

## **THE HISTORIC ZONING COMMISSION'S PURPOSE AND RULES OF ORDER**

### **Section 1. STATEMENT OF PURPOSE**

Historic preservation activities will promote and protect the health, safety, prosperity, education, and general welfare of the people living in and visiting the City of Lebanon, Tennessee, hereinafter referred to as "the City". More specifically, this historic zoning ordinance is designed to achieve the following goals:

- A. Protect, enhance, and perpetuate resources which represent distinctive and significant elements of the City's historical, cultural, social, economic, political archaeological, and architectural identity;
- B. Insure the harmonious, orderly, and efficient growth and development of the City;
- C. Strengthen civic pride and cultural stability through neighborhood conservation;
- D. Stabilize the economy of the City through the continued use, preservation, and revitalization of its resources;
- E. Promote the use of resources for the education, pleasure, and welfare of the people of the City;
- F. Provide a review process for the preservation and development of the City's resources.

### **Section 2. HISTORIC ZONING COMMISSION: COMPOSITION AND TERMS**

- A. The City hereby establishes a historic zoning commission, the Lebanon Historic Zoning Commission, hereinafter referred to as "the Commission", pursuant to the authority granted in Tennessee Code Annotated § 13-7-401 et seq. The Commission is to work to preserve, promote, and develop the city's historical resources and to advise the city on the designation of preservation districts, landmarks, and landmark sites and to perform such other functions as may be provided by law.
- B. The Commission shall consist of seven (7) members. The Commission's membership shall include a representative of a local patriotic or historical organization; an architect, if available; a person who is a member of the Lebanon Municipal Planning Commission at the time of his/her appointment; and the remainder shall be from the community in general<sup>1</sup> Efforts to include Commission members from primary historic preservation-related disciplines (architecture, history, architectural history, archaeology) and secondary historic preservation-related disciplines (urban planning, American studies, American civilization, cultural geography, cultural anthropology, interior design, law, and related fields) shall be documented. Concerning the composition of the Commission, diversity in terms of gender and ethnicity is desirable. All Commission members shall have demonstrated knowledge of or interest, competence, or expertise in historic preservation.
- C. All members of the Commission are appointed by the Mayor and confirmed by the City Council.<sup>2</sup>

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<sup>1</sup> Tenn. Code Ann. § 13-7-403(a)(1).

<sup>2</sup> Tenn. Code Ann. § 13-7-403(a)(1).

- D. The terms of members of the Commission shall be five (5) years and members may be re-appointed.<sup>3</sup> Initial appointments to the Commission shall be staggered so that the terms of at least one (1) member but not more than two (2) members shall expire each year. In the event of Commission vacancies due to death or resignation, the Mayor shall appoint replacement members to serve the remainder of the unexpired term.

### **Section 3. POWERS OF THE COMMISSION**

- A. The Commission shall conduct or cause to be conducted a continuing study and survey of resources within the City; however, the Commission is not authorized to incur any financial obligation without the express authorization of the City Council.
- B. The Historic Zoning Commission has the authority to submit recommendations to the City Council regarding the creation of historic districts and zones (which can include landmarks). Prior to establishing a historic district or zone, City Council shall refer any historic district or zone proposal to the Historic Zoning Commission for its recommendations, and the Historic Zoning Commission shall furnish the City Council its recommendations on such proposal in writing.<sup>4</sup>
- C. Historic districts or zones may be established by City Council, either as a part of a new zoning ordinance or as an amendment to existing ordinances. For the purpose of this part, “historic district or zone” is defined as a geographically definable area which possesses a significant individual structure or a concentration, linkage or continuity of sites, buildings, structures or objects which are united by past events or aesthetically by plan or physical development, and which meets one or more of the following criteria:
  - 1. It is associated with an event which has made a significant contribution to local, state, or national history;
  - 2. It includes structures associated with the lives of persons significant in local, state, or national history;
  - 3. It contains structures or groups of structures which embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction;
  - 4. It has yielded or may be likely to yield archaeological information important in history or prehistory; or
  - 5. It is listed in the National Register of Historic Places.<sup>5</sup>
- D. Prior to the establishment of any historic district or zone, the Historic Zoning Commission also shall adopt for each such proposed district or zone a set of review guidelines, which it will apply in ruling upon the granting or denial of a Certificate of Appropriateness. Such review guidelines shall be consistent with the purposes of Tennessee Code Annotated § 13-7-401 et seq. and with regulations and standards adopted by the secretary of the interior pursuant to the National Historic Preservation Act of 1966 (16 U.S.C. § 470 et seq.), applicable to the construction,

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<sup>3</sup> Tenn. Code Ann. § 13-7-403(a)(1).

<sup>4</sup> State law reference: Tenn. Code Ann. § 13-7-405(a).

<sup>5</sup> State law reference: Tenn. Code Ann. § 13-7-404.

alteration, rehabilitation, relocation or demolition of any building, structure or other improvement situated within a historic district which has been certified by the secretary of the interior as a registered historic district. Reasonable public notice and opportunity for public comment, by public hearing or otherwise, shall be required before the Historic Zoning Commission or the regional historic zoning commission adopts any such review guidelines.<sup>6</sup>

- E. A historic district or zone may be superimposed on other districts or zones, including the zoning maps, established by any other zoning ordinance or regulation, whether established before or after the establishment of a historic district or zone.<sup>7</sup>
- F. The Commission does not have jurisdiction over interior arrangements of buildings and structures, except where such change will affect the exterior of the building and structures.
- G. Subject to the express requirements and approval of the City Council, the Commission may apply for, receive, hold, and spend funds from private and public sources, in addition to any appropriations made by the city for the purpose of carrying out the provisions of this ordinance.
- H. Within the limits of any appropriations or grant in a budget approved by the City Council, and subject to the approval of the Mayor, the Commission is authorized to utilize such staff, technical experts or other persons as may be required for the performance of its duties and to request the equipment, supplies, and other materials necessary for its effective operation.
- I. The Commission is authorized, solely in the performance of its official duties and only at reasonable times, to enter upon private land or water for the examination or survey thereof. No member or agent of the Commission shall enter any private dwelling or structure without the express consent of the owner of record or occupant thereof.

#### **Section 4. RULES OF ORDER**

To fulfill the purposes of this ordinance and carry out the provisions contained therein:

- A. This Section 4 of this ordinance shall constitute the rules of order of the Commission which shall govern the conduct of its business. Such rules of order shall be a matter of public record. The Commission may from time to time adopt such other rules of order as are necessary to its operation.
- B. A quorum for voting on any item of business shall be any four members who are not disqualified from voting due to a conflict of interest.
- C. Except as provided in these rules, or in any subsequent amendment, questions arising concerning rules of order shall be settled by reference to the most recent edition of the *Robert's Rules of Order Newly Revised*.
- D. The Commission annually during the first meeting of the calendar year shall elect from its membership a chairman and vice-chairman. A staff member designated by the Planning Director shall serve as secretary of the Commission. If neither the chairman nor the vice-chairman attends a particular meeting, the remaining members shall select an acting chairman from the members in attendance at such meeting.
- E. The Commission shall keep minutes and records of all meetings and proceedings including voting

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<sup>6</sup> State law reference: Tenn. Code Ann. § 13-7-406.

<sup>7</sup> State law reference: Tenn. Code Ann. § 13-7-402(b).

records, attendance, resolutions, findings, determinations, and decisions. All such material shall be a matter of public record. City staff designated by the Mayor shall keep the aforementioned minutes and records, shall provide descriptions of the issues before the Commission, shall provide notice of meetings, and other support services reasonably necessary to the operation of the Commission.

- F. The Commission shall establish its own regular meeting time; however, the first meeting shall be held after the adoption of this ordinance and within thirty (30) days after the initial appointment of Commission members. Regular meetings shall be scheduled at least once every three (3) months. The chairman, vice-chairman, or any two (2) members may call a special meeting to consider an urgent matter with adequate public notice.

#### **Section 5. DESIGNATION OF LANDMARKS, LANDMARK SITES, AND HISTORIC DISTRICTS**

By ordinance, the City may establish landmarks, landmark sites, and preservation districts within the area of its jurisdiction. Such landmarks, landmark sites, or preservation districts shall be designated following the criteria contained in this ordinance.

- A. The Commission shall initiate a continuing and thorough investigation of the archaeological, architectural, cultural, and historic significance of the City's resources. The findings shall be collected in a cohesive format, made a matter of public record, and made available for public inspection. The Commission shall work toward providing complete documentation for previously designated preservation districts which would include:
  - 1. A survey of all property within the boundary of the district, with photographs of each building.
  - 2. A survey which would be in a format consistent with the statewide inventory format of the Historic Preservation Division of the State Historic Preservation Office (SHPO).
- B. The Commission shall advise the City on the designation of preservation districts, landmarks, or landmark sites and submit or cause to be prepared ordinances to make such designation.
- C. A resource or resources may be nominated for designation upon motion of three members of the Commission or by an organization interested in historic preservation or by an owner of the property being nominated. A nomination shall contain information as specified by the Commission. The Commission must reach a decision on whether to recommend a proposed nomination to the City Council within six months in the case of a preservation district and two months in the case of either a landmark or landmark site. After six months for a district and two months for a landmark or landmark site if no action has been taken by the Commission the nomination proceeds to the City Council.
- D. The Commission shall hold a public hearing on the proposed preservation district, landmark, or landmark site. If the Commission votes to recommend to the City the designation of a proposed resource, it shall promptly forward to the Lebanon City Council its recommendation, in writing, together with an accompanying file.
- E. The Commission's recommendations to the City Council for the designation of a preservation district shall be accompanied by:
  - 1. A map of the preservation district that clearly delineates the boundaries

2. A verbal boundary description and justification
  3. A written statement of significance for the proposed preservation district
- F. The City Council shall conduct a public hearing, after notice, to discuss the proposed designation and boundaries thereof. A notice of the hearing shall be published in the newspaper generally used by the City for such notices.
- G. Within sixty (60) calendar days after the public hearing held in connection herewith, the City shall consider the adoption of the ordinance with such modifications as may be necessary.
- H. Furthermore, the Commission shall notify, as soon as is reasonably possible, the appropriate state, county, and municipal agencies of the official designation of all landmarks, landmark sites and preservation districts. An updated list and map shall be maintained by such agencies and made available to the public.

#### **Section 6. CERTIFICATES OF APPROPRIATENESS**

- A. All applications for permits for construction, alteration, repair, rehabilitation, relocation or demolition of any building, structure or other improvement to real estate situated within a historic zone or district shall be referred to the Historic Zoning Commission, which shall have broad powers to request detailed construction plans and related data pertinent to thorough review of the proposal.<sup>8</sup>
- B. The Historic Zoning Commission is also authorized to review the construction, alteration, rehabilitation, relocation or demolition of any building, structure or other improvement on real property, whether privately or publicly owned, which is situated in a historic district or zone, and for which a permit is not required.<sup>9</sup>
- C. No construction, alteration, repair, rehabilitation, relocation or demolition of any building, structure or other improvement to real property situated within a historic district or zone, for which the Historic Zoning Commission has been granted the authority to review and to grant or deny a Certificate of Appropriateness shall be performed without the issuance of a Certificate of Appropriateness.<sup>10</sup>
- D. The Historic Zoning Commission shall, within thirty (30) days following the availability of sufficient data, grant a Certificate of Appropriateness with or without attached conditions or deny the certificate, and shall state the grounds for denial in writing. In its review of any such work to be undertaken in a historic district or zone, the Historic Zoning Commission or the regional historic zoning commission shall apply the applicable review guidelines and give prime consideration to:
1. Historic or architectural value of the present structure;
  2. The relationship of the exterior architectural features of such structure to the rest of the structures, to the surrounding area, and to the character of the district;
  3. The general compatibility of exterior design, arrangement, texture, and materials

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<sup>8</sup> Tennessee Code Annotated § 13-7-407(a).

<sup>9</sup> Tennessee Code Annotated § 13-7-407(a).

<sup>10</sup> Tennessee Code Annotated § 13-7-407(a).

proposed to be used; and

4. Any other factor, including aesthetic, which is reasonably related to the purposes of this part.<sup>11</sup>
- E. A Certificate of Appropriateness shall not be required for work deemed by the Commission to be ordinary maintenance or repair of any resource as defined in the Design Guidelines.
- F. All decisions of the commission shall be in writing and shall state the findings of the Commission, its recommendations, and the reasons therefore.
- G. Expiration of a Certificate of Appropriateness: a Certificate of Appropriateness shall expire if work has not begun work, a building permit has not been obtained, or a site plan has not been submitted within one (1) year of its issuance. When a certificate has expired, an applicant may seek a new certificate.
- H. Resubmitting of Applications: Twelve months after denial of an application for a Certificate of Appropriateness, the application may be resubmitted without change. A changed application may be resubmitted at any time.

#### **Section 7. CRITERIA FOR ISSUANCE OF CERTIFICATES OF APPROPRIATENESS**

The Commission shall use the Secretary of the Interior's Standards for Rehabilitation and the City's Historic District Guidelines<sup>12</sup>, as the basics for Design Guidelines created for each district or appropriateness:

##### **A. *General Factors:***

1. Historic or architectural value of the present structure;
2. The relationship of the exterior architectural features of such structure to the rest of the structures, to the surrounding area, and to the character of the district;
3. The general compatibility of exterior design, arrangement, texture, and materials proposed to be used; and
4. Any other factor, including aesthetic, which is reasonably related to the purposes of City of Lebanon's Historic District Guidelines and Tennessee Code Annotated § 13-7-401 et seq.<sup>13</sup>

##### **B. *New construction:***

1. The following aspects of new construction shall be visually compatible with the buildings and environment with which the new construction is visually related, including but not limited to: the height, the gross volume, the proportion between width and height of the facade(s), the proportions and relationship between doors and windows, the rhythm of solids to voids created by openings in the facade, the materials, the textures, the patterns, the trims, and the design of the roof.
2. Existing rhythm created by existing building masses and spaces between them shall be preserved.

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<sup>11</sup> Tennessee Code Annotated § 13-7-408.

<sup>12</sup> Municipal Code reference: Title 14, Appendix F.

<sup>13</sup> State law reference: Tenn. Code Ann. § 13-7-408.

3. The landscape plan shall be compatible with the resource, and it shall be visually compatible with the environment with which it is visually related. Landscaping shall also not prove detrimental to the fabric of a resource, or adjacent public or private improvements like sidewalks and walls.
4. No specific architectural style shall be required.

C. *Exterior alteration:*

1. All exterior alterations to a building, structure, object, site, or landscape feature shall be compatible with the resource itself and other resources with which it is related, as is provided in Section 7, A and B, and the design, over time, of a building, structure, object, or landscape feature shall be considered in applying these standards.
2. Exterior alterations shall not adversely affect the architectural character or historic quality of a building, district or landmark and shall not destroy the significance of building district or landmark sites.

D. *Demolition:* In considering an application for the demolition of a landmark or a resource within a preservation district; the following shall be considered:

1. The Commission shall consider the individual architectural, cultural, and/ or historical significance of the resource.
2. The Commission shall consider the importance or contribution of the resource to the architectural character of the district.
3. The Commission shall consider the importance or contribution of the resource to neighboring property values.
4. The Commission shall consider the difficulty or impossibility of reproducing such a resource because of its texture, design, material, or detail.
5. Following recommendation for approval of demolition, the applicant must seek approval of replacement plans, if any, as set forth in Section 7, B, prior to receiving a demolition permit and other permits. Replacement plans for this purpose shall include, but shall not be restricted to project concept, preliminary elevations and site plans, and completed working drawings for at least the foundation plan which will enable the applicant to receive a permit for foundation construction.
6. Applicants that have received a recommendation for demolition shall be required to have a demolition permit as well as Certificate of Appropriateness for the new construction. Permits for demolition and construction shall not be issued simultaneously.
7. When the Commission recommends approval of demolition of a resource, a permit shall not be issued until all plans for the site have received approval from all appropriate city boards, commissions, departments, and agencies.

**Section 8. PROCEDURES FOR ISSUANCE OF CERTIFICATES OF APPROPRIATENESS, REVIEW PROCESS**

- A. Anyone desiring to take action requiring a Certificate of Appropriateness concerning a resource

for which a permit, variance, or other authorization from the city building official is also required, shall make application therefore in the form and manner required by the applicable code section or ordinance.

- B. Anyone desiring to take any action requiring a Certificate of Appropriateness shall submit an application for such Certificate of Appropriateness with the city building official.
- C. After receipt of any such application, the city building official shall be assured that the application is proper and complete.
- D. No building permit shall be issued by the city building official which affects a resource without a Certificate of Appropriateness.
- E. In the event that a building permit need not be obtained for construction, alteration, demolition, or relocation of any resource, a Certificate of Appropriateness is still required before such work can be undertaken. Such application shall be reviewed in accordance with the following procedure:
  - 1. When any such application is filed, it shall be placed on the next available meeting agenda.
  - 2. The chairman or vice-chairman shall set the agenda for the regularly scheduled meeting. A new annual calendar of meetings shall be adopted each year.
  - 3. The applicant shall, upon request, have the right to a preliminary hearing by the Commission for the purpose of making any changes or adjustments which might be more consistent with the Commission's standards.
  - 4. Not later than three (3) days before the date set for the said hearing, the city official designated by the Mayor shall provide written or verbal notice thereof to the applicant and to all members of the Commission.
  - 5. Notice of the time and place of said hearing shall be given by publication in a newspaper having general circulation in the city at least three (3) days before such hearing and by posting such notice on the bulletin board in the lobby of city hall.
  - 6. At such hearing, the applicant for a Certificate of Appropriateness shall have the right to present any relevant evidence in support of the application. Likewise, the City shall have the right to present any additional relevant evidence in support of the application.
  - 7. The Commission shall have the right to conditional approval.
  - 8. The issuance of a Certificate of Appropriateness shall not relieve an applicant for a building permit, special use permit, variance, or other authorization from compliance with any other requirement or provision of the laws of the City concerning zoning, construction repair, or demolition.

#### **Section 9. ECONOMIC HARDSHIP**

- A. No decision of the Commission shall cause undue economic hardship.
- B. If an applicant requests, a hearing on economic hardship shall be conducted after a Certificate of Appropriateness has been denied.

- C. Economic hardship arguments shall be evaluated using the criteria in Appendix A of this document.<sup>14</sup> Economic hardship cases will be heard by the Board of Adjustments and Appeals

**Section 10. APPEALS**

Anyone who may be aggrieved by any final order or judgment of the Historic Zoning Commission or regional Historic Zoning Commission may have such order or judgment reviewed by the courts by the procedure of statutory certiorari, as provided in Tennessee Code Annotated title 27, chapter 8.

**Section 11. MINIMUM MAINTENANCE REQUIREMENTS**

In order to ensure the protective maintenance of resources, the exterior features of such properties shall be maintained to meet the requirements of the City's minimum housing code and the City's building code.

**Section 12. PUBLIC SAFETY EXCLUSION**

- A. None of the provisions of this ordinance shall be construed to prevent any action of construction, alteration, or demolition necessary to correct or abate the unsafe or dangerous condition of any resource, or part thereof, where such condition has been declared unsafe or dangerous by the city building official, Lebanon Police Department's Codes Enforcement Division, or the fire department and where the proposed actions have been declared necessary by such authorities to correct the said condition provided, however, that only such work as is necessary to correct the unsafe or dangerous condition may be performed pursuant to this section.
- B. In the event any resource designated as a landmark or located within a zoning district shall be damaged by fire or other calamity to such an extent that it cannot be repaired and restored, it may be removed in conformity with normal permit procedures and applicable laws, provided that:
  - 1. The City Building Official concurs with the property owner that the resource cannot be repaired and restored and so notifies the Commission in writing.
  - 2. The Commission, if in doubt after receiving such notification from the City Building Official, shall be allowed time to seek outside professional expertise from the State Historic Zoning Office and/ or an independent structural engineer before issuing a Certificate of Appropriateness for the demolition. The Commission may indicate in writing by letter to the City Building Official that it will require a time period of up to thirty days for this purpose, and, upon such notification to the city building official, this section shall be suspended until the expiration of such a delay period.

**Section 13. ENFORCEMENT AND PENALTIES**

- A. The Historic Zoning Commission shall be enforced by the Zoning Enforcement Official or the Chief Building Official who shall have the right to enter upon any premises necessary to carry out his duties in this enforcement.
- B. Any work for which a Certificate of Appropriateness should have been obtained that is undertaken prior to submission and approval of the Certificate of Appropriateness is deemed to be in violation of the historic district guidelines and shall be at the property owner's risk. A stop-work order may be issued at the discretion of the Planning Director or Chief Building Official until a Certificate of

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<sup>14</sup> LMC Title 14, Appendix F.

Appropriateness is granted and any required building permits are obtained. The Historic Zoning Commission shall review all stop work orders at its next regular meeting following the issuance of the order.

- C. Citation. Any person violating any provision of this ordinance shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two (\$2.00) nor more than fifty dollars (\$50.00) for each offense. Each day such violation shall continue shall constitute a separate offense.
- D. Further legal remedies. If a violation continues, the Commission may seek further legal remedies in the appropriate court of competent jurisdiction.

**Section 14. APPROPRIATIONS**

The City Council may make appropriations on behalf of the Commission as necessary for the expenses of the operation of the Commission and may make additional amounts available as necessary for the acquisition, restoration, preservation, operation, and management of historic properties.

**Section 15. DISQUALIFICATION OF MEMBERS BY CONFLICT OF INTEREST**

Members of the Historic Zoning Commission are subject to the City of Lebanon’s Code of Ethics, LMC § 1-1001 et seq.

**Section 16. CONFLICTS**

All other ordinances of the City of Lebanon that are in conflict with this ordinance are hereby repealed to the extent that is necessary to eliminate the conflict.

**Section 17. AMENDMENTS**

These Rules of Order may be amended at a regular or called meeting of the Commission, but no amendment shall be adopted unless at least ten days’ written notice thereof has been previously given to all members of the Commission.

**Section 18. INTERPRETATION OF RULES**

The Commission is the final authority as to the meaning of these rules. From time to time, the Commission may make an exception to these rules for extraordinary cases, setting out the reasons, therefore.

**Section 18. SEVERABILITY**

The requirements and provisions of this ordinance are separable. If any article, section, paragraph, sentence, or portion thereof, be declared by any court of competent jurisdiction to be void, invalid, or inoperative, the decision of the court shall not affect the validity or applicability of the ordinance as a whole or of any part thereof other than the part held void, invalid, or otherwise inoperative.

**Section 19. EFFECTIVE DATE**

These rules shall become effective upon the date of adoption.

APPROVED AND ADOPTED ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Lebanon Zoning Preservation Commission, Chair

\_\_\_\_\_  
Lebanon Historic Zoning Commission, Secretary

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## Appendix A

Proposed language:

### WHAT ABOUT ECONOMIC HARDSHIP?

The HZC can take into consideration economic hardship arguments of the applicant. In its determination, the HZC would consider that by reason of the exceptional deterioration of the structure or by reason of the particular economics of the proposed project, the strict application of the Design Guidelines would result in peculiar and practical difficulties or undue economic hardship upon the owner to develop the property. The HZC would also consider whether the relief of the particular hardships would not establish substantial detriment to the public good or substantially impair the intent and purpose of the Historic Zoning Ordinance. The peculiar hardship would apply to the particular land or building regardless of the owner, and the peculiar hardship is not created as a result of an act upon the part of the applicant.

If a COA is denied to a property owner, the property owner may ask the HZC to consider economic hardships and other factors that may affect an owner's ability to undertake and complete rehabilitation or other work considered. Economic hardship, caused by unusual and compelling circumstances, is based on one or more of the following:

- The property cannot reasonably be maintained in the manner dictated by the ordinance;
- There are no other reasonable means of saving the property from deterioration or collapse, or;
- The property is owned by a nonprofit organization and it is not feasible financially or physically to achieve the charitable purposes of the organization while maintaining the property appropriately.

### ECONOMIC HARDSHIP CRITERIA

Economic Hardship is a finding made by the Historic Zoning Commission (HZC) when the denial of a Certificate of Appropriateness (COA) will:

- Deprive the owner of the property of all reasonable use of, or economic return on, the property, or
- Place an unreasonable economic burden on the property owner commensurate with the owner's financial ability to meet the requirements of the COA.

The HZC shall apply the following criteria:

- A. The basis to establish economic hardship for an income-producing property shall be that a

reasonable rate of return cannot be obtained from a property that retains its historic features or structures in either its present condition or if its features or structures are rehabilitated.

B. Economic hardship in regard to a non-income-producing property shall be found when the property owner demonstrates that the property has no beneficial use as a single-family dwelling or for an institutional use in its present condition or if rehabilitated.

C. Demonstration of an economic hardship shall not be based on or include any of the following circumstances:

1. Willful or negligent acts by the owner.
2. Purchase of the property for substantially more than market value.
3. Failure to perform normal maintenance and repairs.
4. Failure to diligently solicit and retain tenants.
5. Failure to provide normal tenant improvements.

To make a determination of Economic Hardship, the HZC can request the following information in order to make its decision:

A. Cost estimates of the proposed construction, alteration, demolition, or removal and an estimate of the additional costs that would be incurred to comply with the recommendations of the HZC for issuance of a COA.

B. A report from a licensed engineer or architect with expertise in rehabilitation as to the structural soundness of any structures on the property and their suitability for rehabilitation.

C. Estimated market value of the property in its current condition; estimated market value after completion of the proposed construction, alteration, demolition, or removal; after any change recommended by the HZC; and in the case of a proposed demolition, after renovation of the existing property for continued use.

D. In the case of a proposed demolition, an estimate from an architect, developer, real estate consultant, appraiser, or other real estate professional experienced in rehabilitation as to the economic feasibility of rehabilitation or reuse of the existing structure on the property and its market value for continued use after rehabilitation.

E. For income-producing properties, information on annual gross income, operating and maintenance expenses, depreciation deductions and annual cash flow after debt service, current property value appraisals, assessed property valuations, real estate taxes, and any other information considered necessary by the HZC for determine whether substantial evidence of economic hardship exists.

F. Remaining balance on any mortgage or other financing secured by the property and annual debt service, if any, for the previous two years.

G. All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing, or ownership of the property.

H. Amount paid for the property, the date of purchase, and the party from whom purchased.

Approval of Economic Hardship shall be based on the following criteria:

- A. Denial of the COA will diminish the value of the subject property so as to leave substantially no value.
- B. Sale or rental of the property is impractical, when compared to the cost of holding such property for uses permitted in this zone.
- C. An adaptive reuse study has been conducted and found that utilization of the property for lawful purposes is prohibited or impractical
- D. Rental at a reasonable rate of return is not feasible.
- E. Denial of the COA would damage the owner of the property unreasonably in comparison to the benefit conferred to the community.
- F. All means of involving City sponsored incentives such as financial assistance, building code modifications, loans, grants etc. have been explored to relieve possible economic disincentives