

ORDINANCE NO. 2003-019

AN ORDINANCE OF THE CITY OF CASTROVILLE, TEXAS ADOPTING NEW PROVISIONS FOR HISTORIC PRESERVATION FOR THE PURPOSE OF PROTECTING AND PRESERVING PLACES AND AREAS OF HISTORIC AND CULTURAL IMPORTANCE TO THE CITY OF CASTROVILLE; IN ADDITION, ~~ESTABLISH A CASTROVILLE LANDMARK COMMISSION;~~ PROVIDING A REPEALER CLAUSE, SEVERABILITY CLAUSE, A SAVINGS CLAUSE, A PENALTY CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City Council created, within the Comprehensive Zoning Ordinance Article IV, Chapter 2 in the interest of providing protection, enhancement, preservation, and use of historic landmarks for the culture, prosperity, education and general welfare of the general public; and,

WHEREAS, the City of Castroville was populated as an Alsatian community in the 1840's and;

WHEREAS, the City of Castroville has created two (2) historic districts; and,

WHEREAS, the citizens of Castroville and the City Council wish to preserve its historic homes, culture and heritage and;

WHEREAS, the current ordinance for preservation of such is inadequate;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CASTROVILLE, TEXAS THAT:

That the number, make-up and functions of the Historic Landmark Commission and Article IV, Chapter 2 of the Comprehensive Zoning Ordinance are amended as follows:

Section One: Purpose

The City Council of the City of Castroville hereby declares that as a matter of public policy the protection, enhancement, and preservation of landmarks or districts of historic, cultural and architectural importance and significance is necessary to promote the economic, cultural, educational and general welfare of the public. The purposes of this article are to:

1. Protect, enhance, and perpetuate the city's history, culture and architecture by promoting the value and importance in establishing historic landmarks and districts;
2. Strengthen the economy of the Castroville;
3. Protect and enhance Castroville's attractiveness to visitors and residents;
4. Promote the enjoyment and use of historic resources by the people of Castroville;

5. Acknowledge and preserve diverse architectural styles, patterns of development, and design preferences reflecting phases of Castroville's history;
6. Insure harmonious, orderly, and managed growth and development of the city;
7. Increase public awareness and appreciation of Castroville's historic past and unique sense of place;
8. Educate the public on the benefits of historic preservation;
9. Maintain a generally harmonious outward appearance of both historic and modern structures that are compatible and complementary in scale, form, color, proportion, texture and material.

Section Two: Definitions

'Alteration' means any construction or change to the exterior of a building, site, or structure. Alterations shall include, but not be limited to, the changing to a different type, style, or size of roofing or siding materials; changing, eliminating or adding doors, door frames, windows, window frames, shutters, fences, railings, porches, columns, balconies, walls, steps, signs, or other ornamentation; the changing of paint color; regarding; dismantling, removing or moving of any exterior features or demolition. Alteration does not include routine maintenance.

'Archaeology' means the science or study of the material remains of past life or activities and physical site, location or context in which they are found, as delineated in the Department of the Interior's Archaeological Resources Protection Act of 1979.

'Area' means a specific geographic division in the City of Castroville.

'Certificate of Appropriateness' means a signed and dated certificate evidencing the approval of the Landmark Commission for any alteration proposed by an owner or applicant, pursuant to Sec. 7 of this ordinance.

'Contributing structure' means a structure that physically or historically contributes to the significance of a historic district.

'Demolition' means an act or process that destroys or razes in whole, or in part, a building, object, site or structure, including the permanent impairment of structural integrity. This includes demolition by neglect, which is defined as inaction or series of inaction that result in the destruction or irredeemable deterioration of a landmark building..

'Design guidelines' means guidelines which are adopted by the Landmark Commission and guide property owners or residents to appropriate treatments to property designated as a historic landmark or within a landmark district.

Landmark Commission or *Commission* means the Landmark Commission of the City of Castroville, established in accordance with this ordinance.

Historic preservation plan or *Preservation plan* means a document established by the Landmark Commission and adopted by the City Council providing policy recommendations to guide historic preservation activities for the City of Castroville.

Historic landmark also referred to as an historic overlay zone, means a building, structure or site which satisfies two (2) or more of the criteria set out in Section Five and which is designated as such in accordance with that Section.

Historic district also referred to as an historic overlay zone, means a designated geographic area in the city which satisfy two (2) or more of the criteria set out in Section Five, containing landmarks or clusters of structures, including their accessory buildings, fences and other appurtenances, and natural resources having historical, cultural and archeological significance, and which is designated as such in accordance with that Section. A historic district may have within its boundaries other structures that, while not of such historic, cultural, or architectural significance as to be designated as a historic landmark, nevertheless contribute to the overall visual setting and character of the district.

"Historic Overlay Zone" see Historic District

In-kind replacement means repairing or replacing materials to match the existing materials in composition, design and color.

Move-in building means a building that has been moved onto an existing lot.

Non-contributing structure means a structure in a historic district that does not contribute to the district's significance through location, design, setting, materials, workmanship, feeling and association.

Preservation means act or process of applying measures necessary to sustain the existing form, integrity, and materials of an historic property.

Reasonable rate of return means a reasonable profit or capital appreciation which may accrue from the use or ownership of a structure or property as the result of an investment or labor.

Reconstruction means the act or process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location.

Rehabilitation means the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.

'Relocation' means any change of the location of a structure, object or material thing in its present setting or to another setting.

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

'Routine maintenance' means any work which is to correct any deterioration, decay or damage to a structure or property, or any part thereof, and to restore to the same condition prior to such deterioration, decay or damage, using the same materials and design as the original. Routine maintenance does not include a change in design, material or outward appearance, but does include in-kind replacement or repair. Examples of routine maintenance include, but are not limited to: repainting in same colors that exist, replacement of roofing materials in the same color, materials and design, repairing siding or windows in the same materials and design, and repair of sidewalks and driveways using the same type and color of materials.

'Secretary of the Interior's Standards for Rehabilitation' means the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, reported at 36 Code of Federal Regulations 67, or as recodified.

'Site' means the location of a significant event, a prehistoric or historic occupation or activity, or a structure or cluster of structures, whether standing, ruined or vanished, where the location itself maintains historical or archeological value, regardless of the value of any existing structure.

'Stabilization' means the act or process of applying measures designed to reestablish a weather resistant enclosure and the structural stability of an unsafe or deteriorated structure or property while maintaining the essential form as it presently exists.

'Structure' means anything constructed or erected which requires location on the ground, or is attached to something having a location on the ground, including, without limitation, buildings.

'Survey and inventory' means the systematic listing of cultural, historic, architectural or archeological resources prepared by the city, state or federal government, following standards set forth by federal, state and city regulations for evaluations of cultural properties.

Section Three: Landmark Commission

There is hereby created a Commission to be known as the Castroville Landmark Commission, referred to as the "Commission" in this article.

- a. Membership. The Commission is composed of seven (7) members appointed by the City Council with consideration given to the following recommended professions: architect, planner, historian, licensed real estate broker, property owner of historic landmark or in a district, attorney, and archeologist.

- b. Membership Credentials. All Commission members shall have a known and demonstrated interest, competence, or knowledge in historic preservation within the City of Castroville.
- c. Terms. Commission members shall serve for staggered terms of two (2) years ending on October 31. The City Council shall appoint the chairperson of the Commission. The vice-chairperson shall be elected annually by the Commission members.
- d. Ex Officio Members – In addition to seven (7) members appointed by the City Council, the Historic Preservation Officer, a liaison from the Planning and Zoning Commission, and a representative from the Building Inspection Department shall sit on the Commission as ex officio members. Liaisons from different segments of the community may also be appointed by the City Council to assist the Commission in its official duties. None of the ex officio members shall have voting power but shall assist the Commission in its various function.
- e. Powers and duties. The powers of the Commission shall include:
 1. Landmark Eligibility. To thoroughly familiarize itself with the structures, land, areas, and districts within the city that may be eligible for designation as historic landmarks.
 2. Survey and Inventory. Conduct surveys and maintain an inventory of significant historic, architectural, and cultural landmarks and all properties located in historic districts within the city.
 3. Preservation Plan. To create, examine and update the historic preservation plan and present any modifications to Planning and Zoning Commission for inclusion in the comprehensive plan of the city.
 4. Recommend Designations. Recommend the designation of resources as landmarks and historic districts.
 5. Certificates of Appropriateness. Approval or disapproval of applications for certificates of appropriateness and certificates of demolition pursuant to this act.
 6. Demolition by Neglect. To identify cases of demolition by neglect and initiate remedial actions.
 7. Maintain Minutes. Maintain written minutes that record all actions taken by the Committee and the reasons for taking such actions. These minutes shall be forwarded to the CLG Director each month at the Texas Historical Commission.
 8. Design Guidelines. Prepare specific design guidelines for the review of landmarks and districts.
 9. Incentive Programs. Propose preservation incentive program(s) for landmarks or districts.
 10. Recognize Contributions to Preservation. Confer recognition upon the owners of landmarks or within districts by means of certificates, plaques, or markers.
 11. Increase Public Awareness. Increase public awareness of the value of historic, cultural, and architectural preservation by developing and participating in public education and training programs.
 12. Recommendations for Use of Funds. Make recommendations to the city government concerning the utilization of state, federal, or private funds to promote the preservation of landmarks and historic districts within the city.

13. Annual Report. Prepare and submit annually to the City Council and to the Certified Local Government Program of the Texas Historical Commission a report summarizing the work completed during the previous year.
 14. Recommendations for Acquisitions. Recommend the acquisition of a landmark structure by the city government where its preservation is essential to the purpose of this act and where private preservation is not feasible.
 15. Create Committees. Create committees from among its memberships and delegate to these committees responsibilities to carry out the purposes of this ordinance.
- f. Meetings. The Commission shall meet at least once each month, with additional meetings upon call by the Commission chairperson or upon petition of a simple majority of Commission members. Four (4) members present shall constitute a quorum, and issues shall be decided by a simple majority vote of the members present. All meetings shall be held in conformance with the Texas Open Meetings Act, Texas Government Code Chapter 551. The minutes of each meeting shall be filed in the Development Services Department.
- g. Effect of decisions. Unless appealed, the determinations of the Landmark Commission on certificates of appropriateness or certificates of demolition are final. Actions taken or recommendations made by the Landmark Commission that are subject to review by the Planning and Zoning Commission or the city council are not binding on those bodies, and the reviewing body may decide a matter contrary to recommendations or actions of the Landmark Commission.

Section Four: Historic Preservation Officer

- a. Appointment. The City Administrator shall provide for the appointment of a qualified staff person to serve as the historic preservation officer. The historic preservation officer shall administer this article and advise the Commission on matters submitted to it.
- b. Duties. In addition to serving as representative of the Commission, the historic preservation officer is responsible for coordinating the city's historic preservation activities with those of local, state, and federal agencies and with local, state, and national nonprofit preservation organizations, as well as other municipal departments and the general public. The historic preservation officer shall maintain the city's survey and inventory and shall update such survey from time to time. The historic preservation officer shall also have the authority to set deadlines for submittals of applications in order to assure adequate staff review time and notification of the Commission and general public.

Section Five: Criteria for Establishing Historic Landmarks and Districts

A historic landmark or district may be established to preserve places and areas of historic, cultural or architectural importance and significance if it meets any two (2) of the following criteria:

- a. History, heritage and culture. Represents the historic development, ethnic heritage or cultural characteristics of the city, state, or country.

- b. Historic context. Is associated with events that have made a significant contribution to the broad patterns of local, regional, state, or national history.
- c. Significant persons. Is associated with the lives of persons significant in our past.
- d. Architecture. Embodies the distinctive characteristics of a type or period of architecture, method of construction, exceptional craftsmanship, architectural innovation, landscape or site design, or contains details which represent folk or ethnic art.
- e. Architect or master builder. Represents the work of a master designer, builder, or craftsman.
- f. Unique visual feature. Represents an established and familiar visual feature that is a source of pride or cultural significance.
- g. Archeological. Possesses archeological or paleontological value in that it has produced or can be expected to produce data affecting theories of historic or prehistoric interest
- h. National and state recognition. Eligible for or designated as a National Historic Landmark, Recorded Texas Historic Landmark, State Archeological Landmark, American Civil Engineering Landmark, or eligible for inclusion in the National Register of Historic Places.
- i. Historic education. Represents as era of architectural, social or economic history that allows an understanding of how the place or area was used by past generations.

Section Six: Process for Designating Historic Landmarks and Districts

Authority to Designate

The City Council may designate and zone certain sites, districts, areas, buildings, and lands in the City as historic landmarks to be protected, enhanced, and preserved in the interest of culture, prosperity, education and general welfare of the people, and define, amend, and delineate the boundaries thereof.

The suffix "H", as established in Section Eighteen (4) of the Comprehensive Zoning Ordinance, shall indicate the historic zoning overlay designation of those historic landmarks and districts which the City Council has designated. Such designation shall be in addition to any other zoning district designation established in the Comprehensive Zoning Ordinance. All zoning district maps shall reflect the designation of a historic landmarks and/or districts by the letter "H" as a suffix.

Authority to Initiate a Request for Designation

Historic landmark and district applications and/or requests may be initiated by the owner of the property(s) or his/her authorized representative, or the City Council. Landmark Commission or Planning and Zoning Commission may direct the historic preservation officer to initiate such a request on behalf of the City. The historic preservation officer shall provide property owners with notice of a public hearing to initiate the historic designation procedure at least 10 days before the date set for the hearing.

Moratorium Upon Initiation of Designation

Upon initiation of the designation, the historic preservation officer shall immediately notify the building official. The building official shall not accept any application for a permit to alter, demolish, or remove any structure on the property unless a certificate of appropriateness or certificate of demolition as been issued in accordance with Section Eight of this ordinance. This moratorium ends on the earliest of the following dates:

1. If the proposed zoning change is approved, the effective date of the ordinance implementing the change;
2. If the proposed zoning change is denied, the day after the City Council makes its final decision; or
3. One (1) year after the date of initiation of a request for designation as an historic overlay, regardless of who initiated the designation.

Appeal

If the historic designation procedure is initiated by the commission or Planning and Zoning Commission, the property owner may appeal the initiation to the City Council by filing a written notice with the historic preservation officer within 10 days after the action of the Landmark Commission or Planning and Zoning Commission. Within 180 days after the filing of the appeal, the historic preservation officer shall prepare, and the Landmark Commission shall adopt, a designation report and submit it to the city council. After submission of the designation report, the city council shall hold a public hearing on the appeal. The sole issue on appeal is whether the Landmark Commission or Planning and Zoning Commission erred in evaluating the significance of the property based on the characteristics listed in Section Five. Appeal to the city council constitutes the final administrative remedy.

Designation Report

Upon initiation of the historic designation procedure, the property owner, or the historic preservation officer in the case of the commission initiating designation, shall coordinate research to compile a written report regarding the historical, cultural, and architectural significance of the property proposed for historic designation. This report must include a statement on each of the following to the extent that they apply:

1. A physical description of the structure(s) or site, including discussion of character defining features;
2. A description of the historical, cultural, and architectural significance of the structures and site;
3. Legal description of the property
4. A description of the boundaries of the proposed historic overlay district, including subareas and areas where new construction will be prohibited.
5. Historic and current photographs of the property.

The designation report must be submitted to the historic preservation officer, and if complete, the designation will be scheduled for a public hearing with the Landmark Commission.

Notification of Property Owners

Property owners of proposed historic landmarks for designation, or properties within a potential historic district for designation, shall be notified at least ten days prior to the Commission's hearing on the initiated designation. At the Commission's public hearing, owners, interested parties and technical experts may present testimony or documentary evidence which will become part of a record regarding the historic, architectural, or cultural importance of the proposed historic landmark.

Timing of Review and Recommendations

- a. Landmark Commission Review. The commission shall conduct a public hearing on the proposed designation within 45 days after receipt of the designation report by the historic preservation officer.
- b. Planning and Zoning Commission Review. Upon recommendation of the Landmark Commission, the proposed designation shall be submitted to the Planning and Zoning Commission. The Planning and Zoning Commission shall give notice and conduct its hearing on the proposed designation within forty-five (45) days of receipt of such recommendation from the Commission. Such hearings shall be in the same manner and according to the same procedures as specifically provided in the general zoning ordinance of the City of Castroville.
- c. City Council Public Hearing. The City Council shall give notice and conduct a hearing on the Landmark Commissions' recommendation concerning the proposed designation within forty-five (45) days receipt of the recommendation of the Planning and Zoning Commission. The City Council shall give notice, follow the publication procedure, hold hearing, and make its determination in the same manner as provided in the general zoning ordinance of the City of Castroville.

Vote Required for Designation

If the owner of a structure(s) nominated for designation as a historic landmark or district is in consent of the designation, a simple majority of City Council is required in order for designation to take effect. If an owner of a structure nominated for designation as a historic landmark, or the owners of at least 20 percent of an area nominated for designation as a historic district, protest such designation by submitting a written, signed protest, the affirmative vote of at least $\frac{3}{4}$ of all members of the City Council is required in order for the designation to take effect, in accordance with Section 211.006 of the Texas Local Government Code.

Notice of Designation

- a. Local Officials. Upon designation of a historic landmark or district, the City Secretary shall file a copy of the ordinance with the Medina County Clerk and the Medina County Tax Assessor as well as the official zoning maps of the City of Castroville. All zoning maps should indicate the designated landmark with the suffix "H."
- b. Property Owners. Upon designation of a historic landmark or district, the historic preservation officer shall send a notice to the owner or owners of property within the historic overlay district stating the effect of designation, the regulations governing the historic overlay, and any incentives that may be available.

Section Seven: Certificate of Appropriateness

Activities Requiring Certificate of Appropriateness.

No person shall obtain a building permit or carry out any of the following work without obtaining a Certificate of Appropriateness issued by the Landmark Commission in accordance with the provisions of this article:

1. Demolition or relocation of a site or structure designated or pending designation as a historic landmark or district;
2. Repair (other than routine maintenance), reconstruction, alteration, addition, stabilization, restoration or rehabilitation of a structure or property designated or pending designation as a historic landmark or located in an area designated or pending designation as a historic district;
3. New construction on real property which is located in an area designated or pending designation as a historic landmark or district or on land necessary for access to and use of a structure designated or pending designation as a historic landmark or district; or
4. Material changes in any doors, roofs, windows, stonework, woodwork, light fixtures, signs, sidewalks, fences, steps, paving and/or other exterior elements visible from a public right-of-way which affect the appearance and compatibility of any structure or property designated or pending designation as a historic landmark or district.

A certificate of appropriateness may be required for work not otherwise requiring a building permit. The certificate of appropriateness shall be required in addition to, and not in lieu of, any required building permit.

Written notice prior to a certificate of appropriateness shall to adjoining property owners shall be given not less ten days before the date set for hearing by depositing a non-certified notice properly addressed and postage paid in the United States Post Office to such property owners as the ownership appears on the City's most recent tax roll. Cost of notice is \$20.00, payable by applicant at time of permit application.

Routine Maintenance.

No Certificate of Appropriateness is required for routine maintenance or repair of any structure or property if the proposed work does not involve a change in material, configuration or outward appearance. In-kind replacement or repair is considered to be routine maintenance. All maintenance and repairs shall be made in accordance with any guidelines and standards established by the Landmark Commission for historic landmarks and districts.

Application Procedure for a Certificate of Appropriateness

Prior to obtaining a building permit, or beginning any work requiring a Certificate of Appropriateness, the property owner shall file an application for a Certificate of Appropriateness with the historic preservation officer. Applicants are encouraged to meet with the historic preservation officer prior to submitting. The application shall contain the following information, any of which may be waived by the historic preservation officer.

1. name, address and telephone number of the owner;
2. address and legal description of the property;
3. site plan showing the location of the structure of property on its lot;
4. photographs of all elevations of the structure or property and details pertaining to the proposed work;
5. detailed description of the proposed work;
6. elevation drawings of the proposed changes, if applicable;
7. samples of, or appropriate information concerning materials to be used;
8. rationale for why the proposed change is compatible with designation as a historic landmark or property within a historic district;
9. any other information which the Landmark Commission or staff deems reasonably necessary to visualize and evaluate the proposed work;
10. signature of the owner and date verifying that the application is complete and correct.

The historic preservation officer shall review the submitted application and all documents and determine if additional information is required. Upon receiving all information necessary to constitute a completed application, the historic preservation officer shall forward the application to the Landmark Commission.

Review Process

Within 60 days after a completed application is filed, the Landmark Commission shall conduct a public hearing and shall approve, deny with prejudice, or deny without prejudice the application. The applicant has the burden of proof to establish the necessary facts to warrant favorable action. Applicants may appear before the Commission in person or by agent and shall furnish the commission all plans, specifications, drawings, renderings, and designs necessary for the commission to render a final decision. Notices of all public hearing shall be in accordance with Chapter 211 of the Texas Local Government Code.

The historic preservation officer shall notify the applicant of the Landmark Commission's action within five (10) days of the decision. The Landmark Commission's decision must be in writing and must contain the findings for the decision.

Standard for Approval and Issuance

- a. Standard for approval. In determining whether to approve or disapprove the application, the commission shall use the Secretary of Interior Standards and any applicable design guidelines. The Landmark Commission shall approve the application if it determines that:
 1. the proposed work is consistent with the regulations contained in this section, and any applicable design guidelines
 2. the proposed work is consistent with the Secretary of the Interior Standards;
 3. the proposed work will not have an adverse effect on the architectural features of the structure;
 4. the proposed work will not have an adverse effect on the historic district;
 5. the proposed work will not have an adverse effect on the future preservation, maintenance, and use of the structure or historic district.
 6. for noncontributing structures within a historic district, the proposed work is compatible with the historic district.
- b. Issuance. If a certificate of appropriateness has been approved by the Landmark Commission or if final action has not been taken by the Landmark Commission within 60 days after a complete application is filed:
 1. the historic preservation officer shall issue the certificate of appropriateness to the applicant; and
 2. if all requirements of the development and building codes are met and a building permit is required for the proposed work, the building official shall issue a building permit to the applicant for the proposed work.

No change shall be made in the application for any building permit after issuance of a Certificate of Appropriateness without resubmittal to the Commission and approval thereof in the same manner as provided in this section.

Appeal

If the Commission has denied the Certificate of Appropriateness, the applicant may file in writing a notice of appeal to the Planning and Zoning Commission within ten (10) business days after receiving notice from the historic preservation officer. The historic preservation officer shall place the appeal on the Planning and Zoning Commission agenda for a hearing, and the applicant shall be notified of the date of the hearing. In considering an appeal, the sole issue before the Planning and Zoning Commission is whether the Landmark Commission erred in its decision. The Planning and Zoning Commission shall consider the

same standards and evidence that the Landmark Commission was required to consider in making the decision.

Reapplication

If a final decision is reached by the Commission denying a certificate of appropriateness, no further applications will be accepted for the subject matter for the denied certificate of appropriates for one year from the date of final decision unless:

1. the Certificate of Appropriateness has been denied without prejudice; or
2. the Landmark Commission waives the time limit because upon the written request of the applicant indicating the incorporation of changes in plans and specifications to the original application as recommended by the Commission.

Section Eight: Demolition

Demolition or removal of a historic structure constitutes an irreplaceable loss to the quality of and character of the city. Therefore, demolition or removal of historic structures should be allowed only for the reasons described in this subsection.

Application Procedure for Demolition and Economic Hardship

a. Application. A demolition permit for a historic landmark or structure within a historic district shall not be issued by the Building Department until review and issuance of a completed certificate of appropriateness application by the commission. Applicants are encouraged to meet with the historic preservation officer prior to submitting. The historic preservation officer shall not forward the application to the commission until it is complete. The following information must be supplied by the applicant before the application is considered complete:

1. An affidavit in which the owner swears or affirms that all information submitted in the application is true and correct.
2. Information describing the condition of the structure;
3. An indication that the demolition or removal is sought for one or more of the following reasons:
 - (a) To replace the structure with a new structure that is more appropriate and compatible with the historic landmark or district.
 - (b) No economically viable use of the property exists.
 - (c) The structure poses an imminent threat to public health or safety.
 - (d) The structure is noncontributing to the historic landmark or district because it is newer than the period of significance.

3. Estimated cost of restoration or repair;
4. Demonstration that the adaptive use or restoration of the structure has been seriously considered;
5. Any available historic records of the building (drawings, photographs);
6. Architectural drawings for any proposed new construction which is intended to replace the historic structure;
7. Any conditions proposed to be voluntarily placed on new development that would mitigate the loss of the landmark structure; and
8. Any other information that the staff finds appropriate for the commission to render a decision on the application.

The historic preservation officer shall review the submitted application and all documents and determine if additional information is required. Upon receiving all information necessary to constitute a completed application, the historic preservation officer shall forward the application to the Landmark Commission.

Review Process

Within 60 days after a completed application is filed, the Landmark Commission shall conduct a public hearing and shall approve, deny with prejudice, or deny without prejudice the application. The applicant has the burden of proof to establish the necessary facts to warrant favorable action. Notices of all public hearing shall be in accordance with Chapter 211 of the Texas Local Government Code.

The historic preservation officer shall notify the applicant of the Landmark Commission's action within five (10) days of the decision. The Landmark Commission's decision must be in writing and must contain the findings for the decision.

Application for Economic Hardship

An applicant whose demolition CA has been denied may apply for hardship relief within ten (10) business days after receiving notice from the historic preservation officer. In order to prove the existence of hardship, the applicant shall have the burden to establish that:

1. The property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;
2. The property cannot be adapted for another use, whether by the current owner or by a purchaser, that can result in a reasonable return;
3. No potential purchaser of the property with a reasonable offer who intends to preserve it can be identified.

Review Process

The commission shall hold a public meeting on the hardship application at least 60 days following the original date of application for the demolition permit, at which time proponents and opponents of the application may present their views. The commission may seek expert assistance in the field(s) of real estate development, appraisal, financing and other related disciplines to review the hardship application.

The applicant shall consult in good faith with the commission, interested local groups and individuals in a diligent effort to investigate alternatives that will result in preservation of the property.

All decisions of the commission shall be in writing. Copies shall be sent to the applicant and a copy filed with the city secretary.

Appeal

If the Commission has denied the Certificate of Appropriateness for demolition, the applicant may file in writing a notice of appeal to the Planning and Zoning Commission within ten (10) business days after receiving notice from the historic preservation officer. The historic preservation officer shall place the appeal on the Planning and Zoning Commission agenda for a hearing, and the applicant shall be notified of the date of the hearing. In considering an appeal, the sole issue before the Planning and Zoning Commission is whether the Landmark Commission erred in its decision. The Planning and Zoning Commission shall consider the same standards and evidence that the Landmark Commission was required to consider in making the decision.

Section Nine: Demolition by Neglect

Definition. Demolition by neglect is neglect in the maintenance of any structure on property that is a historic landmark or in a historic overlay district that results in deterioration of the structure and threatens the preservation of the structure.

Defects. No person shall allow a structure to deteriorate through demolition by neglect. All structures on properties in historic overlay districts must be preserved against deterioration and kept free from structural defects. The property owner or the property owner's agent with control over the structure, in keeping with the city's minimum housing standards and building codes, must repair the structure if it is found to have any of the following defects:

1. Parts that are improperly or inadequately attached so that they may fall and injure persons or property.
2. A deteriorated or inadequate foundation.
3. Defective or deteriorated floor supports or floor supports that are insufficient to carry the loads imposed.
4. Walls, partitions or other vertical supports that split, lean, list or buckle due to defect or deterioration or are insufficient to carry the loads imposed.
5. Ceilings, roofs, ceiling or roof supports, or other horizontal members that sag, split, or buckle due to defect or deterioration or are insufficient to support the loads imposed.

6. Fireplaces and chimneys that list, bulge or settle due to defect or deterioration or are of insufficient size or strength to carry the loads imposed.
7. Deteriorated, crumbling or loose exterior stucco or mortar.
8. Deteriorated or ineffective waterproofing of exterior walls, roofs, foundations or floors, including broken or open windows and doors.
9. Defective or lack of weather protection for exterior wall coverings, including lack of paint or other protective covering.
10. Any fault, defect or condition in the structure that renders it structurally unsafe or not properly watertight.
11. Deterioration of any exterior feature so as to create a hazardous condition that could make demolition necessary for the public safety.
12. Deterioration or removal of any unique architectural feature that would detract from the original architectural style.

Procedure

- a. Purpose. The purpose of the demolition by neglect procedure is to allow the Landmark Commission to work with the property owner to encourage maintenance and stabilization of the structure and identify resources available before any enforcement action is taken.
- b. Request for investigation. Any interested party may request that the historic preservation officer investigate whether a property is being demolished by neglect.
- c. First meeting with the property owner. Upon receipt of a request, the historic preservation officer shall meet with the property owner or the property owner's agent with control of the structure to inspect the structure and discuss the resources available for financing any necessary repairs. After the meeting, the historic preservation officer shall prepare a report for the Landmark Commission on the condition of the structure, the repairs needed to maintain and stabilize the structure, any resources available for financing the repairs, and the amount of time needed to complete the repairs.
- d. Certification and notice. After review of the report, the Landmark Commission may vote to certify the property as a demolition by neglect case. If the Landmark Commission certifies the structure as a demolition by neglect case, the Landmark Commission shall notify the property owner of the repairs that must be made. The notice must require that repairs be started within 30 days and set a deadline for completion of the repairs. The notice must be sent by certified mail.
- e. Second meeting with the property owner. The historic preservation officer shall meet with the property owner or the property owner's agent with control over the structure
- f. within 30 days after the notice was sent to inspect any repairs completed and assist the property owner in obtaining any resources available for financing the repairs.
- g. Referral for enforcement. If the property owner fails to start repairs by the deadline set in the notice, fails to make continuous progress toward completion, or fails to complete repairs by the deadline set in the notice, the Landmark Commission may refer the

demolition by neglect case to the code compliance department or the city attorney for appropriate enforcement action to prevent demolition by neglect.

Section Ten: Preservation Incentives (Reserved)

Section Eleven: Prohibited Acts, Penalty for Violation, and Enforcement

- a. Prohibited acts. It shall be unlawful to reconstruct, structurally alter, remodel, renovate, restore, demolish, raze, or maintain any heritage resource in violation of the provisions of this article. In addition to other remedies, the city may institute any appropriate action or proceedings to prevent such unlawful construction, restoration, demolition, razing, or maintenance, to restrain, correct or abate such violation.
- b. Penalties. Any person, firm, or corporation violating any of the provisions of terms of this ordinance shall, upon conviction thereof, be fined a sum not exceeding Five Hundred Dollars (\$500.00) for each offense, and each and every day such violation shall continue shall be deemed to constitute a separate offense.
- c. Inspection. All work performed pursuant to a Certificate of Appropriateness issued under this ordinance shall conform to all its requirements. It shall be the duty of the Building Inspection Department to inspect periodically to assure such compliance. In the event work is found that is not being performed in accordance with the certificate of appropriateness, or upon notification of such fact by the Committee and verification by the preservation officer, the Building Official shall issue a stop work order and all work shall immediately cease. No further work shall be undertaken on the project as long as a stop work order is in effect.

Section Twelve: Repealer

All provisions of the Ordinances of the City of Castroville, codified or uncoded, in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Castroville, codified or uncoded, or in conflict with the provisions of this Ordinance, shall remain in full force and effect.

Section Thirteen: Severability

It is the intention of the City Council that this ordinance, and every provision thereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance.

Section Fourteen: Savings Clause

The repeal of any Ordinance or part of Ordinances affected by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such Ordinance or as discontinuing, abating, modifying, or altering any penalty accruing

or to accrue, or as affecting any rights of the municipality under any section or provisions of any Ordinances at the time of passage of this Ordinance.

Section Fifteen: Effective Date

This Ordinance shall become effective from and after its passage and publication as required by law.

PASSED AND APPROVED THIS 28th DAY OF July,
2008

(City Seal)

Robert N. Hancock
Robert N. Hancock, Mayor

ATTEST:

Donna Schueling
Donna Schueling, City Secretary