandalism, or any other form of site disturbance. Archaeological salvage excavations will be concentrated only within the areas to be disturbed in order to save site data which would be lost due to the disturbance, and the extent of the excavations may vary, depending on the significance of the site, time constraints, and the degree of evidence of archaeological resources, at the direction of the city archaeologist.

Super majority means, for a seven-member body, a requirement of five votes when all members are present, or four votes when less than seven members are present.

Significant building means any building within the city which the ~~board~~ Board, pursuant to standards promulgated by the Board and approved by the City Commission, determines to be in the public interest to be preserved or rehabilitated, and whose demolition would be detrimental to the historical and/or architectural heritage and resources of the city. Such determination by the Board requires a supermajority vote by the Board.

Testing means surface or subsurface excavation, or the use of remote sensing techniques, to determine the type and extent of the archaeological site. Testing may include auguring and establishing archaeological excavation units and requires the screening of excavated material for artifact recovery. When necessary, archaeological salvage excavations may take place following, or in conjunction with, the testing procedures.

Sec. 50-43. Historic preservation board.

- (a) *Creation.* There is created the Historic Preservation Board by the City Commission.
- (b) *Purpose.* The Historic Preservation Board shall have the following powers and duties:
 - (1) The Historic Preservation Board shall take action necessary and appropriate to accomplish the purposes of this chapter. These actions may include but are not limited to:
 - a. Continuing the survey and inventory of historic buildings and areas and archeological sites and planning for their preservation;
 - b. Recommending the designation of ~~local historic districts and~~ individual landmarks and landmark sites and the creation of local historic districts pursuant to the process set forth in Sec. 50-56 herein;
 - c. Regulating alterations, demolitions, relocations and new construction to local landmarks; ~~locally designated property;~~
 - d. Adopting guidelines for the alteration, demolition, and reconstruction of a contributing structure in a locally designated historic district; ~~alterations to locally designated property;~~
 - e. Coordinating the historic preservation work of the city by working with and advising the federal, state and county governments and other city departments or advisory boards;
 - f. Advising and assisting property owners and other persons and groups, including neighborhood organizations who are interested in historic preservation;
 - g. Initiating plans for the preservation and rehabilitation of individual historic buildings;
 - h. Educating citizens on the signs of demolition by neglect;
 - i. Undertaking educational programs, including the preparations of publications and the placing of historic markers.
 - (2) The board shall review all nominations of property to the National Register of Historic Places following the regulations of the state historic preservation office. Following a public hearing with public notice of no less than 30 days, the board shall consider the nomination. When necessary, the ~~commission board~~ board shall seek expert advice before evaluating the nomination. The ~~commission board~~ board shall forward

to the state historic preservation officer its action on the nomination and the recommendations of the local officials.

When a property owner objects to having property nominated to the National Register, a notarized written statement must be submitted to the board before the nomination is considered. The ~~commission~~ board may then either continue its review, forwarding its recommendation to the state historic preservation officer and noting the owner's objection, or it may cease any further review process and notify the state historic preservation officer of the property owner's objection to the proposed listing. The board shall not recommend inclusion on the National Register of Historic Places over objection of the owner except by a super - majority vote.

- (3) The board shall conduct at least four public hearings a year to consider historic preservation issues. The board shall recommend to the city commission the local designation of landmarks ~~and~~ landmark sites, ~~and shall propose the creation of local historic districts pursuant to the process set forth in Sec. 50-56 herein, and historic districts.~~ Applicants shall be given written notification of the board's decisions. The board shall prepare and keep on file available for public inspection a written annual report of its historic preservation activities, cases, decisions, qualifications of members and other historic preservation work.
 - (4) The board shall receive assistance in the performance of its historic preservation responsibilities from the planning department, which shall provide expertise in historic preservation or a closely related field. Other city staff members may be asked to assist the board by providing technical advice or helping in the administration of this chapter.
 - (5) The board shall review the historic preservation element of the comprehensive plan at least every five years and shall make recommendations to the local planning agency and the city commission regarding changes to the historic preservation element.
 - (6) The board shall coordinate its activities with the community redevelopment agency, the state historic preservation officer, the New Smyrna beach Museum of History, and the Southeast Volusia Historical Society.
 - (7) The board shall assist the city staff in preparing applications for grant awards for historic preservation and historic survey activities.
 - (8) The area of geographic responsibility for the board shall be coterminous with the boundaries of the city.
 - (9) The board is encouraged to be represented at pertinent informational or educational meetings, workshops and conferences relating to preservation activities.
- (c) *Membership.* The board shall consist of seven members who shall be ~~permanent~~ residents of the city ~~and live within one of the two currently designated National Historic Districts or future locally designated historic districts within the City.~~ In the event of a vacancy on the commission, the city commission shall appoint a new member within 60 days to serve out the remainder of the term. Members shall serve on the board at the pleasure of the city commission.
- (d) *Term.* The board members shall be appointed for staggered terms of three years by the city commission.
- (e) *Qualifications.* The board members shall be composed of lay and professional members in accordance with the criteria set forth by the certified local government program. To the extent available, members shall be professionals from the disciplines of architecture, history, architectural history, archaeology, or other historic-related fields such as urban planning, American studies, American civilization, cultural geography or cultural anthropology. Lay persons who have demonstrated special interest, experience or knowledge in history, architecture or related disciplines shall make up the balance of the board membership. ~~In no event shall such lay persons make up a majority of the members of the board.~~ An up-to-date resume of board members shall
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be kept as a public record and forwarded to the State Historic Preservation Officer as required by State statute.

(f) *Procedures.* The board shall have the following procedures:

- (1) The board shall elect a chair and vice-chair from its membership. The chair and vice-chair will serve terms of one year each. Nothing will prevent the board from electing the chair and vice-chair for additional terms. The chair will preside over the board and will have the right to vote. In the absence or disability of the chair, the vice-chair will perform the duties of the chair. The chair must be a current or retired professional from the disciplines of architecture, history, architectural history, archaeology, or other historic-related fields such as urban planning, American studies, American civilization, cultural geography or cultural anthropology.
- (2) The development services director or designee shall act as the city historic preservation officer. A staff person from the planning and engineering department shall serve as secretary of the board.
- (3) Four members of the board (four) shall constitute a quorum.
- (4) The board shall hold at least four meetings each year, which shall be public meetings. Meetings shall have a previously advertised agenda and shall be open to public participation. All records of the board, including its rules of procedure, minutes and inventory, shall be public records open to inspection by the public. The board shall adopt rules of procedure for use in all its meetings and the planning manager or designee shall provide staff assistance. The board shall submit to the state preservation officer the following reporting items:
 - a. Thirty days advance notice of each meeting.
 - b. Minutes of each meeting within 30 days of holding the meeting.
 - c. Records of board member attendance within 30 days of each meeting.
 - d. Public attendance figures of each meeting within 30 days of each meeting.
 - e. Changes in board membership within 30 days of action.
 - f. All local historic designations or alterations to existing designations.
 - g. An annual report by November 1 covering the previous October 1 through September 30, which shall include:
 1. Any changes in the rules of procedure; and
 2. Number of proposals reviewed; and
 3. Designations or listings; and
 4. Changes to boards; and
 5. Revised resumes of board members as appropriate;
 6. Review of survey and inventory activity with the description of the system used; and
 7. Program report on each grant-assisted activity.

ARTICLE II. HISTORIC DESIGNATION AND PROTECTION

Sec. 50-45. Local designation of landmarks.

- (a) *Authorized.* Upon recommendation of the historic preservation board, the city commission may locally designate by ordinance individual landmarks on public property or if on private property, where all owners have approved the designation in notarized statements.
- (b) *Owner consent.* The local designation of a landmark on private property requires notarized owner consent at the time of designation. However, when a property proposed for local designation has multiple owners, and any of them objects to the designation, ~~approval by the board and city commission shall require a super-majority vote~~ the request shall be terminated and declared void *ab initio*.
- (c) *Application requirements.*
- (1) Consideration of the local designation of a landmark shall be initiated by the filing of an application for local designation by the property owner(s) or authorized agent, or the city. The board is authorized to initiate the local designation process pursuant to this section on behalf of the city. The city shall charge a fee for each application that reflects processing costs for the application, except such fee shall be waived for city-initiated applications. The applicant shall complete an application form provided by the planning department, which shall include:
 - a. A written description of the architectural, historical or archeological significance of the landmark proposed for designation ~~and specifically addressing and documenting how the proposed designation meets the criteria contained in this chapter; and~~
 - b. Date of construction of the structure(s) on the property and the names of former owners; and
 - c. Photographs of the property; and
 - d. Legal description and map of the property to be locally designated or the site upon which the landmark is located.
 - (2) The historic preservation officer shall determine when an application is complete and may request additional information when such application is determined to be incomplete.
- (d) *Public hearings for designations.* The board shall schedule a public hearing on the proposed local designation within 60 days of the submission of a completed application. Notice of the public hearing shall be mailed certified mail by the applicant to the property owner 15 days prior to the scheduled board meeting.
- (e) *Criteria for local designation.* The board shall recommend the local designation of a landmark, that is significant in the City's history, architecture, archaeology and culture, and that possesses integrity of location, design, setting, materials, workmanship, or association and that meets one or more of the following criteria:
- (1) Is associated with events that have made a significant contribution to the broad patterns of our local, state, or national history; n
 - (2) Is associated with the lives of persons significant in our past;
 - (3) Embodies the distinctive characteristics of a type, period, or method of construction, or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components may lack individual distinction;
 - (4) Has yielded, or may be likely to yield, information important in prehistory or history;
 - (5) Is listed in the National Register of Historic Places as established by the National Historic Preservation Act of 1966, (as amended).

- (f) *Board recommendation.* After evaluating the testimony, survey information and other material presented at the public hearing, the board shall, within 60 days, make its recommendation to the city commission with a written report on the landmark under consideration. The board may vote to defer its recommendation for an additional 30 days, if additional information is needed to satisfy the established review criteria. If the board recommends a local designation, it shall explain how the proposed landmark qualifies for designation under the criteria contained in this section. This evaluation may include references to other buildings in the city and shall identify the significant features of the proposed landmark. The report shall include a discussion on the relationship between the proposed local designation and existing and future plans for the development of the city. The planning department shall promptly notify the property owner or authorized represented of the board recommendation.
 - (g) *City commission review and designation.* The city commission shall approve, modify or deny the proposed local designation within 60 days of the board recommendation. If a local designation is made, the zoning map, shall be amended to identify the local designation. The planning department shall notify each applicant and property owner of the decision relating to the property within 30 days of the city commission action and shall arrange that the local designation of a property as a landmark be recorded in the official record books of the county.
 - (h) *Amendments and rescissions.* The local designation of any landmark may be amended or rescinded through the same procedure utilized for the original designation.
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Sec. 50-56. Local designation of historic districts.

- (a) *Authorized.* Upon recommendation of the board, the city commission may, through the process herein, locally designate by ordinance a local historic districts. Each locally designated district must include a list of contributing and non-contributing buildingsstructures.
- (b) *Owner consent.* The designation of a local historic district designation does not require the consent of all owners, but shall require the express consent of at least be supported by over 50/66 and 2/3s % plus one of the property owners of each tax parcel in the proposed district. City owned tax parcels shall not have a vote and shall not be counted toward the total number of tax parcels. The response for each tax parcel shall be counted as one vote, if more than one owner of a tax parcel responds and if one or more owners show opposition/nonsupport then the property shall not be found to support the application. Written and notarized owner consent shall be required for the designation of each contributing structure within the proposed district set forth in the application for designation.
- (c) *Application requirements.*
 - (1) Consideration of the local designation of a historic district shall be initiated by the filing of an application for designation by a property owner within the proposed district or authorized representative, any resident or organization in the city, or the city. The city shall charge a fee for each application that reflects processing costs for the application, except such fee shall be waived for city-initiated applications, provided the exemption is expressly waived by a super majority vote of the City Commission. The applicant shall complete an application form provided by the planning department, which shall include:
 - a. Proof of compliance with the owner consent requirement set forth in subsection (b) above.
 - b. A written description of the architectural, historical or archeological significance of the buildings within the proposed historic district and specifically addressing and documenting how the proposed designation meets the criteria contained in this chapter;

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- bc.** A map showing the proposed district boundary and buildings to be designated as *contributing properties*~~structures~~. The number of *contributing* structures must comprise at least 50 percent of the total structures in the proposed district; if the district falls below 50% of contributing structures at any time in the future, the local designated historic district can remain in place as long as at least one contributing structure is in existence.
- ed.** Date of construction of the contributing structures within the proposed district and the names of former owners;
- de.** Photographs of the contributing sites within the proposed district; e.A written description of the boundaries of the proposed district.
- (2) The planning manager or designee shall determine when an application is complete and may request additional information when such application is determined to be incomplete.
- (d) *Public hearings for local designations.* The board shall schedule a public hearing on the proposed district designation. Notice of the public hearing and notice to the owners within the proposed district shall be ~~mailed~~ **sent via** certified mail by the applicant **within at least 15-30** days **prior to** ~~of~~ the public hearing and shall clearly state the boundaries for the proposed district.
- (e) *Criteria for local designation of a historic district.* The board shall recommend the local designation of historic districts that meet the established review criteria set forth in the preceding section. **Such locally designated historic districts may consist of one or more properties.**
- (f) *Board recommendation.* After evaluating the testimony, survey information and other material presented at the public hearing, the board shall make its recommendation to the city commission with a written report on the area under consideration. The board may vote to defer its recommendation for an additional 30 days, if additional information is needed to satisfy the established review criteria. If the board recommends local designation, it shall explain how the proposed **locally designated** historic district qualified for designation under the established review set forth above. This evaluation may include references to other areas in the city and shall identify the significant features of the proposed **locally designated** historic district. The report shall include a discussion on the relationship between the proposed designation and existing and future plans for the development of the city. The planning department shall promptly notify the applicant and property owners within the district of the board recommendation.
- (g) *City commission review and designation.* The city commission shall approve, modify, or deny the proposed designation within 60 days of the board recommendation. If a designation is made, the zoning map shall be amended to identify the local designation. The planning department shall notify each applicant and property owner of the decision within 30 days of the city commission action and shall arrange that the local designation of the historic district be recorded in the official record books of the county.
- (h) *Amendments and rescissions.* The local designation of any historic district or contributing status of a property may be amended or rescinded through the same procedure utilized for the original designation. The rescission of any contributing structure shall not require a change to the boundaries of a **locally** designated historic district.

Sec. 50-67. Certificate of Appropriateness.

- (a) *Certificate of appropriateness required.* No person may undertake the following actions without first obtaining **either** a **minor or major** certificate of appropriateness **as described in subsection (b) below**:
- Disturbance of an archeological site, or
 - recession of an addition to a local landmark, or
 - New construction within a locally designated historic district, or
 - Relocation, demolition, or material alteration of the exterior features of a local landmark or a **contributing building structure** within a locally designated historic district.
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- (1) Exterior features include, but shall not be limited to, the architectural style, scale, massing, siting, general design and general arrangement of the exterior of the building or structure, including landscape features, site improvements, and the type, style and material of roofs, windows, doors, siding, masonry, porches, storefronts and other architectural features.
 - (2) Review of new construction and alterations to locally designated landmarks shall be limited to exterior changes visible to the public from a public right-of-way.
 - (3) Whenever any alteration is performed, without a certificate of appropriateness, the chief building official is authorized to issue a stop work order.
 - (4) A certificate of appropriateness shall be required in addition to any other required building. The issuance of a certificate of appropriateness shall not relieve the property owner of the duty to comply with all other state and local laws and regulations.
 - (5) Ordinary repairs and maintenance that are otherwise permitted by law may be undertaken without a certificate of appropriateness provided this work does not alter the exterior appearance of the building, structure or archeological site, or alter elements significant to its architectural or historic integrity.
- (b) Minor and major certificates of appropriateness.
- (1) Minor certificate of appropriateness. A minor certificate of appropriateness is **reviewed and approved by the City's Historic Preservation Officer** ~~reviewed and approved by the historic preservation officer~~ and is required for work that ~~is deemed by the historic preservation officer to~~ **will** have minimal impact to the subject resource such that the work will result in the preservation of the original appearance and will meet the Secretary of the Interior's Standards for Rehabilitation and the New Smyrna Beach Preservation Guidelines. Examples of work that ~~may be considered to have~~ **has** minimal impact include, but are not limited to, minor alterations to the rear of a historic structure that is not visible from the public right-of-way, construction of a ground-level deck to the rear of a historic structure that does not obscure architectural features, installation of a canvas awning or canopy, repair of a cornice using existing materials or duplication of the original design, installation of new doors, windows, or roofs that are compatible in size and mimic with the original architecture of the building, fencing located behind any street façade, painting of any exterior material or surfaces other than unpainted masonry, stone, brick, terra cotta, or concrete, installation of skylights, repair or replacement of siding with siding that duplicates the appearance of the original, and installation of signs on commercial property. Original materials should be used when possible but materials that mimic the architecture and meet the Florida Building Code, as amendment, will be allowed.
 - (2) Major certificate of appropriateness. A major certificate of appropriateness is ~~reviewed and approved by the historic preservation board and is required for~~ **reviewed and approved by the Historic Preservation Board, as described in Section 50-6 (e).** ~~additions to a local landmark, new construction in a local historic district, exterior alterations of a local landmark or contributing structure in a local historic district, demolitions of a local landmark or a contributing structure in a local historic district, or any other work on a local landmark or contributing structure in a local historic district that~~ **work that** does not constitute ordinary maintenance or repair and is deemed to have more than a minimal impact to the subject resource. Original materials should be used when possible but materials that mimic the architecture and meet the Florida Building Code, as amendment, will be allowed. **Major certificates are reviewed and approved by the Historic Preservation Board, as described in Section 50-6 (e).**
- (c) *Application procedures for certificates of appropriateness.*
- (1) The applicant shall complete an application form provided by the planning department containing in part the following information:
 - a. Drawings of the proposed work;

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- b. Photographs of the existing building or structure and adjacent properties; and
 - c. Information about the building materials to be used.
- (2) Each application for a certificate of appropriateness shall be accompanied by the required fee.
- (3) The historic preservation officer shall determine when an application is complete and may request additional information when such application is determined to be incomplete.
- (d) *Review of minor certificates of appropriateness.* The historic preservation officer reviews and issues minor certificates of appropriateness, subject to the criteria contained in subsection (f) below. A decision to approve, approve with conditions, or deny shall be made and communicated in writing to the applicant within 10 business days from the receipt of a complete application. The officer's decision may be appealed to the historic preservation board within 30 business days of the officer's findings. The appeal is reviewed by the historic preservation board as a special certificate of appropriateness and an additional application fee may be required. The decision on the board may be appealed to the city commission within 15 business days to ensure the decision is in keeping with subsection (f) below. If no such appeal is filed within that time, the board's decision becomes final. The city commission shall render a decision within 60 days after receiving the appeal.
- (e) *Review of major certificates of appropriateness.* The historic preservation board shall hold a public hearing on each major certificate of appropriateness within 30 days after receipt of a completed application. The commission shall approve, approve with conditions, or deny each application, based on the criteria contained in subsection (f). The board shall make its decision at a public hearing, but no later than 60 days after an application is presented to the board. If the board fails to make a decision within the specified time period, the application shall be deemed approved. The decision on the board may be appealed to the city commission within 15 business days to ensure the decision is in keeping with subsection (f) below. If no such appeal is filed within that time, the board's decision becomes final. The city commission will render a decision within 60 days after receiving the appeal.
- ~~No certificate of appropriateness for alteration, new construction, demolition, or relocation pursuant to the provisions of this chapter shall be effective for a period of 15 calendar days subsequent to the board's decision. If during that 15-day period an appeal by an aggrieved party is made to the city commission, the decision of the board shall automatically be stayed pending city commission review and determination.~~
- (f) *Criteria for granting certificates of appropriateness.* In approving or denying applications for certificates of appropriateness, the historic preservation officer or board shall consider the following criteria:
- (1) The effect of the proposed work on the local landmark or the contributing structure upon which such work is to be done;
 - (2) The relationship between such work and other structures on the local landmark or surrounding properties in the local historic district;
 - (3) Whether the denial of a certificate of appropriateness would deprive the property owner of reasonable beneficial use of property; and
 - (4) Whether the plans may be reasonably carried out by the applicant; and
 - (5) Compliance with the standards contained in Section 50-8.
- ~~(g) *Appeals to city commission.* Within 15 calendar days of the historic preservation board decision, any aggrieved person may appeal to the city commission any decision of the board on an application for a certificate of appropriateness. The city commission shall approve, approve with conditions, or deny the application at a public hearing within 60 days after receiving the appeal.~~
- (hg)** *Emergency conditions.* In any case where the chief building official determines that there are emergency conditions dangerous to life, health, or property affecting a local landmark, or a contributing structure in a
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local historic district, the official may order the remedying of these conditions without the approval of the board or issuance of a required certificate of appropriateness. The chief building official shall promptly notify the chair of the board of the action being taken.

Sec. 50-78. Certificate of appropriateness review criteria.

An application for a Minor or Major Certificate of Appropriateness shall be reviewed and decided in accordance with the following criteria:

(a) *Secretary of the Interiors' Standards for Rehabilitation.*

- (1) A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
- (2) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and space that characterize a property shall be avoided. Alternate modern materials may be used if historic architecture will not be changed. All replacement materials shall meet the Florida Building Code, as amended.
- (3) Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
- (4) Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
- (5) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.
- (6) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall mimic the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence. If replacement of windows, exterior doors, siding, or roofing materials is proposed, the replacement shall minim the original architecture even if modern material will be used. All exterior materials must meet the Florida Building Code, as amended.
- (7) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
- (8) Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
- (9) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment. All exterior materials must meet the Florida Building Code, as amended.
- (10) New additions and adjacent or related new construction shall be undertaken in 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) *Additional standards for rehabilitation.* The rehabilitation of a local landmark or a contributing structure in a local historic district shall comply with subsection (a) of this Section, as well as the following general standards of the New Smyrna Beach Historic Preservation Design Guidelines, **as approved by the City Commission:**

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- (1) *Storefronts.* The materials, composition, proportion, and features (e.g., windows, entries, transoms, bulkheads) of commercial storefronts shall be preserved and shall not be covered with added elements. Glass shall remain transparent.
 - (2) *Awnings and canopies.* Maintain and repair as needed. Replacement awnings or canopies must resemble the original in structure, dimensions and materials. The use of pent roofs (a more permanent awning that typically uses clay tile, metal or shingles instead of fabric) are not allowed. All awnings and canopies must meet the Florida Building Code, as amended.
 - (3) *Building materials.* Exterior façade materials (e.g., siding, wall finish, accents) shall be maintained and repaired when deteriorated. If replacement is necessary, the new materials must match or mimic the existing. The use of aluminum, vinyl composite, and glass block (unless original to the building) shall not be permitted. All exterior materials must meet the Florida Building Code, as amended.
 - (4) *Building colors.* Building colors should be consistent with the schemes typically attributed to the building architectural style.
 - (5) *Roofs.* The roof shape and elements (e.g., dormers, eaves, and parapets) shall be preserved. The use of colored metal roofing materials shall be prohibited. All exterior roofing materials must meet the Florida Building Code, as amended.
 - (6) *Entries and doors.* Existing entries and their decorative elements shall be preserved. Replacement doors must match or mimic the original in dimensions, shape, configuration, and material when possible. Trim boards, sidelights, and transom lights, and any other architectural elements, if present, shall be preserved. All exterior replacement doors must meet the Florida Building Code, as amended.
 - (7) *Windows.* The windows on historic buildings, if they haven't already been modified, must be retained, properly maintained and repaired. If replacement is necessary, the new windows and associated elements (e.g., frames, panes, lintels, sills, etc.) shall match or mimic the original in placement, shape, dimensions, orientation, and type (e.g., double hung, casement, etc.). If it is suspected that the existing windows do not match the original windows (based on the style of the building) the applicant must consult with city staff to find the most appropriate type of window for the building style. All replacement windows must meet the Florida Building Code, as amended.
 - (8) *Window shutters.* Replacement shutters shall match the original in size, type, design and materials when possible (including hardware). New shutters shall only be allowed if appropriate to the building style (e.g., Bahama shutters shall not be added to a Folk Victoria house). New and replacement shutters do not need to be operational but must be proportionate to the window (each shutter must have a width that equals one half of the window width).
 - (9) *Hurricane shutters.* Traditional window shutters, when present, are the first line of defense against hurricanes. If not present or not operable, the use of temporary/removable protection elements (e.g., plywood, metal screens, impact and impact resistant fabric screens) over windows and gable vents is permitted. Fasteners and tacks must be painted the same color as the surface where they are installed, shall not cause permanent damage to the building, and shall not remove or hide character-defining features of the building. Accordion and roll-up shutters, which fold or roll to the side or top when not in use and remain permanently attached to the building, are not permitted. All proposed hurricane shutters must meet the Florida Building Code, as amended.
 - (10) *Porches.* Existing porches that are open or screened shall not be enclosed. Open porches may be screened as long as the porch elements (e.g., columns, railings, beams) are not modified or obscured.
 - (11) *Foundations.* Foundations must be repaired to maintain the original function and appearance. Foundation enclosures may be replaced if deteriorated beyond repair with enclosures that match the original in terms of placement, material and appearance. The enclosures shall be located between piers instead of covering them.
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- (12) *Architectural details.* Where deteriorated, architectural details (e.g., brick or tile work, medallions, chimneys, attic vents, roof brackets, exposed rafters, railings and balustrades, etc.) shall be repaired if damaged. If replacement is necessary, the replacement feature shall match or mimic the original in design, shape, dimensions and materials. Architectural details shall not be covered by other elements added to the façade.
 - (13) *Privacy fences and walls.* Existing fences and walls must be properly maintained and repaired. If replacement is necessary, the fence/wall must be consistent with the style of the main building. Chain link fences in a front yard shall be prohibited.
 - (14) *Accessory structures.* Existing accessory structures that are part of the designated site are also subject to a Certificate of Appropriateness if altered. All applicable provisions in this subsection (b) shall apply.
 - (15) *Signs.* If possible, the original sign board/structures shall be preserved with only the sign copy changing. New signs shall not cover architectural features (e.g., windows, details, trims).
- (c) *Additional standards for additions and new construction.* Additions to designated local historic landmarks and contributing structures in a local historic district, and any new construction in a local historic district shall comply with subsection (a) of this Section, as well as the following general standards:
- (1) *Volume scale and massing.* The scale and massing of additions and new structures must be similar to the contributing structures in the historic district. Any new structure which exceeds 50 linear feet along any street frontage must provide a projection or recess at least 3 feet deep to minimize the scale of the building.
 - (2) *Building height.* The maximum height of additions and new buildings must comply with the requirements of the zoning district but shall not overwhelm the existing structures on the subject site or surrounding sites. In order to accommodate changes in height permitted by the district, an additional 10-foot setback must be provided for every floor above the height of the surrounding structures. The step backs may be provided per floor or for the entire building.
 - (3) *Building placement.* The proposed setbacks for additions and new construction shall be made consistent with the predominant setbacks in the same block provided that the setbacks comply with the zoning district regulations. Additionally, new buildings and additions must replicate the building orientation that is predominant along the same block. For instance, residential buildings tend to locate the narrow part of the building along the street and the front façade is parallel to the street.
 - (4) *Roofs.* Roof types, shapes and pitch on additions and new buildings must be similar to the roof characteristics of the subject structure and surrounding buildings in the historic district.
 - (5) *Architectural style.* Additions must respect the architectural style of the existing building but not create a false historical appearance. Similarly, new construction may use any architectural style, but shall not duplicate historic styles. If a particular style is selected for inspiration, it must be a style that appears in the historic district.
 - (6) *Fenestration.* Fenestration refers to the pattern of windows and doors that provide façade transparency and interest. The facades facing a street must contain fenestration that resembles the historic patterns in the district. Windows (other than storefront display windows) must have a vertical emphasis similar to the windows found on contributing buildings in the historic district and must include prominent window frames, sills and lintels.
 - (7) *Entrances.* New buildings must provide the main entrance facing the street. Commercial buildings in storefront areas must respect the pattern of storefronts. Residential buildings must provide a porch, portico, stoop or other architectural feature consistent with the predominant style in the district.
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- (8) *Building materials and colors.* The materials and colors used on additions and new construction must be similar to the materials and textures of the original structure and the contributing structures in the district. Prohibited materials include unfinished block, textured plywood, aluminum or vinyl siding.
 - (9) *Façade ornamentation.* Features such as awnings, canopies, shutters, and similar must be in character with the style of the existing building and the other buildings in the district. Awnings must follow the shape of the door and window opening. Shutters do not need to be operational but must be proportionate to the window (each shutter must have a width that equals one half of the window width).
 - (10) *Privacy fences and walls.* The materials and colors of privacy fences and walls must be coordinated with the main structure. Chain link fences visible from a public right-of-way or space are prohibited.
 - (11) *Accessory structures.* The introduction of accessory structures, if not visible from the public right-of-way do not require a Certificate of Appropriateness if they meet the requirements of the Land Development Regulations. If visible from the public-right-of-way, they must complement the style, materials and colors of the building.
 - (12) *Signs.* Proposed signs shall meet the requirements of the Land Development Regulations and must be compatible with the design of the structure and shall not cover architectural details or features.
 - (13) *Accessibility ramps.* Compliance with health and safety codes and ADA access requirements must be carried out with minimum impact on the historic character of buildings. Therefore, where possible, they should be located on the side or rear elevation, shall not cover any architectural details, shall be installed in a manner that if removed, there will not be damage to the building, and must incorporate materials and colors that are consistent with the building.
 - (14) *Mechanical equipment.* Rooftop equipment must be screened so that it is not visible from the public right-of-way. Ground level equipment must be located to the side or rear of the building and must be screened by fencing or landscaping.
 - (15) *Solar panels.* When added to an existing buildings or sites, they shall not be visible from the public right-of-way (may be placed on flat roofs behind parapets, or the back side of sloped roofs).
- (d) *Additional guidelines for relocation.* The relocation of a local landmark, a contributing structure in a local historic district or relocating a structure to a local landmark site or local historic district, shall comply with subsection (a) of this Section, as well as the following general standards:
- (1) The contribution the building or structure makes to its present setting;
 - (2) Whether there are definite plans for the site to be vacated;
 - (3) Whether the building or structure can be moved without significant damage to its physical integrity; and
 - (4) The compatibility of the building or structure to its proposed site and adjacent properties.

Sec. 50-89. Emergency actions; non-designated properties.

The city commission may call an emergency meeting to review a threat to a property that has not yet been designated by the city but appears to be eligible for designation. The city commission may request that a stop work order be issued by the chief building official for a 30-day period in order to provide time to negotiate with the property owner to remove the threat to the property; the city commission shall seek alternatives that will remove the threat to the property. During the 30-day period the city commission may initiate steps to designate the property under the provisions of this chapter.

Sec. 50-~~91~~10. Conformity with the certificate of appropriateness.

All work performed pursuant to a certificate of appropriateness shall conform to all provisions of such certificate. It shall be the responsibility of the building department to inspect from time to time any work being performed to assure such compliance. In the event work is not being performed in accordance with such certificate, the chief building official is authorized to issue a stop work order. No additional work shall be undertaken as long as such stop work order remains in effect.

Sec. 50-~~101~~101. Maintenance and repair of local landmarks and contributing structures in a local historic district.

- (a) Every owner of a local landmark or a contributing structure in a local historic district shall keep in good repair:
 - (1) All of the exterior portions of such buildings or structures;
 - (2) All interior portions that, if not so maintained, may cause such buildings or structures to deteriorate or to become damaged or otherwise to fall into a state of disrepair; and
 - (3) In addition, where the landmark is an archeological site, the owner shall be required to maintain his property in such a manner so as not to adversely affect the archeological integrity of the site.
- (b) The board may refer violations of this section to the code compliance department for enforcement proceedings on any structure designated under this chapter so that such structure shall be preserved in accordance with the purposes of this chapter.
- (c) The provisions of this section shall be in addition to the provisions of the building code requiring such buildings and structures to be kept in good repair.

Sec. 50-112. Demolition delay.

- (a) *Regulated buildings.* This section applies to all **locally designated** contributing buildings within the city's ~~locally designated National Register of Historic Places~~ Historic Districts.
- (b) *Notice.* Notice of a public hearing to consider any proposal to demolish a **locally designated** contributing building located in one of the city's nationally registered historic districts ~~shall~~ be made by the historic preservation officer, at **the applicant's** expense, in a ~~newspaper~~ of general circulation in the city at least 30 days prior to the hearing. The owner or authorized representative of the owner of the building proposed for demolition shall notify all property owners within 150 feet of the subject property of the public hearing. The notice shall be sent by United States Postal Service certified mail "return receipt requested" to each property owner no less than 15 days prior to the advertised public hearing and shall indicate the property address of the building proposed for demolition and the location, date and time of the public hearing.
- (c) *Board review.* The board shall review any application for demolition of a **locally designated** contributing building within the city's ~~National Register of Historic Places~~ **locally designated** Historic District at its next public hearing with notice given as provided in this section to determine whether the building ~~is~~ **may be locally designated as** historically significant. The building shall be considered ~~historical~~ **historically** significant if one or more of the following criteria are declared to be met by the board:

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- (1) The building is historically or architecturally significant in terms of its period, style, method of building construction or use of indigenous materials; or
 - (2) The building is a significant reminder of the cultural, or architectural history of the city, state or nation; or
 - (3) The building is associated with a significant local, state or national event; or
 - (4) The building is associated with one or more significant historic persons or events, or with the broad architectural, cultural, political, economic, or social history of the city, state or nation; or
 - (5) The building is one of the few remaining examples of its period, style, or method of construction; or
 - (6) The building is identified with a person who significantly contributed to the development of the city, state or nation; or
 - (7) The building is identified as the work of a master builder, designer or architect whose individual work has influenced the development of the city, state or nation; or
 - (8) The building value is recognized for the quality of its architecture, and it retains sufficient elements showing its architectural significance; or
 - (9) The building character is in a geographically definable area possessing a significant concentration or continuity of buildings united in past events or aesthetically by plan or physical development; or
 - (10) The building character is in an established and geographically definable neighborhood united in culture, architectural style or physical plan and development.

The board shall not consider the request until the applicant has provided the information to explain why the building is not considered significant, or if significant, why it should be demolished. The board shall issue no demolition approval until the applicant has demonstrated that no other feasible alternative to demolition can be found. The board may ask interested individuals and organizations for assistance in seeking an alternative to demolition.

- (d) *Demolition of significant buildings.* If the board finds that the building is historically significant the board may, nevertheless, grant a demolition approval if it finds that one of the following circumstances is met:
 - (1) *Undue economic hardship.* In any instance where there is a claim of undue economic hardship, the property owner shall submit to the board prior to the public hearing a report indicating the economic hardship and why the demolition should be allowed. The report shall include the following:
 - a. The amount paid for the property, the date of purchase and the party from whom purchased;
 - b. The assessed value of the land and improvements thereon, according to the two most recent assessments;
 - c. Real estate taxes for the previous two years;
 - d. Annual debt service, or mortgage payments, if any, for the previous two years;
 - e. All appraisals (if any) obtained within the previous two years by the owner(s) or applicant(s) in connection with the purchase, financing or ownership of the property;
 - f. Any listing of the property for sale or rent, price asked and offers received, if any; and
 - g. Any consideration by the owner as to profitable adaptive uses for the property, including but not limited to possible fair market rents for the property if it were rented or leased in its current condition.

The board may require that an applicant furnish such additional information as the board believes is relevant to the commission's determination of any alleged undue economic hardship. The board may also require, in appropriate circumstances, that information be furnished under oath.

In the event that any of the required information is not reasonable available to the property owner and cannot be obtained by the property owner, the property owner shall file with the affidavit a statement of the information which cannot be obtained and the reasons why such information cannot be reasonable obtained. Where such unobtainable information concerns required financial information, the property owner will submit a statement describing estimates which shall be as accurate as feasible.

- (2) *Building condition.* In any instance where there is a claim the building is not structurally sound and/or suitable for restoration, the applicant shall provide a written report signed by a licensed engineer or architect with experience in historic building restoration stating that the building is structurally unsound and unsuitable for restoration. The board shall review the credentials of the licensed engineer or architect signing the report and shall find them experienced in historic restorations before the report is accepted. The applicant shall allow members of the board and the historic preservation officer to inspect the interior and exterior of the building.
 - (3) *Lack of alternative to demolition.* In any instance where there is a claim of no other alternative to demolition, the applicant shall provide written documentation of attempts to sell the building at a reasonable and comparable amount or to offer it without charge to purchasers willing to move the building to another location and preserve, rehabilitate, relocate or restore the building. A reasonable and comparable sales price shall be indicated by providing evidence such as recent appraisals, comparable values of properties similar to the building proposed to be demolished or other evidence the board deems acceptable.
- (e) *Conditions of demolition approval.* If the board grants demolition approval for a **locally designated** contributing structure listed ~~on~~ **in** a ~~National Registered~~ **locally designated** Historic District, the board may condition approval on one or more of the following requirements:
- (1) The board shall require the applicant to provide a written and pictorial record of the building's history and architectural features for archival purposes, approved by the city. The record should include a narrative accompanied by relevant photographs, drawings, maps, and copies of original documents; or
 - (2) The ~~board may~~ **board may** require that the owner allow archaeological study of the property before and/or during demolition if the property falls within the area demonstrated to have a medium or high probability to contain archaeological resources; or
 - (3) The board may require that the owner allow salvage activities of the contributing structure provided the board finds that there are salvageable materials within the building. The historic preservation officer shall provide evidence to demonstrate that salvageable materials are within or on the building to be demolished; or
 - (4) The board may require that the owner of a contributing structure meet any other condition that is reasonable to mitigate the demolition of the historic building.
- (f) *Delay.* Should the board determine that a building is historically significant and does not meet at least one of the circumstances allowing demolition of a **locally designated** contributing structure, the board shall provide for a demolition delay effective date of up to 120 days from the date of its decision. The purpose for the delay is for the historic preservation officer to invite the owner of record of the building to participate in an investigation of alternatives to demolition including, but not limited to, incorporation of the building into the future development of the site; adaptive reuse of the building; utilization of financial incentives to rehabilitate the building; seeking a new owner willing to purchase and preserve, restore or rehabilitate the building; or moving the building. The historic preservation officer will provide the applicant resource assistance including but not limited to potential grant sources and tax relief measures. Once the delay period has ended and if the owner is still seeking demolition of the **locally designated** contributing structure, the owner shall appear
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before the board at a meeting adhering to the notice requirements of this section and present a case as to why the demolition should be granted. The board shall again consider the reasons for demolition of a historically significant building and must approve the demolition provided any board-imposed conditions of approval contained in subsection (e)(1)-(3) have been satisfied.

Sec. 50-123. Demolition by neglect.

- (a) *Demolition by neglect.* The owner of a **locally designated** contributing structure within a ~~National-Registered~~ **locally designated** Historic District shall comply with all applicable codes, laws and regulations governing the maintenance of property in order to preserve such structures from deliberate or inadvertent neglect of the exterior features of such structures or the interior portions thereof when such maintenance is necessary to prevent deterioration and decay of the exterior. All such structures shall be preserved against such decay and deterioration and free from structural defects through prompt corrections of any of the following defects:
- (1) Facades that may fall and injure persons or property;
 - (2) Deteriorated or inadequate foundation, defective or deteriorated flooring or floor supports, deteriorated walls or other vertical structural supports;
 - (3) Members of ceilings, roofs, ceiling and roof supports or other horizontal members that sag, split or buckle due to defective material or deterioration;
 - (4) Deteriorated or ineffective waterproofing of exterior walls, roof, foundations or floors, including broken windows or doors;
 - (5) Defective or insufficient weather protection for exterior wall covering, including lack of paint or weathering due to lack of paint or other protective covering; or
 - (6) Any fault or defect in the building that renders it not properly watertight or structurally unsafe.

Sec. 50-134. Appeals.

- (a) Within 15 days of the board decision, regarding demolition or demolition by neglect of any **locally designated** contributing structure within a ~~National-Registered~~ **locally designated** Historic District, any affected person with standing may appeal to the city commission. The city commission shall consider the appeal and approve, approve with conditions, or deny the application at a public hearing, but no later than 60 days after-hearing the appeal. The city commission shall only approve the demolition of a contributing structure if they determine that the request complies with the applicable review criteria.

Sec. 50-145. Archaeological preservation.

- (a) *Archaeological zones.* In order to regulate and restrict disturbances as hereinafter provided in this chapter, and to determine the extent of archaeological investigation and excavations that may be required in a given area, the incorporated area of New Smyrna Beach, Florida, is hereby divided into zones as shown on the archaeological base map entitled, "Archaeological Base Map for New Smyrna Beach, Florida," more particularly described as:

*See Exhibit "A" attached hereto and by reference made a part hereof.

Archaeological zones shall be updated on the base map as additional sites are documented. Zones as delineated on the base map are as follows with titles and abbreviations as indicated:

- (1) *Archaeological zone I* is comprised of those areas within the city where there are known significant archaeological sites.

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- (2) *Archaeological zone II* is comprised of those areas that have a medium or high probability of containing archaeological resources as determined by The Search for Turnbull's Colony, an Archaeological Survey, a report by Southeast Archaeological Research, Inc., dated June 1999.
- (b) *Interpretation of zone boundaries.* Where uncertainty exists as to the boundaries of zones as shown on the archaeological base map for New Smyrna Beach, Florida, the following rules shall apply:
- (1) Boundaries indicated as approximating center lines of streets, highways or alleys shall be construed to follow such centerlines;
 - (2) Boundaries indicated as approximately following platted lot lines shall be construed to follow such lot lines;
 - (3) Boundaries indicated as approximately following city limits shall be construed to follow such city limits;
 - (4) Boundaries indicated as following railway lines shall be construed to be midway between the main tracks;
 - (5) Boundaries indicated as following shorelines shall be construed to follow the mean high water line. In the event of a change in shorelines, the boundaries shall be construed to move with the change except where such moving would change the archaeological status of a lot or parcel. In such case the boundary shall be interpreted in such a manner as to avoid changing the archaeological status of such lot or parcel;
 - (6) Boundaries indicated as parallel to or extensions of beaches indicated in subsections (1) through (5) above shall be so construed. The distance not specifically indicated on the archaeological base map shall be determined by the scale of the map.
 - (7) Where physical or cultural features existing on the ground are not in agreement with those shown on the archaeological base map or in other circumstances not covered by subsections (1) through (6) above, the city archaeologist shall interpret the zoning boundaries.
- (c) *Zone regulations.* On city-owned or maintained property, within archaeological zones I and II, the conduct of any ground disturbances on, or activities taking place at or below the present surface of the ground, shall be in compliance with the following regulations:
- (1) All proposed disturbances on city-owned or maintained property, including but not limited to those by the utilities commission, telephone, cable, and gas companies, the department of transportation, city contractors, and city subcontractors shall be reported to the city archaeologist before those disturbances take place. Furthermore, this chapter will apply only to city-owned or maintained properties within the boundaries of the proposed disturbances. Any additional archaeological testing or excavation by the city archaeologist, within areas outside the proposed disturbances, may be conducted only with written permission of the property owner.
 - (2) Within archaeological zones I and II, disturbances on city-owned or maintained properties shall be subject to intensive archaeological salvage excavations, to be conducted by the city archaeologist prior to any underground disturbance, building construction, or utility excavation, and paid for by the entity initiating the disturbance. The extent of the archaeological salvage excavations by the city archaeologist will be dependent on the extent of the proposed area of construction disturbance and the significance of the archaeological resource.
 - (3) Within archaeological zones I and II, the city archaeologist will be authorized to delay the proposed construction work or major disturbance for up to four weeks. The city manager, or his or her designee may grant additional time, if needed. Early notification of and by the city archaeologist, prior to any disturbances occurring, may minimize or eliminate the need for work delays. The applicant will be informed of any delays.
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- (4) Any disturbances on city-owned or maintained property, which are required to deal with an emergency situation, shall not be subject to the regulations of this chapter.
- (d) *Excavations on public property.* No individual shall be allowed to disturb or remove artifacts from public property without the written permission of the city archaeologist, the city manager, or his or her designee.
- (e) *Ownership of artifacts.* Artifacts uncovered, recovered, or discovered during testing, salvage archaeology, excavation, or monitoring of city-owned or maintained properties shall remain the property of the city. If additional archaeological testing or excavation by the city archaeologist is permitted within areas outside the proposed disturbances and artifacts uncovered, the city shall obtain written permission from the property owner to analyze, catalog, record, and conserve the artifacts for long-term storage, care, protection, and preservation.
- (f) *Curation of artifacts.* Artifacts uncovered, recovered, or discovered during testing, salvage archaeology, excavation, or monitoring shall be washed, if the city archaeologist deems appropriate, cataloged, analyzed, recorded, and conserved by the city archaeologist. The Southeast Volusia Historical Society, Inc. will be the repository for artifacts discovered on city-owned or maintained properties.
- (g) *Human remains.* Human skeletal remains, uncovered, recovered, or discovered during testing, salvage archaeology, excavation, or monitoring shall be coordinated with the local medical examiner, the city, city archaeologist, and the state archaeologist. Such remains shall be dealt with in accordance with the provisions of F.S. ch. 872, as amended, and are not subject to private ownership. Such material shall be sensitively treated and, following its analysis by a physical anthropologist, shall be curated at a designated repository or appropriately buried.
- (h) *City archaeologist.* The city manager or his or her designee shall appoint a city archaeologist who shall meet the city's requirements and the standards for membership by the register of professional archaeologists and shall have a demonstrated background in historic and prehistoric archaeology. The city archaeologist shall review all applicable ground disturbances on city-owned or maintained property in archaeological zones I and II; shall conduct such testing, excavations, or monitoring as shall be required by this chapter; shall prepare or oversee preparation of a final report on all projects, which report shall meet the guidelines established for archaeological reports by the department of state, division of historical resources, and be in accordance with the Cultural Resource Management Standards and Operations Manual; shall record archaeological sites and develop strategies for preservation of the archaeological resources of New Smyrna Beach; and shall participate in the planning state of applicable projects, to minimize the potential impacts on archaeological sites by any activities proposed for such sites; and shall maintain and update the archaeological base map; and shall advise the city manager concerning archaeological issues.

Sec. 50-156. Penalty.

- (a) *Non-compliance with regulations applicable to local landmarks, local historic districts, and archaeological preservation.* Any person violating any of the provisions of this chapter shall be punished as provided in section 1-14. The code compliance board shall review any violation of this chapter. Additionally, the city has the option to require any person who violates any provision of this chapter to forfeit and pay to the city civil penalties equal to the fair market value of any property demolished or destroyed in violation of this chapter or the cost to repair or rehabilitate any property that is altered in violation of this chapter. In lieu of a monetary penalty, any person altering property in violation of the provisions of this chapter may be required to repair or restore any such property.
- (b) *Non-compliance with regulations applicable to **locally designated** contributing structures in **National Register locally designated** Historic Districts.*
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- (1) The board, building official and code compliance officer are each authorized to institute any and all proceedings in law or equity, as they deem necessary and appropriate to obtain compliance or to prevent a violation thereof.
 - (2) No building permit shall be issued with respect to any premises upon which a significant building has been voluntarily demolished for a period of ~~22~~ 6 months after the date of the completion of such demolition.
 - (3) Upon a determination of the board that a building is a preferably preserved significant building, the owner shall be responsible for properly securing the building, if vacant, to the satisfaction of the city.
 - (4) Anyone who demolishes a contributing structure without first obtaining a demolition permit and fully complying with the permit requirements shall be subject to a fine of up to ~~\$25~~ \$5,000.00.

ARTICLE III. PROPERTY TAX EXEMPTION²

Sec. 50-~~16~~ 7. Intent.

- (a) The State of Florida has enacted legislation implementing the provisions of the State Constitution to specifically provide for ad valorem tax exemptions for historic properties.
- (b) The city commission desires to take advantage of all available state and federal programs that may assist in the preservation of historic properties.

Sec. 50-~~17~~ 8. Purpose.

The purpose of the historic property tax exemption is to:

- (a) Provide a positive financial incentive for the designation of local landmarks and local historic districts within the City of New Smyrna Beach;
- (b) Encourage more restoration, rehabilitation and renovation of contributing structures in New Smyrna Beach;
- (c) Stabilize and improve property values, and enhance the property tax base of the City of New Smyrna Beach, by encouraging improvement of contributing structures; and
- (d) Improve the appearance of designated local historic districts and local landmarks in the City of New Smyrna Beach, thereby enhancing their appeal as places to live, work and visit.

Sec. 50-~~18~~ 9. Historic preservation property tax exemption.

The owners of qualifying properties who have met all requirements outlined in this chapter shall receive an exemption of 100 percent of the increase in assessed value of ad valorem taxes levied by the City of New Smyrna

Beach which result from the restoration, renovation or rehabilitation of such buildings or structure for the duration of the exemption period. The amount of exemption shall be determined by the property appraiser for the County of Volusia based on the typical post-construction inspection and appraisal.

The tax exemptions allowed herein apply only to the ad valorem taxes assessed by the City of New Smyrna Beach. The exemption does not apply to taxes levied for the payment of bonds, to taxes authorized by a vote of the electors pursuant to Fla. Const., art. VII, § 9(b) or § 12, or to improvements made prior to October 1, 2022.

Sec. 50-1920. Eligible property for tax exemption.

The following real property in the City of New Smyrna Beach is eligible for the historic preservation property tax exemption, provided it meets such criteria on the date the historic preservation property tax exemption is granted by the city commission.

Property is qualified for an exemption under this section if;

- (1) At the time the exemption is granted, the property:
 - a. Is individually listed in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended; or
 - b. Is a contributing structure in a National Registered Historic District; or
 - c. Is designated by the city as a local historic landmark or as a contributing structure- in a **locally designated** historic district; and,
- (2) The Division of Historical Resources or the Historic Preservation Board, whichever is applicable,- has certified to the City of New Smyrna Beach that the property for which an exemption is requested satisfies paragraph (1) above.

Sec. 50-201. Overview of tax exemption application and review procedures.

An application for a tax exemption shall be made in accordance with F.S. § 196.1997(8) and Fla. Admin. Code R. 1A-38.003, as amended. A pre-construction application and a completed work application must be submitted for review by the Historic Preservation Board, in accordance with the rules adopted by the Department of State. The board shall make recommendations to the city commission as to whether the applications should be granted or denied, along with reasons for such recommendations. The city commission shall review the applications, along with the board's recommendations. Approval of any application by the city commission shall be by resolution and shall contain the name of the owner and the address of the historic property for which the exemption is granted, the period of time for which the exemption will remain in effect and the expiration date of the exemption, a finding that the historic property meets the requirements of F.S. § 196.1997, and shall be accompanied by a historic preservation exemption covenant as further detailed below.

Sec. 50-212. Pre-construction application.

For any tax exemption to be considered by the City of New Smyrna Beach, the owner of record of the property seeking the exemption must fill out an approved pre-construction application obtained from the city. The application must contain all the information that is required by the Florida Department of State, Division of Historical Resources, promulgated in accordance with Rule 1A-38, Florida Administrative Code, and shall include additional information regarding the documentation of the cost of the qualifying improvements. Any improvements made prior to the pre-construction application shall not be eligible for the exemption.

The pre-construction application shall be filed with the City of New Smyrna Beach before any work begins, and shall include but is not limited to the following:

- (a) Information sufficient to determine if the subject property is an eligible property;

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- (b) Information sufficient to determine if the proposed project will be a qualifying improvement;
 - (c) Photographs documenting the property prior to any improvements;
 - (d) Information outlining construction estimates for the proposed project; and
 - (e) A copy of the latest tax bill issued by the Property Appraiser for the County of Volusia

If the proposed work involves exterior work which requires a certificate of appropriateness, then in addition to the criteria listed above, the proposed work will be reviewed in accordance with sections 50-7 and 50-8. The pre-construction application and the certificate of appropriateness may be reviewed simultaneously, however no pre-construction application shall be approved until the certificate of appropriateness had been approved.

Sec. 50-223. Review of pre-construction applications.

The pre-construction application shall be reviewed at any regular or special meeting of the Historic Preservation Board. The board shall determine the following:

- (a) whether the proposed project will be a qualifying improvement; and
- (b) whether the work, as proposed, is in compliance with the applicable historic review standards.

If the Historic Preservation Board, by majority vote, finds that the proposed project is a qualifying improvement and the proposed work is in compliance with the historic review standards then the pre-construction application shall be approved.

If the Historic Preservation Commission finds that the proposed project is not a qualifying improvement or is not in compliance with the historic review standards then the board shall advise the applicant as to changes necessary to make it a qualifying improvement or how to bring the project in compliance with applicable historic review standards. The applicant may resubmit the pre-construction application for further consideration at a subsequent meeting of the board.

Sec. 50-234. Review of completed work.

Once the proposed work is completed then the applicant shall ~~submit~~ a completed work application for review by the historic preservation officer. The application shall be reviewed within 30 days of submission to determine if the completed work is consistent with the pre-construction application. If the historic preservation officer determines that the completed work is consistent with the pre-construction application then the officer will inform the applicant in writing of the decision and the item will be placed on the next scheduled meeting of the board. The board shall review the application and vote in favor of a recommendation of approval of the tax exemption to the city commission if staff makes a recommendation that the completed work is consistent with the pre-construction application and the board's own review determines the work is consistent with the pre-construction application.

If the historic preservation officer finds that the completed project is not consistent with the pre-construction application, then the officer shall inform the applicant in writing of the changes necessary to make it consistent with the pre-construction application. The applicant will have 60 days to bring the work into compliance. After 60 days, regardless of whether the applicant has made any necessary changes to the completed work, the applicant shall have the application for completed work presented to the board with the officer's recommendation and the board can determine if the completed work is consistent with the pre-construction application. If the board determines that the completed work is consistent with the pre-construction application then the board shall, by a majority vote, recommend approval of the tax exemption to the city commission.

If, after the application is presented to the board, a majority vote determines the completed work presented is not consistent with the pre-construction application then the board shall deny the tax exemption. The historic preservation officer will provide written notice to the applicant as to the reason for the denial and recommend

changes to the project that will make it a qualifying improvement and consistent with the pre-construction application. Any denial may be appealed to the city commission within 30 days of the denial. The city commission will review the appeal to determine if the completed work is consistent with the pre-construction application.

Sec. 50-245. Exemption period for tax exemption.

The tax exemption granted shall remain in effect for ten years with respect to any particular property, regardless of any change in the authority of the city to grant such exemptions or any change in ownership of the property. However, to retain the exemption, the historic character of the property, and the qualified improvements must be maintained over the period for which the exemption is granted.

The exemption period shall begin on January 1 after all three of the following events have occurred: (1) issuance of a certificate of occupancy by the City of New Smyrna Beach; (2) final approval of the restoration, renovation or rehabilitation work has been granted by the city commission; and (3) written notice stating the exemption is in effect has been forwarded by the City of New Smyrna Beach and received by the property appraiser for the County of Volusia.

Sec. 50-256. Historic preservation exemption covenant.

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

Sec. 50-267. Notice to property appraiser.

Within three working days following adoption of a resolution by the city commission granting the historic preservation property tax exemption, the historic preservation officer shall cause the transmittal of a copy of the resolution, the preservation exemption covenant, and the final application to the property appraiser for Volusia County, with instructions that the property appraiser provide the historic preservation property tax exemption to the applicant.

Sec. 50-278. Revocation proceedings.

The historic preservation officer may initiate proceedings to revoke the tax exemption at any time if the property owner, or any subsequent owner or successor in interest to the property, violates the covenant, fails to maintain the qualifying property according to the terms, conditions and standards of the covenant, the historic character of the property and improvements which qualified the property for the exemption are not maintained or if the qualifying property has been damaged by accidental or natural causes to the extent that the historic integrity of the features, materials, appearances, workmanship and environment, or archeological integrity which made it eligible for listing or designation have been lost or damaged so that restoration is not possible. Proceeding under this section may also be initiated following a finding by the Code Compliance Board or Special Magistrate finding the property in violation of any city code.

The historic preservation officer shall provide written notice to the current owner of record at least ten days prior to any public hearing on the matter. Once notice is provided, by either posting or US certified mail to the current owner of record, a hearing will be held before the historic preservation board in which the board will review the current state of the qualifying improvements and make a recommendation to the city commission. The city

commission will review the board recommendation and make a determination as to whether the exemption should be revoked.

Upon a determination by the city commission that the tax exemption shall be revoked, the historic preservation officer shall provide written notice of the decision to the owner of record as well as the property appraiser of Volusia County. The notice to the owner of record shall be accompanied by the reason and recommendation for changes to the property that may result in reinstatement of the exemptions.

The property appraiser, upon receipt of the notice of revocation, shall discontinue the tax exemption on the property as of January 1st of the year following receipt of the notice.

Sec 50-289. Reinstatement after revocation.

A property may be reinstated for a tax exemption after revocation by satisfying the recommendations for changes to the property as provided in the written notice by the historic preservation officer or by bringing the property into compliance for any outstanding code violations. The process for reinstatement shall follow the review procedure applicable to the completed work application. If approved, the tax exemption shall be reinstated for the remaining unexpired term of the initial exemption period.

ARTICLE IV. HISTORIC PRESERVATION GRANT PROGRAM

Sec. 50-2930. Established.

There is hereby established a historic preservation grant program for owners of contributing structures in either a National Registered Historic District or a Local Historic District.

Sec. 50-301. Eligibility.

The owner of any contributing building which had been condemned by the building trades board under chapter 26, article X, may apply to the historic preservation board for a grant for repair or rehabilitation of the building, as follows:

- (1) The program is open to any resident of the City of New Smyrna Beach who owns and occupies a contributing structure.
- (2) Qualifications are based on both family size and annual household incomes that do not exceed 120 percent of the Volusia County median income, as shown below:

	1 person	2 persons	3 persons	4 persons	5 persons	6 persons	7 persons	8 persons
Low/Mod Income	\$39,982	\$45,730	\$51,415	\$68,520	\$61,723	\$66,283	\$70,844	\$75,404

The income guidelines are to be adjusted every two years in relationship to the Consumer Price Index. Household income will be established by the total annual household income and assets of all persons identified on the title of the property, plus all persons 18 years of age or older living in the home.

- (3) Exterior property improvements are eligible, including exterior paint, window and screen repairs, garage door and exterior door repairs, deadbolts, disabled access, exterior electrical and plumbing repair and weatherization.
- (4) The work must be completed by a licensed contractor.

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- (5) The following restrictions apply:
 - a. Upgrades and remodeling are not allowable.
 - b. The home cannot be listed for sale or be in jeopardy of foreclosure.
 - c. The home must be owner occupied.
 - d. Replacement is only allowable if repair is not possible.

Sec. 50-312. Review of application.

The board shall review the application for a grant at a public hearing. The application shall include, at a minimum, the following:

- (1) Proof of ownership of the property to be repaired.
- (2) The order of the building trades board requiring demolition or repair of the property.
- (3) Description of proposed repairs, with a cost estimate and timetable for repairs.
- (4) Proof that the applicant meets the eligibility requirements of section 50-31.

The board may approve, deny, or approve with conditions the application. The action of the board shall constitute final administrative action.

Sec. 50-313. Procedure after approval of grant; grant limits.

- (a) If a grant to repair or rehabilitate a contributing building is approved by the board, a copy of the action taken and the application shall be forwarded to the building official, who may issue a permit for the work to be performed in accordance with the action of the board. The owner shall comply with all laws and ordinances pertaining to the repair or construction.
- (b) The grant amount shall not exceed the city's cost of demolition of the structure or building as ordered by the building trades board. The grant funds shall be taken from budgeted demolition funds, if there are sufficient funds in that account.
- (c) The order of the building trades board shall be stayed during the time of application for the grant and during repair of the building, provided the owner obtains all required permits within the time ordered by the board, and work progresses as required by law and ordinance. After repairs are completed the order of the building trades board shall be deemed satisfied.
- (d) If repairs are not completed, the city is entitled to a lien in the amount of the grant funds dispersed to owner, as provided in section 26 of this code.