

## **Chapter 19 – Historic Preservation**

### **Article 1 – General.**

#### **Sec. 19-1-10. – Authority.**

This ordinance is adopted pursuant to the police powers of the Town of Minturn and not an exercise of zoning powers;

#### **Sec. 19-1-20. – Purpose.**

Purpose. The purpose of this ordinance is to enhance the Town of Minturn's local resources and to promote the public health, safety, and welfare through:

1. The protection and preservation of the Town's architecture, culture, and heritage as embodied in Historic Properties and Historic Districts, by appropriate regulations and incentives;
2. The stabilization of historic neighborhoods;
3. The establishment of the Town's Historic Register listing Historic Properties and Historic Districts;
4. The cultivation of civic pride in the art, architecture, and accomplishments of the past;
5. The encouragement of continued private ownership and utilization of such Historic Properties or Historic Districts now so owned and used;
6. The promotion of thoughtful community planning and design; and
7. The provision of educational opportunities to increase public appreciation of the Town's unique heritage.

#### **Sec. 19-1-30. – Intent.**

Intent. The intention of this ordinance is to create a reasonable balance between private property rights and the public interest in preserving the Town's unique historic character through the nomination of Buildings, Structures, Sites, Objects, and districts for preservation.

#### **Sec. 19-1-40. – Definitions.**

Definitions. For purposes of this ordinance, the following terms are to be defined as follows:

*Adjacent Properties* means Properties within 100 linear feet of the boundaries of the proposed or subject Historic Property or Historic District

*Alter, Alters, or Alterations* means any act or process that changes one (1) or more of the exterior architectural features of a Building, Structure, Site, Object, or district.

*Applicant* means Person or persons submitting nomination or Alteration paperwork.

*Building* means any shelter or enclosure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of any individual, animal, process, equipment, goods or materials of any kind.

*Building Code* means The Building Codes that have been adopted in Chapter 18 of the Minturn Municipal Code.

*Building Official* means the officer or other designated authority charged with the administration and enforcement of the Building Code, or that person's authorized representative.

*Certificate of Appropriateness* means a Certificate issued by the Commission authorizing any proposed repair, restoration, Alteration, Construction, Relocation, or Demolition of a Historic Property or element within a Historic District pursuant to this ordinance.

*Certificate of Economic Hardship* means a certificate issued by the Commission authorizing the repair, restoration, Alteration, Construction, Relocation, or Demolition of a designated Building, Structure, Object, Site, or element within a designated Historic District in accordance with the provisions of this ordinance, even though a Certificate of Appropriateness has previously been denied.

*Code* means the Town of Minturn Municipal Code.

*Colorado State Register of Historic Properties* means the official listing of state designated cultural resources.

*Compatible* or *Compatibility* means consistent or harmonious with location, design, setting, materials, workmanship, feeling, or association of an individual Building, Structure, Object, or Site or of surrounding Properties.

*Construction* or *Construct* means an act of erecting an addition to an existing Building, Structure, or Object or the erection of a new principal or accessory Building, Structure, or Object on a lot or Property.

*Contributing Property* means a Building, Structure, Site, or Object that is located within a Historic District and that reflects the historic or architectural character within the Historic District.

*Demolition* or *Demolish* means any act or process that destroys in part or in whole a Building, Structure, Object, or Site.

*Historic Preservation Design Guidelines* means a standard of appropriate activity that will preserve the historic and architectural character of a Historic Property, Property, or Historic District.

*Eligibility Criteria* meaning as set forth in Article 3 of this Chapter.

*Historic District* meaning as set forth in Article 3 of this Chapter.

*Historic Preservation Commission (“HPC”)* meaning as set forth in Article 2 of this Chapter.

*Historic Property* means a Building, Structure, Site, or Object which is designated by the Town Council pursuant to this Chapter.

*Historic Significance* means the meaning or value ascribed to a Building, Structure, Object, Site, or district based on criteria for evaluation as defined by Article 3 of this Chapter.

*Infill* means Construction on vacant or under-used parcels within existing areas that are largely developed within a designated Historic District.

*Integrity* means the ability of a Property to convey its Historic Significance through its physical features.

*Inventory* means Catalog of Buildings, Structures, Objects, and Sites within the Town, listed, eligible for listing, or non-eligible for listing in the Town’s Historic Register.

*Maintenance* means all activities necessary to prolong the useful life and aesthetic appearance of a Property.

*National Register of Historic Places* means the list of significant Buildings, Structures, Sites, Objects, or districts in American history, architecture, archeology, engineering, or culture maintained by the U.S. Secretary of the Interior.

*Non-Contributing Property* means a Building, Structure, Object, or Site that does not reflect the historic or architectural character within a Historic District because of age or lack of Integrity.

*Object* means a material item of functional, aesthetic, cultural, historical, or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

*Owner* means as applied to a building or land, includes any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety of the whole or a part of such building or land.

*Period of Significance* means span of time during which significant events and activities occurred.

*Property* means a Building, Structure, Site, or Object.

*Relocation or Relocate* means moving a Building, Structure, or Object to a different location, either temporarily or permanently.

*Secretary* means the Secretary of the Historic Preservation Commission.

*Secretary of the Interior's Standards for the Treatment of Historic Properties* means the preservation, rehabilitation, restoration, and reconstruction standards adopted by the U.S. Department of the Interior.

*Section 106 Review* means the process required of federal agencies under 54 U.S.C. 306108 to consult local governments and other parties in consideration of the effects of projects carried out, permitted, licensed, or funded by that agency on properties listed in the National Register of Historic Places.

*Site* means the location of a significant event; a prehistoric or historic occupation or activity; or a Building, Structure, or Object, whether standing or vanished, where the location itself maintains historic or archeological value regardless of the value of any existing Building, Structure, or Object.

*Structure* means anything Constructed or erected, the use of which requires location on or in the ground for purposes other than shelter of humans, animals, or chattels.

*Town* means the Town of Minturn.

*Town Council* means the council of the Town.

*Town's Historic Register* means the register established pursuant to Article 3 of this Chapter.

## **Article 2 – Historic Preservation Commission.**

### **Sec. 19-2-10. – Creation.**

Creation. There is hereby established a Historic Preservation Commission, which shall be appointed by the Town Council, and hereinafter referred to as the ("HPC").

### **Sec. 19-2-20. – Composition.**

Composition.

1. HPC shall be composed of five voting members with the option of Town Council to appoint additional non-voting members to be utilized in an advisory capacity, all of whom have demonstrated interest in, competence with, or knowledge of the Town's history and/or historic preservation.
2. At least 2 of the voting members shall be full time residents, Property or business

Owners, or designated representatives of Property or business Owners within the Town.

3. At least 2 of the voting members shall be professionals or shall have extensive expertise in a preservation-related discipline, including but not limited to History, Architecture, Landscape Architecture, American Studies, American Civilization, Construction and Building Trades; Cultural Geography, Cultural Anthropology, Environmental Expertise, Planning, Real Estate, or Archeology.
4. Non-voting advisory members may be appointed by the Town Council.

#### **Sec. 19-2-30. – Term of Office.**

1. Members shall serve three year staggered terms from the date of their appointment; provided, however, that the initial appointment to HPC shall consist of one appointment of a term of one year, two appointments of a term of two years, and two appointments of a term of three years.
2. Members may continue to serve until their successors have been appointed.

#### **Sec. 19-2-40. – Officers.**

Officers. HPC shall, by majority vote, elect one of its members to serve as chairperson to preside over HPC's meetings and one member to serve as the vice-chairperson. The members so designated shall serve in these capacities for terms of one year.

#### **Sec. 19-2-50. – Staffing.**

Staffing. The Town Manager shall designate one or more Town Employee(s) within the Planning Department to assist HPC in the administration of its duties.

#### **Sec. 19-2-60. – Quorum and Voting.**

Quorum and Voting. A quorum for HPC shall consist of a majority or 3 voting members. A quorum is necessary for HPC to conduct business, including holding a public hearing. A roll call vote shall be taken upon the request of any member. A majority vote shall be determinative. A tie vote shall be deemed a denial of the motion or recommended action.

#### **Sec. 19-2-70. – Compensation.**

Compensation. All members of HPC shall serve without compensation except for such amounts determined appropriate, in advance, by the Town Council to offset expenses incurred in the performance of their duties.

#### **Sec. 19-2-80. – Powers and Duties.**

The HPC:

1. May conduct surveys and create inventories of Properties and areas for the purpose of defining those of Historic Significance.
2. Shall review and determine qualifications of Buildings, Structures, Objects, Sites, and districts nominated for designation and recommend that the Town Council designate by ordinance such Buildings, Structures, Objects, Sites, or districts qualifying for such designation.
3. Shall recommend to the Town Council the establishment of Construction and Design Guidelines, consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties, for review of proposals to Alter, Relocate, or Demolish Historic Properties.
4. Shall review and make recommendations on any application for Alteration, Relocation, or Demolition of a Historic Property or Historic District or planning and design project that may affect the character or Integrity of the Historic Property or Historic District.
5. May participate in review of National Register of Historic Places nominations.
6. May advise and assist Owners on physical and financial aspects of preservation, rehabilitation, restoration, and reconstruction, including nomination to the Town's Historic Register, the Colorado State Register of Historic Properties, and the National Register of Historic Places.
7. May develop and assist in public education programs on history, archaeology, and historic preservation.
8. Shall advise the Town Council on matters related to preserving the historic character and substance of the Town and recommend easements, covenants, licenses, and other methods which will implement the completion of the purposes of this Chapter.
9. Shall participate in Federal Section 106 Review as requested by Town Council or staff.
10. May actively pursue financial assistance for preservation-related programs.
11. Shall draft and recommend for adoption by the Town Council such by-laws, operating policies and other rules of procedure, as HPC may deem appropriate.

**Sec. 19-2-90. – Meetings.**

1. HPC shall establish a regular meeting schedule with no less than monthly scheduled meetings.
2. Minutes shall be kept of all HPC proceedings.
3. All meetings of HPC shall be open to the public, subject to the right of HPC to receive legal advice in an executive session.

**Sec. 19-2-100. – Vacancies.**

Vacancies. Appointments to fill vacancies on HPC shall be made by the Town Council in the same manner as regular appointments.

**Sec. 19-2-110. – Removal.**

Removal. Members of HPC may be removed by the Town Council.

## **Article 3 – Establishment of Town Register and Designation Criteria**

### **Sec. 19-3-10. – Register of Historic Places Established.**

The Town Council hereby establishes the Town of Minturn Register of Historic Places (the “Town's Historic Register”).

1. Properties or districts may be listed in the Town's Historic Register only if such Property or district has been so designated pursuant to this ordinance.
2. All Properties listed in the Colorado State Register of Historic Properties and the National Register of Historic Places are eligible for the Town's Historic Register but are not designated until approval, pursuant to this Chapter, is obtained.

### **Sec. 19-3-20. – Eligibility Criteria.**

1. Properties or districts shall be at least fifty years old and meet one or more of the following criteria in order to be considered for designation:
  - a. Association with events that have made a significant contribution to history.
    - i. Is a Site of a historic event that had an effect upon society; or
    - ii. Exemplifies cultural, political, economic, or ethnic heritage of the Town.
  - b. Connection with persons significant in history.
  - c. Distinctive characteristics of a type, period, method of Construction, or artisan.
    - i. Exemplifies specific elements of an architectural style or period;
    - ii. Is an example of the work of an architect or builder who is recognized for expertise nationally, state-wide, regionally, or locally;
    - iii. Demonstrates superior craftsmanship or high artistic value;
    - iv. Represents a style that is particular to the Town;
    - v. Represents an innovation in Construction, materials, or design; or
    - vi. Represents a built environment of a group of people in an era of history.
  - d. Geographic importance.
    - i. Enhances the sense of identity of the Town or community; or
    - ii. Is an established and familiar natural setting or visual feature of the Town or community.
  - e. Possibility to yield important information related to prehistory or history.
    - i. Addresses research questions or fills recognized data gaps;
    - ii. Embodies Construction, development, or design adaptations; or
    - iii. Informs on the development of engineering systems.
2. A Property or district may be exempted from the age standard if the Town Council finds it to be exceptionally important in other criteria.

### **Sec. 19-3-30. – Integrity Criteria.**

All Properties and districts shall be evaluated for their physical Integrity using the following criteria:

1. Location - the place where the Property was Constructed or the place where the historic event occurred.
2. Design - the combination of elements that create the form, plan, space, Structure, and style of a Property.
3. Setting -the physical environment of a Property.
4. Materials - the physical elements that were combined or deposited during a particular period of time and in a particular pattern or configuration to form a Property.
5. Workmanship - the physical evidence of the crafts of a particular culture or people during any given period in history or prehistory.
6. Feeling - a Property's expression of the aesthetic or historic sense of a particular period of time.
7. Association - the direct link between an important historic event or person and a Property.

#### **Sec. 19-3-40. – Historic Districts.**

1. A “Historic District” is a geographically definable area including a concentration, linkage, or continuity of Properties within a specified Period of Significance and may include within its geographic boundaries one or more Contributing Properties, which has been designated by the Town Council pursuant to this Chapter.
2. A Historic District is related by a pattern of either physical elements or social activities. Historic Significance is determined by applying eligibility and Integrity criteria to the pattern(s) and unifying element(s).
3. Historic District boundaries will be defined by visual changes, historical documentation of different associations or patterns of development, or evidence of changes in Property type, density, or Integrity.
4. Properties that do not contribute to the Historic Significance of the Historic District may be included within its boundaries.

### **Article 4 – Designation Procedure**

#### **Sec. 19-4-10. – Application for Nomination.**

1. Applications shall be submitted to the Town of Minturn Planning Department for consideration on a form provided by HPC.
2. An application for nomination for listing in the Towns Historic Register may be made:
  - a. By the Owner or Owners of the Property or Properties to be designated;
  - b. By a member or members of HPC;
  - c. By a member or members of Town Council; and/or
  - d. By non-Owners of the Property or Properties to be designated, in which case the Applicant must be a resident or Owner of Property in the Town, or have a place of business in the Town.
3. Where an application for nomination is submitted by someone other than the Property Owner or less than all of the Property Owners in a district nominated for designation, the staff person assigned to the HPC pursuant to Code Sec. 19-2-50 shall contact the Owner



or Owners of such Property or Properties nominated for designation in writing, outlining the reasons and effects of listing in the Town's Historic Register within 45 days of receipt of application.

4. Applications determined incomplete by the Planning Department shall be returned to the Applicant within 45 days of receipt of application with a request for additional information.

#### **Sec. 19-4-20. – Designation Hearing.**

1. Within 45 days after an application is determined complete by the Planning Department and delivered to HPC a public hearing shall be held by HPC.
  - a. HPC shall provide notice by U.S. Mail of the date, time, and location of the public hearing to the Applicant, the Owner or Owners of record, the Owners of Adjacent Properties at least 10 days prior to the hearing.
  - b. A legal notice in accordance with Code Sec. 16-21-610 indicating the nature of the hearing, the Property involved, and the time, date, and place of the scheduled public hearing, shall be published in the Town's publication of record at least 10 days prior to the hearing.
2. A hearing may be continued. If the hearing is continued, the time, date, and place of the continuation shall be established and announced to those present when the current session is to be adjourned. In no case shall a hearing be continued more than 45 days without the express consent of the Applicant and the Owner.
3. Reasonable opportunity shall be provided for interested parties to express their opinions regarding the proposed designation. However, nothing contained in this ordinance shall be construed to prevent HPC from establishing reasonable rules to govern the proceedings of the hearings, or from establishing reasonable limits on the length of individual presentations.
4. Hearings in front of HPC shall be conducted in conformance with the requirements in Code Sec. 16-21-220. Written reports and presentations submitted to HPC shall be incorporated into the record of the hearing.

#### **Sec. 19-4-30. – HPC Review.**

1. HPC shall review the application for conformance with the established criteria for designation and with the purposes of this Article.
2. HPC shall recommend:
  - a. Approval;
  - b. Approval with conditions; or
  - c. Denial of the application.HPC shall set forth in writing the basis of its recommendation.
3. If HPC recommends approval of an application or approval of an application with conditions, HPC shall forward the application with a copy of its report and findings to the Town Council within 30 days of determination.

4. If HPC recommends denial of an application, HPC shall forward the application with a copy of its report and findings to the Town Council within 30 days of determination.
5. HPC may issue an order continuing the nomination process if HPC finds that additional information is necessary to make a decision. If the hearing is continued, the time, date, and place of the continuation shall be established and announced to those present when the current session is to be adjourned. In no case can a hearing be continued more than 45 days without the express consent of the Applicant and the Owner(s).

**Sec. 19-4-40. – Town Council Proceedings.**

1. Within 30 days after receipt of HPC's recommendation, the Town Council shall hold a public hearing to consider HPC's recommendation. Such notice and hearing shall be conducted in conformance with the procedures set forth Code Sec. 19-4-20.
2. The Town Council shall review the application for conformance with this Article.
3. The Town Council shall deny, or, by ordinance, shall approve or approve with conditions, the proposed application.

**Sec. 19-4-50. – Recording of Designation.**

Within 30 days of the effective date of an ordinance designating a Historic Property or Historic District for preservation, the Town shall record the ordinance with the Clerk and Recorder of Eagle County.

**Sec. 19-4-60. – Records.**

Records. The Town shall maintain a current record of all Historic Properties and Historic Districts and pending designations.

**Sec. 19-4-70. – Limitation on Resubmission and Reconsideration of Proposed Designation.**

Limitation on Resubmission and Reconsideration of Proposed Designation. Whenever the Town Council denies a proposed designation, no person shall submit an application that is the same or substantially the same for at least one year from the effective date of the final action on the denied application.

**Sec. 19-4-80. – Amendment of Designation.**

An application to amend designation of a Historic Property or Historic District to add features or Properties to such Historic Property or Historic District shall be administered by the Planning Department and HPC in accordance with the procedures in Code Sections 19-4-10 through 19-4-70.

**Sec. 19-4-90. – Revocation of Designation.**

If a Historic Property or Historic District has been Altered to a degree that it no longer retains its Eligibility Criteria, the Owner, an HPC member, or Town Council person may apply to HPC for a revocation of the designation or HPC. The revocation application shall be administered by the Planning Department, HPC, and Town Council in the same manner as a proposed amendment of designation.

## **Article 5 – Alterations to Listed Properties and Historic Districts**

### **Sec. 19-5-10. – Application.**

1. Before carrying out any new Construction, Alteration, Relocation, or Demolition involving the exterior of any Historic Property or Contributing Property within a Historic District Applicants and/or Owner(s) must submit and obtain approval for an application for the proposed work by the Planning Department and HPC under this Article. The application shall include anything HPC deems necessary, including, without limitation and as applicable, a description of the type of work proposed and its effect or impact upon the Historic Property or Historic District and plans and specifications showing the proposed exterior appearance, with finishes, materials, samples of materials, and architectural design and detail. The application shall not relieve the Applicant from the responsibility to apply for any other permit required by the Code.
2. The Planning Department shall review the application received to determine whether the Property is a listed Historic Property or a Contributing Property located in a Historic District. If so, the Planning Department shall determine when the application is complete and shall refer the application to HPC for Certificate of Appropriateness review in accordance with this Section. If the Planning Department determines the application is incomplete, the Applicant shall be advised of the reasons in writing within 30 days of submittal.
3. No person shall receive a building permit to Construct, Alter, remove, or Demolish any Building, Structure, Object, or other feature on a Site, or element of a Historic District nominated for designation after an application has been filed to initiate the designation of such Property or Historic District. No such building permit shall be approved while proceedings are pending on such designation.
4. If the Planning Department determines that the Property is not a Historic Property or a Contributing Property within a Historic District, then the application shall be processed without further requirement of review under this Article.

### **Sec. 19-5-20. – Alteration Hearing.**

Within 45 days after referral of an application by the Planning Department to HPC a public hearing shall be held by HPC, and shall be conducted in conformance with the procedures set forth in Code Sec. 19-4-20.

### **Sec. 19-5-30. – Review Criteria.**

1. Compliance with any Historic Preservation Design Guidelines adopted by the Town Council for Historic Properties and/or Contributing Properties within Historic Districts.
2. Compliance with the Secretary of the Interior's Standards for the Treatment of Historic Properties, including the Standards for Rehabilitation.

#### **Sec. 19-5-40. – HPC Certificate of Appropriateness Review**

1. HPC shall:
  - a. Approve the application
  - b. Approve the application with conditions; or
  - c. Deny the application
2. Any decision of the HPC to approve the application or approve the application with conditions shall be included on an agenda of the Town Council within 21 days. The Town Council may call up for review any final decision reached by the HPC. After review, Town Council may affirm, deny, or affirm with additional conditions the decision of HPC. No Certificate of Appropriateness shall be issued before HPC's decision has been included on an agenda of the Town Council.
3. If HPC approves or approves the application with conditions, HPC shall issue a Certificate of Appropriateness to the Applicant and a copy will be placed in the appropriate Town records. If approved with conditions, such conditions shall be stated in the Certificate of Appropriateness.
4. If HPC denies the application, HPC shall notify the Applicant in writing and a copy will be placed in the appropriate Town records.
5. The application form shall have a section for HPC to set forth HPC's reasons for the approval, approval with conditions, or denial of the application.
6. HPC may issue an order continuing the Alteration application process if HPC would like additional information necessary to make a decision. If the hearing is continued, the time, date, and place of the continuation shall be established and announced to those present when the current session is to be adjourned. In no case shall a hearing be continued more than 45 days without the express consent of the Applicant.
7. The Applicant and/or Owner(s) may resubmit an amended application that takes into consideration the recommendations of HPC.
8. If an application for a Certificate of Appropriateness is denied after final action upon the application by HPC, no person may submit a subsequent application for the same Alteration or Construction within one year from the date of the final action.
9. If a Certificate of Appropriateness has been issued on the permit application and the proposed work conforms thereto, the Town shall process the application in accordance with all other applicable provisions of the Code. If no Certificate of Appropriateness has been issued or if the Town determines that the permit application does not conform, the Town shall not approve the permit application and shall not issue any other permit until a Certificate of Appropriateness has been issued and the permit application conforms thereto.

#### **Article 6 – Relocation of Listed Properties**

**Sec. 19-6-10. – General.**

1. In addition to the criteria and procedures in Article 5, HPC will use the criteria of this Article in considering applications for Relocating a Historic Property or Contributing Property in a Historic District within or outside of a designated Site or district or Relocating a Property onto a designated Site or Historic District.
2. Applicants for Relocation shall provide:
  - a. An estimate of costs, in such form as determined by HPC, of continued Maintenance of the Property in its current condition, of rehabilitation on Site, and of Relocation and rehabilitation;
  - b. A licensed structural engineer's report as to structural soundness;
  - c. Professionally prepared Site plan and Construction documents for the proposed Relocation Site; and
  - d. A replacement/reuse plan for the current Site.
3. If Relocation is approved by HPC, the Relocation will not be permitted until a design review application for the current Property Site has been approved by the Planning Commission.

**Sec. 19-6-20. – Review Criteria.**

1. For consideration of the original Property and Site, HPC will review for the following criteria:
  - a. Whether the Property can be preserved, restored, rehabbed, or reused on its current Site to provide for any reasonable, beneficial use of the Property regardless of any proposed development plan for the Property's Site or Adjacent Properties;
  - b. And
    - i. Whether a structural report submitted by a licensed structural engineer adequately demonstrates the soundness of the Building, Structure, or Object proposed for Relocation;
    - ii. If the Property can be Relocated without significant damage to its physical Integrity; and
    - iii. Whether plans are specifically defined for the Site to be vacated, and have been approved by the Planning Commission.
2. For consideration of the new location, if it is to a Historic District within Town boundaries, HPC will review for compliance with all of the following criteria:
  - a. Whether the Building, Structure, or Object is Compatible with its proposed Site and Adjacent Properties; and if the receiving Site is Compatible in nature with the Building, Structure, or Object proposed to be moved;
  - b. The Building, Structure, or Object's architectural Integrity and its consistency with the character of the neighborhood of the receiving Site;
  - c. Whether the Relocation of the Building, Structure, or Object will diminish the Integrity or character of the neighborhood of the receiving Site.

**Article 7 – Demolition of Listed Properties**

**Sec. 19-7-10. – General.**

1. In addition to the criteria and procedures in Article 5, HPC will use the criteria of this Section in considering applications for Demolition of Historic Properties and Contributing Properties in a Historic District.
2. Applicants for Demolition shall provide:
  - a. An estimate of costs, in such form as determined by HPC, of continued Maintenance of the Property in its current condition, of rehabilitation, and of Demolition;
  - b. A licensed structural engineer's report as to structural soundness; and
  - c. Professionally prepared estimates of the Property's market value in its current condition.
3. If a Demolition approval is granted on any basis other than that of an imminent hazard or economic hardship (See Article 8), a Certificate of Appropriateness will not be issued until a design review application for the Property has been approved by the Planning Commission.

**Sec. 19-7-20. – Review Criteria for Total Demolition.**

Review Criteria for Total Demolition. Applicants requesting a Certificate of Appropriateness for total Demolition must provide data to clearly demonstrate all of the following criteria:

1. The Property proposed for Demolition is not structurally sound, despite evidence of the Owner's efforts to properly maintain said Building, Structure, or Object;
2. The Property cannot be preserved, restored, rehabbed, or reused on Site to provide for any reasonable, beneficial use of the Property regardless of any proposed development plan for the Property's Site or Adjacent Properties;
3. The Property cannot be practically moved to another Site in the Town; and
4. The Applicant demonstrates that the proposal mitigates to the greatest extent practical, all the following that are applicable:
  - a. Any impacts that occur to the visual character of the neighborhood where Demolition is proposed to occur;
  - b. Any impact on the Historic Significance of the Buildings, Structures, or Objects located on the Property and Adjacent Properties;
  - c. Any impact to the Integrity of Buildings, Structures, or Objects located on the Property and Adjacent Properties; and
  - d. Any impact to archaeological deposits or ruins or the potential to access such resources and whether information can be recovered as part of the Demolition process.

**Sec. 19-7-30. – Review Criteria for Partial Demolition.**

Review Criteria for Partial Demolition. Applicants requesting a Certificate of Appropriateness for partial Demolition must provide data to clearly demonstrate all of the following criteria:

1. The partial Demolition is required for the preservation, restoration, or rehabilitation of the Property; and
2. The Applicant demonstrates that the proposal mitigates to the greatest extent practical, all the following:
  - a. Any impact on the Historic Significance of the Buildings, Structures, or Objects located on the Property and Adjacent Properties; and
  - b. Any impact on the Integrity of the Buildings, Structures, or Objects located on the Property and Adjacent Properties.

**Sec. 19-7-40. – Town Council Review.**

Any decision of HPC to approve the application or approve the application with conditions shall be included on an agenda of the Town Council within 21 days. The Town Council may call up for review any final decision reached by HPC. After review, Town Council may affirm, deny, or affirm with additional conditions the decision of HPC.

**Article 8 – Exemptions**

**Sec. 19-8-10. – General.**

1. If an application for a Certificate of Appropriateness is denied, the Applicant and/or Owner(s) may request an exemption from such certificate requirement pursuant to this Article.
2. A request for exemption shall be initiated by the Applicant and/or Owner(s). Such application shall be submitted to the Planning Department on a form provided by HPC. The Applicant and/or Owner(s) shall have the obligation to establish hardship.
3. HPC may request additional information from the Applicant and/or Owner(s) as necessary to make informed decisions according to the applicable criteria for decision-making.
4. If the Planning Department determines the application is complete, the Planning Department shall promptly refer the application to HPC. If the Planning Department determines the application is incomplete, the Applicant and/or Owner(s) shall be advised of the reasons in writing within 30 days of submittal.

**Sec. 19-8-20. – Criteria for Exemption.**

1. Economic Hardship
  - a. HPC may solicit expert testimony and require that the Applicant and/or Owner(s) make submissions concerning any or all of the following information before it makes a determination:
    - i. Estimate of the cost of the proposed Construction, Alteration, Demolition, or Relocation and an estimate of any additional cost that would be incurred to comply with the conditions of approval set out in Articles 5, 6 or 7 above.

- ii. A report from a licensed structural engineer with experience in rehabilitation of Historic Properties as to the structural soundness of any Buildings, Structures, or Objects on the Property and their suitability for rehabilitation.
  - iii. In the case of a proposed Alteration, the cost of the project proposed by the Applicant compared with the conditions required by HPC.
  - iv. In the case of a proposed Demolition, the estimated market value of the Property in its current condition.
  - v. Amount paid for the Property, the date of purchase or acquisition, and the party from whom purchased, including a description of the relationship, if any, between the Owner of record or Applicant and the person from whom the Property was purchased.
  - vi. All appraisals obtained within the previous two (2) years by the Owner or Applicant in connection with the purchase, financing, or ownership of the Property.
  - vii. Any listing of the Property for sale or rent, price asked, and any written offers received within the previous two (2) years.
  - viii. The market value of the land and improvements thereon according to the most recent property tax assessment.
  - ix. Real estate taxes for the previous two (2) years.
  - x. Any proposal for a replacement Building, Structure, or Object for the Property and financial proof of the ability to complete the replacement project.
  - xi. For income producing Property, the annual gross income from the Property for the previous two (2) years and itemized operating and Maintenance expenses for the previous two (2) years.
- b. The following factors, evidence, and testimony are to be considered:
- i. The structural soundness of any Buildings or Structures on the Property and their potential for rehabilitation.
  - ii. The economic feasibility of rehabilitation or reuse of the existing Property in the case of a proposed Demolition.
  - iii. For investment or income producing Properties, the ability to obtain a reasonable rate of return on the Property in its present condition, or in a rehabbed condition pursuant to the requirements of this Chapter.
  - iv. For Properties consisting of Owner-occupied dwellings and/or Properties operated on a not for profit basis and providing public benefit, the ability to maintain or to convert the Property to a reasonable residential or not for profit use in its present condition or in a rehabbed condition pursuant to the requirements of this Chapter or the ability to transfer the Property for a reasonable rate of return.
  - v. The justification for economic hardship shall not include any of the following:
    - 1. Willful or negligent acts by the Owner;
    - 2. Purchase of the Property for substantially more than its market



- value;
  - 3. Failure to perform normal Maintenance and repairs; or
  - 4. Failure to offer a rental Property for rent on market terms.
- 2. Undue Hardship. An Applicant and/or Owner(s) requesting an exemption based on undue hardship must show that the application of the criteria create a situation that is substantially inadequate to meet the Applicant's and/or Owner(s) needs because of specific health and/or safety issues.
- 3. Inability to Use
  - a. After two years following denial of a Demolition permit approval, if no reasonable economic use or ownership is found for the designated Site or Structure, the Owner may request a waiver of all or a part of the restraint of Demolition.
  - b. HPC may solicit expert testimony and require that the Applicant make submissions concerning any or all of the following information before it makes a determination:
    - i. Documented evidence of applications and written correspondence, including written consultations, illustrating efforts made by the Owner to make necessary repairs, to find an appropriate user or to find a purchaser for the Property.
    - ii. Documented evidence of applications and written correspondence, including written consultations, illustrating efforts made by the Owner to locate and obtain available assistance for making the Property functional without Demolition.
  - c. The following factors, evidence and testimony shall be considered:
    - i. Efforts to locate and secure a potential user or purchaser for the Property.
    - ii. Efforts to locate and obtain available assistance for making the Property functional without Demolition.
    - iii. The justification for inability to use shall not include any of the following:
      - 1. Willful or negligent acts by the Owner;
      - 2. Purchase of the Property for substantially more than its market value;
      - 3. Failure to perform normal Maintenance and repairs; or
      - 4. Failure to offer a rental Property for rent on market terms.

**Sec. 19-8-30. – Decision.**

- 1. If HPC deems the criteria of this Section are met, HPC shall issue an approval of exemption and deliver a Certificate of Economic Hardship, Undue Hardship, or Inability to Use as applicable to the Applicant with a copy to Town Council within 30 days.
- 2. If HPC deems the criteria of this Section are not met, HPC shall deny the exemption request and notify, in writing, the Applicant, with a copy to the Town Council, within 30 days of such denial. Such denial shall state the reasons for the denial.
- 3. HPC may issue an order continuing the exemption process for a period of not to exceed 90 days from the date of the initial HPC hearing if HPC would like additional information necessary to make a decision.

**Article 9 – Alteration, Relocation, or Demolition of Non-Designated Properties Greater Than 50 Years Old**

#### **Sec. 19-9-10. – Requirements.**

1. Any permit application for Alteration, Relocation, or Demolition of a non-designated Property greater than 50 years old shall be referred to HPC for review to determine the eligibility of such Property for consideration as a Historic Property or Contributing Property within a Historic District.
2. Permit applications for work on the interior of a Property, minor repair as determined by the Building Official, and/or replacement of materials in-kind are exempt from this requirement.
3. In order to determine eligibility for consideration as a Historic Property or Contributing Property within a Historic District, the Applicant must submit a Determination of Eligibility Form as prescribed by HPC.
4. This Article shall not apply to mobile homes.

#### **Sec. 19-9-20. – HPC Review.**

1. HPC shall act on each application within 45 days after the hearing thereon.
2. HPC shall review the eligibility of the Property following the Eligibility Criteria and review procedure as outlined in Article 3.
3. HPC shall determine that the Property is:
  - a. Eligible for consideration; or
  - b. Not eligible for consideration.
4. Notice of determination:
  - a. HPC shall determine within 45 days of referral to HPC whether the Property is eligible for consideration or not eligible for consideration.
  - b. If HPC determines that the Property is not eligible for consideration then HPC shall notify the Applicant and/or Owner(s), with a copy to Town Council, within 30 days that the Property is not eligible for consideration. In such case, all other permitting activities shall proceed in accordance with the Code.
  - c. If HPC determines that the Property is eligible for consideration, then:
    - i. A Stay of Alteration, Relocation, or Demolition shall be placed on the Property which:
      1. Cannot exceed 90 days.
      2. Shall provide the Owner and HPC the opportunity to take action consistent with this Article to preserve the Property, including but not limited to:
        - a. Consulting with Town staff, civic groups, public agencies, and interested citizens regarding feasible alternatives;
        - b. Exploring the possibility of Relocating Buildings, Structure, or Objects that would otherwise be Demolished;
        - c. For applications of proposed Demolition, recommending acquisition of the Property by private or public bodies or agencies;
        - d. Salvaging building materials; or
        - e. Nominating the Property for consideration as a Historic Property or a Contributing Property within a Historic District.

- d. At the expiration of the Stay, should the Property not be nominated for consideration as a Historic Property or a Contributing Property within a Historic Property as set forth in Article 4, nor a Certificate of Appropriateness issued as set forth in Articles 5, 6 or 7, all other permitting shall proceed in accordance with Code.

## **Article 10 – Appeals**

### **Sec. 19-10-10. – Appeals.**

A final decision of HPC made pursuant to Article 5 (Alterations to Listed Properties and Historic Districts), Article 6 (Relocation of Listed Properties), Article 7 (Demolition of Listed Properties), Article 8 (Exemptions) and Article 9 (Alteration, Relocation or Demolition of Non-Designated Properties Greater than 50 Years Old) may be appealed by the Applicant or aggrieved party to the Town Council by filing a written notice with the Town Clerk within 15 days after HPC's final decision.

1. An aggrieved party is any person who will suffer an adverse effect to an interest protected or furthered by this Chapter.
2. No right of appeal shall exist for an application that was the subject of a call up by the Town Council in which the Town Council has already affirmed, denied, or affirmed with additional conditions the decision of HPC.
3. Within 45 days after an appeal is received by the Town Administrator, a public hearing shall be held by the Town Council subject to continuance by vote of the Town Council.
4. Notice of the Town Council's consideration of the appeal and hearing shall be provided in accordance with notice procedures set forth in Code Sec. 19-4-20 except the Town Clerk shall perform the responsibilities.
5. The Town Council shall consider the notice of appeal, HPC's reasons for denial of the application, the comments related thereto made during the HPC hearing and any evidence (including new evidence) it deems relevant to the application.
6. The decision of the Town Council shall be final subject to the provisions of Code Section 16-21-700 – Appeals.

## **Article 11 – Maintenance**

### **Sec. 19-11-10. – Maintenance.**

1. The Town Council intends to preserve from deliberate or inadvertent neglect the exterior portions of Historic Properties and the exterior portions of Contributing and Non-Contributing Properties within Historic Districts including all interior portions thereof who's Maintenance is necessary to prevent deterioration of any exterior portion. No Owner of any Historic Property or of any Contributing or Non-Contributing Property within a Historic District shall fail to prevent significant deterioration of the exterior of the Building, Structure, Object, or special feature beyond the condition of such Historic Property or of such Contributing or Non-Contributing Property within a Historic District on the effective date of the designating ordinance.
2. No Owner of any Historic Property or of any Contributing or Non-Contributing Property

within a Historic District shall fail to comply with all applicable provisions of this ordinance and other ordinances of the Town regulating Property Maintenance.

3. Before the Town files a complaint in municipal court for failure to maintain a Historic Property or a Contributing or Non-Contributing Property within a Historic District, the Town shall notify the Owner of the need to repair, maintain or restore such Property; and shall give the Owner a reasonable time to perform such work.
4. Should the condition of a Historic Property or of a Contributing or Non-Contributing Property within a Historic District require immediate repair or stabilization to mitigate unsafe or dangerous conditions and after notification, the Owner has not undertaken such repair or stabilization, the Town may take such action and bill all expenses to the Owner. Should the Owner not remit such payment to the Town, after ninety (90) days, the Town may record a notice with the Eagle County Clerk and Recorder of a lien against the Historic Property in violation. The lien created hereby shall be prior to all other liens, regardless of their dates of recordation, except liens for general taxes and prior special assessments.

## **Article 12 – Unsafe or Dangerous Conditions**

### **Sec. 19-12-10. – Unsafe or Dangerous Conditions.**

Nothing in this Chapter shall be construed to prevent any measures of Construction, Alteration, removal, or Demolition necessary to correct the unsafe or dangerous condition of any Property, other feature, or parts thereof where such condition is determined to be unsafe or dangerous by the Town and the Owner has been given notice by the Town to correct the unsafe or dangerous condition. Any temporary measures deemed necessary and approved by the Building Official may be taken without first obtaining a Certificate of Appropriateness under this Chapter, but a certificate is required for permanent Construction, Alteration, removal, or Demolition.

## **Article 13 – Enforcement and Penalties**

### **Sec. 19-13-10. – General.**

No person shall violate or permit to be violated any of the requirements of this Chapter or the terms of a certificate issued pursuant to this Chapter.

### **Sec. 19-13-20. – General Penalty for Violation.**

Any person who violates the provisions of this Chapter shall be guilty of a misdemeanor and, in addition to the penalties provide herein, upon conviction shall be punished in accordance with the provisions of Code Section 1-4-20.

### **Sec. 19-13-30. – Violation; Injunction.**

The Town may seek an injunction to restrain a person who does not obtain the required approvals or permits provided in this Chapter or who engages in violations of this Chapter after the required approvals or permits have been revoked or suspended. This remedy shall be in addition to all other remedies prescribed in this Chapter or available by law.

**Sec. 19-13-40. – Violation and Penalty.**

Violations of this Chapter are subject to the following additional penalties:

1. If any Historic Property or any Contributing Property within a Historic District is externally reconstructed, externally Altered, added to, Relocated, or Demolished in violation of this Chapter, the Court may order any Historic Property or any Contributing Property within a Historic District to be returned to its condition prior to such unlawful Construction, reconstruction, exterior Alteration, addition, or Demolition.
2. If any Historic Property or any Contributing Property within a Historic District is not maintained as required in Article 11, then the Town may obtain an order of the Court for the Owner to correct and remediate violation.
3. If any Building, Structure, or Object is erected or Constructed on a Historic Property or any Contributing Property within a Historic District, without complying with this Chapter, the Court may order any such Building, Structure, or Object to be removed or deconstructed.

**Sec. 19-13-50. – Violation; Alteration.**

Alterations to a Historic Property or a Contributing Property without an approved Certificate of Appropriateness may result in a one-year moratorium imposed by the Town on all building permits for the subject Property.

**Sec. 19-13-60. – Violation; Relocation or Demolition.**

Relocating or Demolishing a Historic Property or Contributing Property without an approved Certificate of Appropriateness may result in a five-year moratorium imposed by the Town on all Relocation, Demolition, or building permits for such Property and/or its original location.