

ORDINANCE NO. C - \_\_\_\_\_

An ordinance relating to the Landmarks Commission, adopting a new chapter 4.35 to title 4 of the Spokane Municipal Code, amending SMC sections 17D.040.230 and 17D.040.300, adopting a new section 17D.040.310 to chapter 17D.040 of the Spokane Municipal Code and repealing SMC section 17D.040.010, 17D.040.020, 17D.040.030, 17D.040, 17D.040.050, 17D.040.060, 17D.040.070 and 17D.040.080.

The City of Spokane does ordain:

Section 1. That there is adopted a new chapter 4.35 to title 4 of the Spokane Municipal Code to read as follows:

**Chapter 4.35**

**Landmarks Commission**

- 4.35.010 Findings and Purpose**
- 4.35.020 Establishment – Membership**
- 4.35.030 Terms – Appointment**
- 4.35.040 Compensation**
- 4.35.050 Rules and Regulations**
- 4.35.060 Funding**
- 4.35.070 Commission Staff**
- 4.35.080 Duties**

**4.35.010 Findings and Purpose**

- A. Findings.  
The City and Spokane County find that the establishment of a landmarks commission with specific duties to recognize, protect, enhance and preserve those buildings, districts, objects, sites and structures which serve as visible reminders of the historical, archaeological, architectural, educational and cultural heritage of the City and County is a public necessity.
- B. Purpose.  
The purpose of this chapter is to establish a city/county historic landmarks commission responsible for the stewardship of historic and architecturally significant properties in the City, unincorporated areas of the County, and, upon request, incorporated towns, in order to effect the recognition and preservation of such properties.

**4.35.020 Establishment – Membership**

- A. There is created the city/county historic landmarks commission (herein called the “commission”) consisting of eleven ~~((residents of Spokane County))~~ total

members; nine members nominated by the mayor and appointed by the city council and two members appointed at large by the County board all who have demonstrated experience and/or interest in historic preservation. ((as follows)) Seven members should have the following expertise:

~~((1. There shall be appointed jointly by the city council and the board of county commissioners)):~~

1. an architect who is registered in the state of Washington;
2. a state-certified general real estate appraiser;
3. two historians with appropriate degrees or equivalent experience;
4. a professional archaeologist or anthropologist with appropriate degrees;
5. an owner or managing agent in a fiduciary capacity of real estate in Spokane's central business district; and
6. an experienced preservation construction specialist.

~~((2. There are appointed by the board two County residents at large.~~

~~3. There are appointed by the city council two City residents at large.))~~

B. ~~((Exception to the residency requirement for commission members may be granted with approval of the commission for members under subsection (A)(1) of this section, a maximum of two nonresidents may serve on the commission at any one time.)) The City appointments to the commission may include non-residents of the City.~~

#### **4.35.030 Terms – Appointment**

The term of office is three years. No member will be deemed to have served one term if he/she resigns or is removed after appointment or if he/she serves an unexpired term of less than two years. All members hold their offices at the pleasure of the respective appointing authority. No member may serve more than two consecutive terms of three years, unless the appointing authority ~~((council and/or board))~~ shall so designate.

#### **4.35.040 Compensation**

All members of the commission shall serve without compensation.

#### **4.35.050 Rules and Regulations**

A. The commission by rule prescribes the selection and function of officers, including at least a chair and vice chair. A quorum is seven members. Any action of the commission requires a majority vote. The commission uses Robert's Rules of Order as the established rules for the conduct of its meetings and the transaction of business.

- B. The commission through rules and regulations adopts standards to guide the various activities provided in SMC 4.35.080.

**4.35.060 Funding**

The City and the County shall by interlocal cooperative agreement provide, at a minimum, funds for an historic preservation officer and operational support.

**4.35.070 Commission Staff**

The commission staff consists of the historic preservation officer and such ancillary staff as is available.

**17D.040.080 Duties**

The commission sets historic preservation policies for the City and County of Spokane.

- B. The major responsibilities of the commission are to:
  - 1. identify and actively encourage the conservation of City and County historic resources;
  - 2. recommend the designation of historic landmarks and districts;
  - 3. raise community awareness of historic resources; and
  - 4. advise the council and board on matters of history, historic planning and preservation.
  
- C. In carrying out these responsibilities the commission engages in, but is not limited to, the following activities:
  - 1. Registers of Historic Places.
    - a. Submit nominations to the state and national registers of historic places.
    - b. Review nominations to the Spokane register according to criteria in SMC 17D.040.090.
    - c. Initiate and maintain the Spokane register of historic places to encourage efforts by owners to maintain, rehabilitate and preserve properties. This official register compiles buildings, districts, objects, sites and structures identified by the commission as having historic significance worthy of recognition by the council or board
    - d. Review proposals (as provided in SMC 17D.040.200) to construct, change, alter, modify, remodel, move, demolish and significantly affect properties or districts on the register.

- e. Review all applications for alterations to buildings on which the City or county owns a facade easement, and make recommendations to the appropriate building officials concerning the approval or denial of a permit. The building official does not issue a permit for any alteration to a building which is encumbered by a facade easement until the commission or its designee has made its recommendation. The building official's decision may be appealed to the hearing examiner.
  - f. Review all applications for the special permit under SMC 11.19.270 and make recommendations concerning the approval or denial of the special permit and suggest conditions, if appropriate, to the Spokane hearing examiner.
2. Public Plans and Programs.
- a. Conduct and maintain a comprehensive inventory of historic resources within the boundaries of the City and Spokane County and publicize and periodically update inventory results. Properties listed on the inventory are recorded on official zoning records but this designation does not change or modify the underlying zoning classification.
  - b. Implement and maintain the City's historic preservation plan, upon the direction of the city plan commission and council.
  - c. Review and comment to the council or board on land use, housing and redevelopment, municipal improvement and other types of planning and programs undertaken by any agency of City or County government, other neighboring communities, the state or federal governments, as they relate to historic resources in Spokane and Spokane County
  - d. Establish liaison support, communication and cooperation with federal, state and other local government entities which will further historic preservation objectives, including public education, within the City of Spokane and Spokane County ((~~area~~)).
3. Tax Valuation.
- a. Serve as the local review board for special valuation of historic property in Spokane (Resolution 85-66, November 4, 1985), and:
    - i. make determinations concerning the eligibility of historic properties for special valuation,
    - ii. verify that the improvements are consistent with the Washington State Advisory Council's Standards for Rehabilitation and Maintenance,
    - iii. enter into agreements with property owners for the duration of the special valuation period as required under WAC 254-20-070(2),
    - iv. approve or deny applications for special valuation,

- v. monitor the property for continued compliance with the agreement and statutory eligibility requirements during the ten-year special valuation period, and
- vi. adopt administrative rules and comply with all other local review board responsibilities identified in chapter 84.26 RCW.

~~((b. Comply with obligations as stated in the Spokane County open space and timberland current use taxation application (Resolution 80-1342, November 3, 1980).))~~

4. Public Education.

- a. Participate in, promote and conduct public informational, educational and interpretive programs pertaining to historic resources; and provide, by way of pamphlets, newsletters, workshops and similar activities, information to the public on methods of maintaining and rehabilitating historic properties.
- b. Be informed about and provide information to the public and city and county departments on the use of various federal, state, local and private funding sources available to promote historic resource preservation and other incentives for preservation of historic resources, including legislation, regulations and codes which encourage the use and adaptive reuse of historic properties.
- c. Officially recognize excellence in the rehabilitation of historic buildings, structures, sites and districts and new construction in historic areas; and encourage appropriate measures for such recognition.

5. Historic Building Code Review.

With certification of the state historic preservation officer, the historic preservation officer/landmarks commission is the local government historic preservation program for reviewing qualified historic rehabilitation projects.

6. Other.

- a. Provide for the review, either by the commission or its staff, of all applications for approvals, permits, environmental assessments or impact statements and other similar documents pertaining to identified historic resources or adjacent properties.
- b. Advise the council or board generally on matters of City of Spokane and Spokane County history and historic preservation.
- c. Conduct all commission meetings in compliance with chapter 42.30 RCW, the Open Public Meetings Act, to provide for adequate public participation.
- d. Perform other related functions assigned to it by the board or council.

- e. Provide historic preservation services pursuant to interlocal cooperation agreements entered into by the city council and county commissioners.

Section 2. That SMC section 17D.040.230 is amended to read as follows:

**SMC 17D.040.230 Demolition Permits for Historic Structures in the Downtown Boundary Area and National Register Historic Districts**

A. Demolition Permits.

No demolition permits for structures that are listed or eligible to be listed on the ~~(National or)~~ Local Register of Historic Places located in the area shown on Map 17D.040.230-M1, Downtown Boundary Area ~~(, and in all National Register Historic Districts)~~ shall be issued unless the structure to be demolished is to be replaced with a replacement structure that meets the following criteria:

1. The replacement structure shall have a footprint square footage equal to or greater than the footprint square footage of the landmark structure to be demolished. The square footage of the footprint may be reduced:
  - a. to accommodate parking serving the replacement structure or for public benefit, such as public green space and/or public art; or
  - b. if the owner submits plans in lieu for review and approval by the City's design review board subject to applicable zoning and design guidelines.
2. The replacement structure satisfies all applicable zoning and design guidelines.
3. A building permit has been issued for the replacement structure prior to the issuance of the demolition permit. In the alternative, the owner may obtain a demolition permit prior to the issuance of the building permit if the owner either:
  - a. submits to the City a performance and surety bond in the amount of the full cost of the replacement structure; or
  - b. demonstrates to the satisfaction of the director of building services, in consultation with the City's historic preservation officer, that the owner has a valid and binding commitment or commitments for financing sufficient for the replacement use subject only to unsatisfied contingencies that are beyond the control of the owner other than another commitment for financing; or has other financial resources that are sufficient (together with any valid and binding commitments for financing) and available for such purpose.

B. Eligibility.

Eligibility shall be determined by the historic landmarks commission within

fourteen days of the submission of the application for a demolition permit. The applicant shall be responsible to submit a determination of eligibility demonstrating the ineligibility of the structure based upon the National Register Criteria for Evaluation (36 CFR 60). Applications for structures that are determined not to be listed or eligible to be listed on ~~(a National or)~~ the Local Register of Historic Places shall be processed pursuant to existing regulations.

C. Economic Hardship.

The requirements of SMC 17D.040.230 shall not apply and the owner may obtain a demolition permit without the requirement of constructing a replacement structure if the owner can demonstrate to the satisfaction of the ad hoc committee on economic hardship that maintaining the historic structure would impose an economic hardship on the property owner that was created beyond the owner's control.

1. The ad hoc committee on economic hardship shall be appointed by the mayor and confirmed by the city council, and will consist of at least seven members as follows:
  - a. one member of the real estate development community or association such as CCIM Institute, Institute of Real Estate Management, the Society of Office and Industrial Realtors, and Building Owners and Managers Association;
  - b. one member from a banking or financial institution;
  - c. one licensed architect registered in Washington State;
  - d. one member from the property management industry;
  - e. one member representative of property developers;
  - f. one member of the landmarks commission; and
  - g. one member representing the neighborhood council where the historic structure is located.
2. The ad hoc committee's decision shall be made by majority vote and within thirty days of the submission of the material demonstrating an economic hardship by the property owners.
  - a. The property owner has the burden of demonstrating the economic hardship.
  - b. Evidence of economic hardship is limited to instances when preservation will deprive the owner of reasonable economic use of the property.
  - c. An owner's financial status is not evidence of economic hardship.
  - d. The decision of the ad hoc committee may be appealed to the hearing examiner within thirty days of the committee's decision.
3. The ad hoc committee will be a standing committee with one revolving member representing the specified neighborhood in which the property resides.

- a. There is a preference for developer and architects who participate on the ad hoc committee to have both new building construction and historic renovation experience.
- b. There is a preference for the neighborhood representative who participates on the ad hoc committee to have experience in development, appraising, construction, and/or related skills.
- c. Members of the ad hoc committee shall serve for two-year terms and may be reappointed for additional two-year terms.

D. Factors to Determine Reasonable Economic Use.

A reasonable economic use would be one that provides a greater return on the underlying land value (land with improvements) than the land alone could generate. The following four steps will be taken to determine reasonable economic use:

1. The market value of the land, as vacant, is to be estimated.
  - a. The sales comparison approach to value is an approved method.
  - b. The land residual technique is an approved method, but only allowable when accompanied by and reconciled with the sales comparison approach method.
2. The first year market rate of return on leased land is to be estimated.
3. Market data supporting this rate of return must be provided.
4. Based on applying the rate of return to the land value estimate, an annual market return on the underlying land results. This is the base figure or threshold for the analysis.
5. Provide an estimate of the annual market net operating income for the property as is, and under any reasonable modifications thereof. Note that any required capital investment in the property would increase the basis from which the return is estimated.
  - a. The sales comparison approach, income approach, cost approach, and development approach to value are all approved techniques.
  - b. Under valuation scenarios where an additional capital investment is required, the expected market return on the capital investment will be subtracted from the annual return, with the residual income being the return on the land.

E. Request by Owner for Advance Determination of Status.

An owner may request an advance determination of economic hardship exemption qualification by the City as to whether a property subject to this ordinance may be demolished without the constraints of this SMC 17D.040.230, so that the owner may market for sale or refinance the property knowing its status. Upon receipt of a written request from a property owner, the owner shall be entitled to an economic hardship hearing at the owner's expense, pursuant to

SMC 17D.040.230(D) and represent the findings as binding upon the property owner and City to third parties including but not limited to prospective purchasers and lenders.

- F. Building Official or Fire Marshal Orders.  
The requirements of this section shall not apply to orders of the building official or fire marshal regarding orders that a structure be demolished due to public health, safety, or welfare concerns.
- G. Additional Parking.  
This section shall not apply if the owner demonstrates to the satisfaction of the building official, in consultation with the historic preservation officer, that the property will be used as parking associated with the renovation of an adjacent structure listed or eligible to be listed on the National or Local Register of Historic Places.

Section 3. That SMC section 17D.040.300 is amended to read as follows:

**SMC 17D.040.300 Waiver of Review**

The commission, at the request of the owner, may waive review under SMC 17D.040.240 through 17D.040.290 of those actions which may require a certificate of appropriateness or which may be within the scope of agreed management standards when the action will be reviewed by the Washington State ~~((Office))~~ Department of Archaeology and Historic Preservation or the National Park Service and will be subject to the ~~((standards for rehabilitation of the))~~ Secretary of the Interior's Standards for Treatment of Historic Properties. The commission may choose to deny said request should it be determined by the Washington State Department of Archaeology and Historic Preservation or the National Park Service that the proposed action does not meet the Secretary of the Interior's Standards for the Treatment of Historic Properties.

Section 4. That there is adopted a new section 17D.040.310 to chapter 17D.040 of the Spokane Municipal Code to read as follows:

**17D.040.310 Review and Monitoring of Properties for Special Property Tax Valuation**

- A. Time Lines
  - 1. Applications shall be forwarded to the commission by the assessor within 10 calendar days of filing.
  - 2. Applications shall be reviewed by the commission before December 31 of the calendar year in which the application is made.

3. Commission decisions regarding the applications shall be certified in writing and filed with the assessor within 10 calendar days of issuance.

B. Procedure

1. The assessor forwards the application(s) to the commission.
2. The commission reviews the application(s), consistent with its rules of procedure, and determines if the application(s) are complete and if the properties meet the criteria set forth in WAC 254-20-070(1) and listed in SMC 17D.040.090.
  - a. If the commission finds the properties meet all the criteria, then, on behalf of the City, it enters into a Historic Preservation Special Valuation Agreement (set forth in WAC 254-20-120) with the owner. Upon execution of the agreement between the owner and commission, the commission approves the application(s).
  - b. If the commission determines the properties do not meet all the criteria, then it shall deny the application(s).
3. The commission certifies its decisions in writing and states the facts upon which the approvals or denials are based and files copies of the certifications with the assessor.
4. For approved applications:
  - a. The commission forwards copies of the agreements, applications, and supporting documentation (as required by WAC 254-20-090 (4) to the assessor,
  - b. Notifies the state review board that the properties have been approved for special valuation, and
  - c. Monitors the properties for continued compliance with the agreements throughout the 10-year special valuation period.
5. The commission determines, in a manner consistent with its rules of procedure, whether or not properties are disqualified from special valuation either because of
  - a. The owner's failure to comply with the terms of the agreement or
  - b. Because of a loss of historic value resulting from physical changes to the building or site.

6. For disqualified properties, in the event that the commission concludes that a property is no longer qualified for special valuation, the commission shall notify the owner, assessor, and state review board in writing and state the facts supporting its findings.

C. Criteria

1. Historic Property Criteria:

The City attained Certified Local Government (CLG) status in 1986. As a CLG, the City determines the class of property eligible to apply for Special Valuation. Eligible property types in Spokane mean only properties listed on Spokane Register of Historic Places or properties certified as contributing to a Spokane Register Historic District which have been substantially rehabilitated at a cost and within a time period which meets the requirements set forth in Chapter 84.26 RCW.

2. Application Criteria:

Complete applications shall consist of the following documentation:

- a. A legal description of the historic property,
  - b. Comprehensive exterior and interior photographs of the historic property before and after rehabilitation,
  - c. Architectural plans or other legible drawings depicting the completed rehabilitation work, and
  - d. A notarized affidavit attesting to the actual cost of the rehabilitation work completed prior to the date of application and the period of time during which the work was performed and documentation of both to be made available to the commission upon request, and
  - e. For properties located within historic districts, in addition to the standard application documentation, a statement from the appropriate local official, as specified in local administrative rules or by the local government, indicating the property is a certified historic structure is required.
3. Property Review Criteria:

In its review the commission shall determine if the properties meet all the following criteria:

- a. The property is historic property;
- b. The property is included within a class of historic property determined eligible for Special Valuation by the City;
- c. The property has been rehabilitated at a cost which meets the definition set forth in RCW 84.26.020(2) within twenty-four months prior to the date of application; and d. The property has not been altered in any way which adversely affects those elements which qualify it as historically significant as determined by applying the Washington State Advisory Council's Standards for the Rehabilitation and Maintenance of Historic Properties (WAC 254-20-100(1) and listed in 17D.040.210 of this ordinance).

4. Rehabilitation and Maintenance Criteria:

The Washington State Advisory Council's Standards for the Rehabilitation and Maintenance of Historic Properties in WAC 254-20-100 shall be used by the commission as minimum requirements for determining whether or not an historic property is eligible for special valuation and whether or not the property continues to be eligible for special valuation once it has been so classified.

D. Agreement:

The historic preservation special valuation agreement in WAC 254-20-120 shall be used by the commission as the minimum agreement necessary to comply with the requirements of RCW 84.26.050(2).

E. Appeals:

Any decision of the commission acting on any application for classification as historic property, eligible for special valuation, may be appealed to Superior Court under Chapter 34.05.510 -34.05.598 RCW in addition to any other remedy of law. Any decision on the disqualification of historic property eligible for special valuation, or any other dispute, may be appealed to the County Board of Equalization.

Section 5. That SMC sections 17D.040.010, 17D.040.020, 17D.040.030, 17D.040, 17D.040.050, 17D.040.060, 17D.040.070 and 17D.040.080 are repealed.

PASSED BY THE CITY COUNCIL ON \_\_\_\_\_

Draft Date: Dec. 8, 2014

\_\_\_\_\_  
Council President

Attest:

Approved as to form:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Effective Date